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Presidential Documents

Title 3—

The President

Proclamation 10733 of April 26, 2024

National Small Business Week, 2024

By the President of the United States of America

A Proclamation

Small businesses are the engine of our economy and the heart and soul of our communities. They employ nearly half of all private sector workers and contribute to every industry. Getting them what they need to grow is one of the best investments our country can make. During National Small Business Week, we celebrate the grit and strength of every entrepreneur who has chased a dream and put in the hard work each day to see their business and our Nation thrive.

When I took office, the pandemic was raging, and our economy was reeling. Hundreds of thousands of small businesses had closed forever, and millions more hung on by a thread. Too many families faced the possibility of losing not only their life's work but also their hopes of leaving something behind for their kids. But we turned that around. My Administration reformed the landmark Paycheck Protection Program, which got quick help to thousands of small businesses so they could keep paying their workers. We delivered $450 billion in relief to help 6 million small businesses cover their bills and stay afloat. I signed the American Rescue Plan, which provided additional support to 100,000 restaurants and to 225,000 child care centers, which so many parents rely on to be able to work themselves.

Three years later, America is in the midst of a historic small business boom. Americans have filed a record 17 million new business applications—and every one of them is an act of hope. The share of Black-owned businesses has more than doubled between 2019 and 2022, and Latino business ownership is growing at the fastest pace in at least a decade, generating new jobs and new wealth in local communities. In all, our economy has added 15 million new jobs since I took office. Growth is strong, wages are rising, and inflation is down. We are witnessing a small business boom. Across the country, we are experiencing a great comeback story—and small businesses are playing a key part.

From day one, they have been at the heart of my plan to grow our economy from the middle out and bottom up. That is why—as my Bipartisan Infrastructure Law makes the biggest investment in our Nation's infrastructure in generations, rebuilding roads, bridges, ports, public transit, and more—we are relying on America's Main Street entrepreneurs to help us rebuild. We set a goal of awarding $37 billion in these investments to small businesses so they can benefit from these projects and create good-paying jobs. We are making sure every home and business in America has access to affordable, high-speed internet by the end of the decade so entrepreneurs everywhere can access more customers and have a fair shot. We passed the CHIPS and Science Act to expand semiconductor manufacturing and ensure industries of the future are Made in America, creating tens of thousands of jobs, strengthening supply chains, and supporting small suppliers and businesses across the country. As our Inflation Reduction Act makes the most significant investment in fighting climate change ever in the world, it is creating new markets for small clean-energy companies. Altogether, my Investing in America Agenda has attracted $688 billion in private-sector investments from companies that are bringing jobs back to America where they

belong, helping to rebuild our economy, our supply chains, and our small businesses.

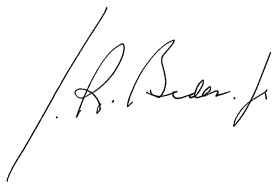
To help small businesses grow, we are also expanding access to capital and to markets by using the power of the Federal Government as both a lender and customer. Mom and pop businesses with only a handful of employees often need small loans of $100,000 or less, but not all banks offer them. That is why the Small Business Administration (SBA) is expanding access to low-cost small-dollar loans and increasing the number of lenders that offer affordable guaranteed loans. The SBA finalized rules that will provide rural and minority-, women-, and veteran-owned small businesses with more affordable loan options by authorizing more non-traditional lenders, like Community Development Financial Institutions, to offer guaranteed loans. Because the Federal Government buys more goods and services than any entity in the world, we set a goal of increasing the share of Federal contracting dollars that must go to small disadvantaged businesses from less than 10 percent before I took office to 15 percent. Last year, we awarded a record-setting $76 billion to these businesses, helping level the playing field and close the racial wealth gap.

Meanwhile, we invested $10 billion in State-level small-business programs, which will catalyze tens of billions in private investments to expand access to capital for small businesses and entrepreneurs. Further, my Administration has invested nearly $70 million in the Women's Business Centers network, which is designed to promote and support women-owned businesses and can now be found in all 50 States, the District of Columbia, and Puerto Rico.

Small businesses may only employ a few people instead of thousands, but together they make up 40 percent of our economy and 99.9 percent of all American businesses. They are the glue that helps hold our Nation together. In their dedication to their communities and in their courage, hope, sweat, and drive, small business owners embody the spirit of America and our boundless possibilities. This week, we recommit to making that future real and leaving no one behind.

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 April 28 through May 4, 2024, as National Small Business Week. I call upon all Americans to recognize the contributions of small businesses to the American economy, continue supporting them, and honor the occasion with programs and activities that highlight these important businesses.

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



[FR Doc. 2024–09551
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Presidential Documents

Proclamation 10734 of April 26, 2024

Workers Memorial Day, 2024

By the President of the United States of America

A Proclamation

A job is about more than a paycheck—it is about dignity and respect. Our Nation's workers built this country, and we need to have their backs. On the most basic level, that means every worker in this Nation deserves to be safe on the job. Too many still risk their lives or well-being in unsafe work conditions or dangerous roles. On Workers Memorial Day, we honor our fallen and injured workers and recommit to making sure every worker has the peace of mind of knowing that they are protected at work and can return home safe to their families every night.

I am proud to be the most pro-labor President in history, and from day one, my Administration has fought to make workplaces safer and fairer. Our American Rescue Plan invested $200 million into keeping workers safe during the pandemic and guaranteeing that workers had sick leave available if they got COVID–19. We also used the full power of the Defense Production Act to deliver personal protective equipment to workers who needed it. We vaccinated 230 million Americans so they could return to offices, stores, factory floors, and more without worrying about their health.

Strong unions are at the core of all of this work. Every major law that protects workers' safety passed because unions fought for it. That is why, as my Administration makes the biggest investment in our Nation's infrastructure in generations, we are also incentivizing companies to hire union workers, pay prevailing wages, and support pre-apprenticeships and Registered Apprenticeships that help workers learn how to safely do the job. At the same time, my Administration finalized a rule requiring Project Labor Agreements for most large-scale Federal construction projects, helping ensure these projects are completed safely, efficiently, and on time.

I am proud of my work standing up for unions, from being the first sitting President to walk a picket line to nominating union advocates to the National Labor Relations Board, which has helped protect the right to organize. I also signed Executive Orders restoring and expanding collective bargaining rights for the Federal workforce, and I re-established labor-management forums at Federal agencies to ensure Federal workers on the job are heard. I signed the Butch Lewis Act, protecting the pensions that millions of Americans worked their whole lives for. I have expanded coverage through the Affordable Care Act and slashed prescription drug prices, making health care more affordable for millions of working families.

At the same time, the Department of Labor has also made it easier for whistleblowers to report unsafe working conditions, regardless of their immigration status, and are hiring and training hundreds of workplace inspectors to ensure employers are meeting health and safety requirements. Last year, my Administration issued the first-ever heat Hazard Alert to protect millions of farm, construction, and other workers who spend their days outside in increasingly extreme heat. We also finalized a new rule to limit miners' exposure to toxic silica dust—protecting more than 250,000 from its harmful effects. The Department of Labor has also ramped up the enforcement of heat-safety rules, conducting more than 4,000 heat inspections in the past 2 years. They have also completed over 65,000 workplace safety and health

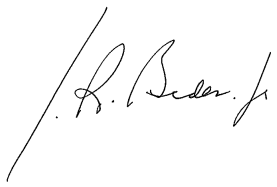
inspections since 2022, helping keep workers in high-risk industries safe. Further, my Administration published a rule that allows workers to choose a representative to accompany an Occupational Safety and Health Administration official during a workplace inspection, ensuring workers are being heard. The Department of Labor is working to develop a national standard to protect indoor and outdoor workers from extreme heat that can be hazardous to their health.

We are also fighting for the courageous first responders who routinely run toward danger to protect the rest of us. The Department of Labor proposed a rule that would strengthen safety standards for emergency responder equipment, training, and vehicle operations for the first time in more than 40 years. These new standards would transform many current industry best practices to requirements and could prevent thousands of injuries for more than one million brave first responders across the country. I was also proud to sign the Federal Firefighters Fairness Act, which boosted pay for over 10,000 Federal firefighters to help recruit more to the job, because I know that nothing keeps firefighters safe like more firefighters. We are also committed to protecting firefighters from the harmful effects of toxic ''forever chemicals'', which are still too often found in firefighting equipment and fire suppression agents. I signed legislation extending the Public Safety Officers' Benefits Program to firefighters who are permanently disabled and to families of firefighters who die after experiencing trauma like PTSD—it will not bring their loved ones back, but we owe them.

Today, our Nation is in the midst of a great comeback. Our economy is growing, wages are rising, and inflation is down. We have created a record 15 million jobs. On Workers Memorial Day, we recommit to making sure that every worker in this country is safe on the job. We honor those who lost their lives or have been injured on the job; we stand by their families; and we stand with the labor unions that are fighting to guarantee every worker safety, dignity, and respect.

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 April 28, 2024, as Workers Memorial Day. I call upon all Americans to observe this day with appropriate service, community, and education programs and ceremonies in memory of those killed or injured due to unsafe working conditions.

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



[FR Doc. 2024–09552
Filed 4–30–24; 8:45 am]
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Rules and Regulations

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INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

2 CFR Chapter XVI

Nonprocurement Suspension and Debarment

AGENCY: U.S. International Development Finance Corporation.

ACTION: Final rule.

SUMMARY: The U.S. International Development Finance Corporation (DFC) is issuing a final rule to implement its nonprocurement debarment and suspension regulations. With this regulatory action, DFC adopts Office of Management and Budget (OMB) regulations with some agency specific additions and clarifications. This final rule states what contracts are covered under this regulation, identifies the official authorized to grant exceptions to an excluded persons list, and states the person responsible for communicating requirements to both first and second tier program participants. Elements not addressed in this regulation are covered by the Governmentwide sections in the common rule.

DATES: This rule is effective May 30, 2024.

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

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order 12549 (51 FR 6370, February 18, 1986) established a Governmentwide debarment and suspension system covering the full range of Federal procurement and nonprocurement activities, and established procedures for debarment and suspension from participation in Federal nonprocurement programs. Section 6 of the Executive order authorized OMB to issue guidelines to Executive departments and agencies that govern which programs and activities are covered by the Executive order, prescribe Governmentwide criteria and Governmentwide minimum due process procedures, and set forth other related details for the effective administration of the guidelines. Section 3 directed agencies to issue implementing regulations that are consistent with OMB guidelines.

OMB issued an interim final guidance that implemented a common rule for Governmentwide Debarment and Suspension (Nonprocurement). This common rule is codified in part 180 of title 2 of the Code of Federal Regulations (70 FR 51864, August 31, 2005). In addition to restating and updating its guidance on nonprocurement debarment and suspension, the interim final guidance requires all Federal agencies to adopt a new approach to Federal agency implementation of the guidance. OMB requires each agency to issue a brief rule that: (1) Adopts the guidance, giving it regulatory effect for that agency's activities; and (2) states any agency-specific additions, clarifications, and exceptions to the Governmentwide policies and procedures contained in the guidance.

Under this system, a person who is debarred or suspended is excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency is registered with the General Services Administration (GSA)-maintained System for Award Management (SAM) exclusion list and has Governmentwide, reciprocal effect on that participant's ability to obtain procurement and nonprocurement contracts.

DFC published its proposed rule regarding nonprocurement suspension and debarment on January 5, 2024 (89 FR 714). During the public comment period, we received two comments, which are addressed in §§ 1600.220 and 1600.890 (see the corrections published on January 22, 2024 (89 FR 3896), and March 8, 2024 (89 FR 16701)).

Regulatory Analysis

Executive Order 12866

DFC is an independent agency and is not subject to Executive Order 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and Tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995

This rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 2 CFR Part 1600

Administrative practice and procedure, Assistance programs, Debarment and suspension, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, under the authority at 2 CFR 180.30, the United States International Development Finance Corporation adds 2 CFR chapter XVI, consisting of parts 1600 through 1699, to read as follows:

Chapter XVI—US International Development Finance Corporation

PART 1600—NONPROCUREMENT DEBARMENT AND SUSPENSION

PARTS 1601–1699 [RESERVED]

PART 1600—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 54 FR 34131, 3 CFR, 1989 Comp., p. 235.

§ 1600.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through I of 2 CFR part 180, as supplemented by this part, as the U.S. International Development Finance Corporation (DFC) regulations for non-procurement debarment and suspension. It thereby gives regulatory effect for DFC to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR, 1986 Comp., p. 189); Executive Order 12689, ''Debarment and Suspension'' (3 CFR, 1989 Comp., p. 235); and section 2455 of the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (31 U.S.C. 6101 note).

§ 1600.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see 2 CFR part 180, subpart B, and the definition of ''non-procurement transaction'' at 2 CFR 180.970);

(b) Respondent in a DFC suspension or debarment action;

(c) DFC suspending or debarring official; and

(d) DFC investment, guarantee, insurance or grant official authorized to enter into any type of non-procurement transaction that is a covered transaction.

§ 1600.30 What regulations must I follow?

The DFC regulations that you must follow are the regulations specified in each applicable section of the OMB guidance in subparts A through I of 2 CFR part 180 as that section is supplemented by the section in this part with the same section number or by additional provisions with no corresponding section number. For any section of OMB guidance in subparts A through I of 2 CFR part 180 that has no corresponding section in this part, DFC regulations are those in the OMB guidance.

Subpart A—General

§ 1600.137 Who in DFC may grant an exception to let an excluded person participate in a covered transaction?

The Chief Executive Officer (CEO) of DFC or designee may grant an exception permitting an excluded person to participate in a particular covered transaction. If the CEO of DFC or designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the Governmentwide policy in Executive Order 12549.

Subpart B—Covered Transactions

§ 1600.215 Which nonprocurement transactions are not covered transactions?

In addition to the nonprocurement transactions which are not covered transactions under 2 CFR 180.215, any nonprocurement transaction entered into under a primary tier nonprocurement transaction that does not require DFC explicit prior consent is not a covered transaction under 2 CFR 180.215(g)(2).

§ 1600.220 What contracts and subcontracts are covered transactions?

First-tier procurements (*i.e.,* primary contracts) under a covered nonprocurement transaction are covered transactions. Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (see also optional lower tier coverage in the figure in the appendix to 2 CFR part 180), DFC does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement under a covered nonprocurement transaction. Moreover, for purposes of determining whether a procurement contract is included as a covered transaction, the threshold in 2 CFR 180.220(b) is increased from $25,000 to the ''simplified acquisition threshold'' as defined in 48 CFR 2.101.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 1600.332 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

You, as a participant, must include a term or condition in lower-tier transactions that are covered transactions, requiring lower-tier participants to comply with the OMB guidance in 2 CFR part 180, subpart C, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 1600.437 What method do I use to communicate to a participant the requirements for participating in a covered transaction?

To communicate to a participant the requirements described in 2 CFR 180.435, you must include provisions in the contractual documentation of the transaction to ensure compliance with 2 CFR part 180, subpart C, as supplemented by subpart C of this part. The provisions must also require the participant to include similar terms or conditions of compliance in lower-tier covered transactions.

Subparts E–F [Reserved]

Subpart G—Suspension

§ 1600.765 How may I request reconsideration of my DFC suspension?

(a) If the DFC suspending official issues a decision under 2 CFR 180.755 to continue your suspension after you present information in opposition to that suspension under 2 CFR 180.720, you can ask the suspending official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) The suspending official must notify you of their decisions under this section, in writing, using the notice procedures at 2 CFR 180.615 and 180.975.

Subpart H—Debarment

§ 1600.890 How may I request reconsideration of my DFC debarment?

(a) If the DFC debarring official issues a decision under 2 CFR 180.870 to debar

you after you present information in opposition to a proposed debarment under 2 CFR 180.815, you can ask the debarring official to reconsider the decision for material errors of fact or law that you believe will change the outcome of the matter.

(b) A request for review under this section must be in writing; state the specific findings you believe to be in error; and include the reasons or legal bases for your position.

(c) DFC may debar a person or entity for refusing to engage in efforts to remediate identified environmental, social, and human rights harm stemming from their activities, including harm that may be identified through a DFC Office of Accountability complaints process.

(d) The debarring official must notify you of their decisions under this section, in writing, using the notice procedures at 2 CFR 180.615 and 180.975.

Subpart I—Definitions

§ 1600.930 Debarring official.

The debarring official for DFC is the Vice President & Chief Administrative Officer, Office of Administration, or designee as delegated in Agency policy.

§ 1600.1010 Suspending official.

The suspending official for DFC is the Vice President & Chief Administrative Officer, Office of Administration, or designee as delegated in Agency policy.

PARTS 1601–1699 [RESERVED]

Dated: April 10, 2024.

Lisa Wischkaemper,

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

[FR Doc. 2024–08855 Filed 4–30–24; 8:45 am]

BILLING CODE 3210–02–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

7 CFR Parts 1719, 1738, 1739, 1774, 1775, 3570, 4274, 4279, 4280, and 4288

[Docket Number: RHS–22–ADMIN–0025]

Rural Development Regulations With the Unique Entity Identifier (UEI) for Federal Awards

AGENCY: Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBCS), Rural Housing Service (RHS), and Rural Utilities Services (RUS), agencies in the United States Department of Agriculture (USDA) Rural Development (RD) Mission area, are issuing a final rule to update RD program regulations by removing references to the Data Universal Numbering System (DUNS) numbers and replacing them with the new Unique Entity Identifier (UEI) as the primary means of identifying entities registered for Federal awards government-wide in the System for Award Management (SAM).

DATES: Effective date: May 1, 2024.

FOR FURTHER INFORMATION CONTACT: Lauren Cusick, Rural Development Innovation Center—Regulations Management Division, United States Department of Agriculture, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 720–1414. Email: *lauren.cusick@usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

RD is a mission area within USDA comprised of RBCS, RHS, and RUS that strives to increase economic opportunity and improve the quality of life for all rural Americans. RD invests in rural America with loan, grant, and loan guarantee programs to help drive economic security and prosperity. These programs help expand access to high-speed internet, electric, telecommunications, and transportation infrastructure as well as support business growth, healthcare, education, housing, and other community essentials.

In 2016, the Federal Government revised both the Federal Acquisition Regulation (FAR) and title 2 of the Code of Federal Regulations (CFR) to remove any proprietary references to the DUNS. On July 10, 2019, the General Services Administration (GSA) published a notice in the **Federal Register** at 84 FR 32916, announcing a public meeting that was held on July 25, 2019. During this meeting, GSA presented information on replacing the DUNS with a governmentwide UEI. A universal identifier is required under titles 2 and 48 of the CFR for all applicants (non-individuals), recipients, and subrecipients of Federal agency awards.

On April 4, 2022, the universal identifier used across the Federal Government transitioned from using the DUNS number to the UEI, which is now the official identifier for doing business with the Federal Government. UEIs are required in accordance with 2 CFR part 25, and this transition has resulted in the UEI being issued by the Federal Government through SAM which is a government-wide registry for any entity doing business with the Federal Government, from securing Federal contracts to receiving Federal financial assistance. SAM centralizes information in conducting the acquisition and financial assistance which includes grants and cooperative agreements processes and provides a central location for Federal award recipients to change organizational information. The use of an UEI means entities no longer rely on a third party to obtain an identifier which has allowed the government to streamline the entity identification and validation process, making it easier and less burdensome for entities to do business with the Federal Government.

The Administrative Procedures Act exempts from prior notice any actions ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts'' (5 U.S.C. 553(b)(A)): therefore, RD is issuing this action as a final rule.

II. Summary of Changes

This final rule will update the remaining RBCS, RHS, and RUS regulations that are still using a DUNS number reference and replace it with the UEI. This change will make it clear that the UEI will be required, unless exempt, when applying for Federal awards from RD. The following is a summary, by regulation, of the changes made:

1. *7 CFR part 1719.* Section 1719.5(b)(2)(ii) was updated to replace the requirement for a DUNs number with the UEI.

2. *7 CFR part 1738.* Section 1738.202 was updated to remove paragraph (b) that addressed the DUNs number, the remaining paragraphs were redesignated, and the new paragraph (b) was updated to incorporate the UEI with the SAM registration information and the reference to a commercial and Government Entity (CAGE) code in paragraph (c) was removed as that is no longer required.

3. *7 CFR part 1739.* Section 1739.10 was updated to remove paragraph (c) that addressed the DUNs number, paragraph (d) was redesignated as paragraph (c) and the new paragraph (c)(1) was updated to incorporate the UEI with the SAM registration information.

4. *7 CFR part 1774.* Section 1774.2 was updated to remove the definition of

DUNS number and § 1774.10(a) was updated to replace the DUNS number information with UEI.

5. *7 CFR part 1775.* Section 1775.2 was updated to remove the definition of DUNS number and § 1775.10, paragraphs (b)(3) and (c) were updated to replace the DUNS number information with the UEI.

6. *7 CFR part 3570.* Section 3570.252 was updated to remove the definition of DUNS number and § 3570.267(b) was updated to replace the DUNS number information with the UEI.

7. *7 CFR part 4274.* Section 4274.352(a)(4)(i) was updated to replace the DUNS number with the UEI.

8. *7 CFR part 4279.* The introductory text for §§ 4279.161 and 4279.261(i) were updated to replace the DUNS number with the UEI.

9. *7 CFR part 4280.* Section 4280.416(c)(3) was updated to replace the DUNS number with the UEI.

10. *7 CFR part 4288.* Section 4288.20(b) was updated to replace the DUNS number with the UEI.

III. Executive Orders

Paperwork Reduction Act

This final rule contains no reporting or recordkeeping provisions requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

E-Government Act Compliance

RD is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible and to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 12372—Intergovernmental Consultation

This final rule is not subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented under USDA's regulations at 2 CFR part 415, subpart C.

Executive Order 12866

This final rule is exempt from OMB review for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 13132—Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Congressional Review Act

This rule is not subject to the Congressional Review Act (''CRA'') (5 U.S.C. 801 *et seq.*), as the CRA provides an exemption for any rule relating to agency management or personnel and for rules relating to agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (5 U.S.C. 601–602) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (''APA'') or any other statute. The Administrative Procedures Act exempts from notice and comment requirements rules ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts'' (5 U.S.C. 553(a)(2)), so therefore an analysis has not been prepared for this rule.

Unfunded Mandates Reform Act

This final rule contains no Federal Mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25) for State, local, and tribal governments, or the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (''Environmental Policies and Procedures''). The Agency has determined that: (i) This action meets the criteria established in 7 CFR 1970.53(f); (ii) No extraordinary circumstances exist; and (iii) The action is not ''connected'' to other actions with potentially significant impacts, is not considered a ''cumulative action'' and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This Executive order imposes requirements on RBCS, RHS and RUS (the Agencies) in the development of regulatory policies that have tribal implications or preempt tribal laws. The Agencies have determined that the final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. If Tribal leaders are interested in consulting with the Agencies on this final rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Native American Coordinator at: *AIAN@usda.gov* to request such a consultation.

Assistance Listing Number (Formally Known as the Catalog of Federal Domestic Assistance)

The Assistance Listing Numbers assigned to the programs affected by this final rule are: 10.351—Rural Business Development Grants, 10.751—Rural Energy Savings Program, 10.759—Special Evaluation Assistance for Rural Communities and Households, 10.761—Technical Assistance and Training Grants, 10.762—Solid Waste Management Grants, 10.766—Community Facilities Training and Technical Assistance Grants, 10.767 Intermediary Relending Program, 10.768—Business and Industry Loans, 10.863—Community Connect Grants, 10.865—Biorefinery Assistance Program, 10.867—Bioenergy Program for Advanced Biofuels, and 10.886—Rural Broadband Access Loan and Loan Guarantee Program. The Assistance Listings are available at *SAM.gov.*

Civil Rights Impact Analysis

RD has reviewed this final rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis, to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, marital or familial status. Based on the review and analysis of the rule and all available data, issuance of this final rule is not likely to negatively impact low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by

virtue of their age, race, color, national origin, sex, disability, or marital or familial status. No major civil rights impact is likely to result from this final rule.

USDA Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, 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 *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.*

List of Subjects

7 CFR Part 1719

Electric power, Grant programs—energy, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1738

Loan programs—communications, Rural areas, Telecommunications, Telephone.

7 CFR Part 1739

Grant programs—communications, Rural areas, Telecommunications, Telephone.

7 CFR Part 1774

Community development, Grant programs, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply.

7 CFR Part 1775

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

7 CFR Part 3570

Administrative practice and procedure, Fair housing, Grant programs—housing and community development, Housing, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 4274

Community development, Loan programs—business, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 4279

Community development, Energy, Energy conservation, Fees, Grant programs, Loan programs—business, Loan programs—housing and community development, Renewable energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 4280

Business and industry, Energy, Grant programs—business, Loan programs—business, Rural areas.

7 CFR Part 4288

Administrative practice and procedure, Biobased products, Energy, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, the Agency amends 7 CFR parts 1719, 1738, 1739, 1774, 1775, 3570, 4274, 4279, 4280 and 4288 as follows:

PART 1719—RURAL ENERGY SAVINGS PROGRAM

■ 1. The authority citation for part 1719 continues to read as follows:

Authority: 7 U.S.C. 8107a (Section 6407).

Subpart B—Application, Submission and Administration of RESP Loans

■ 2. Amend § 1719.5 by revising paragraph (b)(2)(ii) to read as follows:

§ 1719.5 Application process and required information.

* * * * *

(b) * * *

(2) * * *

(ii) The Applicant's tax identification number, SAM Managed Identifier (SAMMI), Unique Entity Identifier, and such similar information as it may be subsequently amended or required for Federal funding.

* * * * *

PART 1738—RURAL BROADBAND LOANS, LOAN/GRANT COMBINATIONS, AND LOAN GUARANTEES

■ 3. The authority citation for part 1738 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*

Subpart E—Loan and Loan/Grant Combination Application Review and Underwriting

■ 4. Amend § 1738.202 by:

■ a. Removing paragraph (b);

■ b. Redesignating paragraphs (c) through (e) as paragraphs (b) through (d), respectively; and

■ c. Revising newly redesignated paragraph (b).

The revision reads as follows:

§ 1738.202 Elements of a complete application.

* * * * *

(b) *SAM registration.* Prior to submitting an application, all Applicants requesting loan/grant combination funds must register in the System for Award Management (SAM) at *https://sam.gov/* and provide a Unique Entity Identifier as part of the application. SAM registration must be active with current data at all times, from the application review throughout the active Federal Award. To maintain the required registration in the SAM database, annual renewal is required with a review and update of all information. The Applicant must ensure that the information in the database is current, accurate, and complete.

* * * * *

PART 1739—BROADBAND GRANT PROGRAM

■ 5. The authority citation for part 1739 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*

Subpart A—Community Connect Grant Program

■ 6. Amend § 1739.10 by:
■ a. Removing paragraph (c);
■ b. Redesignating paragraph (d) as paragraph (c); and
■ c. Revising newly redesignated paragraph (c)(1).

The revision reads as follows:

§ 1739.10 Eligible applicant.

* * * * *

(c) * * *

(1) At the time of application, whether applying electronically or by paper, each applicant must have a Unique Entity Identifier (UEI) and an active registration in SAM before submitting its application in accordance with 2 CFR part 25. Instructions for obtaining the UEI are available at *https://sam.gov/.*

* * * * *

PART 1774—SPECIAL EVALUATION ASSISTANCE FOR RURAL COMMUNITIES AND HOUSEHOLDS PROGRAM (SEARCH)

■ 7. The authority citation for part 1774 continues to read as follows:

Authority: 7 U.S.C. 1926(a)(2)(C).

Subpart A—General Provisions

§ 1774.2 [Amended]

■ 8. Amend § 1774.2 by removing the definition of ''DUNS Number''.

Subpart B—Grant Application Processing

■ 9. Amend § 1774.10 by revising paragraph (a) introductory text to read as follows:

§ 1774.10 Applications.

(a) To file an application, an organization must provide their Unique Entity Identifier (UEI) in accordance with 2 CFR part 25. Instructions for obtaining the UEI are available at *https://sam.gov/.* To file a complete application, the following should be submitted:

* * * * *

PART 1775—TECHNICAL ASSISTANCE GRANTS

■ 10. The authority citation for part 1775 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart—A General Provisions

§ 1775.2 [Amended]

■ 11. Amend § 1775.2 by removing the definition of ''DUNS Number''.

Subpart B—Grant Application Processing

■ 12. Amend § 1775.10 by revising paragraphs (b)(3) and (c) introductory text to read as follows:

§ 1775.10 Applications.

* * * * *

(b) * * *

(3) Electronic applications will be accepted prior to the filing deadline through the Federal Government's eGrants website (*Grants.gov*) at *https://www.grants.gov.* Applicants should refer to instructions found on the *Grants.gov* website to submit an electronic application. A Unique Entity Identifier (UEI) from the System for Award Management and a Central Contractor Registry (CCR) registration is required prior to electronic submission. The sign-up procedures, required by *Grants.gov,* may take several business days to complete.

(c) *Application requirements.* To file an application, an organization must provide their UEI in accordance with 2 CFR part 25. Instructions for obtaining the UEI are available at *https://sam.gov/.* To file a complete application, the following information should be submitted:

* * * * *

PART 3570—COMMUNITY PROGRAMS

■ 13. The authority citation for part 3570 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart F—Community Facilities Technical Assistance and Training Grants

§ 3570.252 [Amended]

■ 14. Amend § 3570.252 by removing the definition of ''DUNS''.

■ 15. Amend § 3570.267 by revising paragraph (b) introductory text to read as follows:

§ 3570.267 Applications.

* * * * *

(b) *Application requirements.* To file an application, an organization must provide their Unique Entity Identifier (UEI) in accordance with 2 CFR part 25. Instructions for obtaining the UEI are available at *https://sam.gov/.* To file a complete application the following information must be submitted:

* * * * *

PART 4274—DIRECT AND INSURED LOANMAKING

■ 16. The authority citation for part 4274 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

Subpart D—Intermediary Relending Program (IRP)

■ 17. Amend § 4274.352 by revising paragraph (a)(4)(i) to read as follows:

§ 4274.352 Loan documentation for ultimate recipients.

* * * * *

(a) * * *

(4) * * *

(i) Name, address, Unique Entity Identifier, Federal ID number, and North American Classification System (NAICS) Code of the ultimate recipient;

* * * * *

PART 4279—GUARANTEED LOANMAKING

■ 18. The authority citation for part 4279 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 7 U.S.C. 1932(a); and Public Law 116–136, Division B, Title I.

Subpart B—Business and Industry Loans

■ 19. Amend § 4279.161 by revising the introductory text to read as follows:

§ 4279.161 Filing preapplications and applications.

Borrowers and lenders are encouraged to file preapplications and obtain Agency comments before completing an application. However, if they prefer, borrowers and lenders may file a complete application without filing a preapplication. The Agency will neither accept nor process preapplications and applications unless a lender has agreed to finance the proposal. For borrowers other than individuals, a Unique Entity Identifier (UEI) is required. Instructions for obtaining the UEI are available at *https://sam.gov/.* Guaranteed loans exceeding $600,000 must be submitted under the requirements specified in paragraph (b) of this section. However, guaranteed loans of $600,000 and less may be submitted under the requirements of either paragraph (b) or (c) of this section.

* * * * *

Subpart C—Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Loans

■ 20. Amend § 4279.261 by revising paragraph (i) to read as follows:

§ 4279.261 Application for loan guarantee content.

* * * * *

(i) *Unique Entity Identifier (UEI).* For Borrowers other than individuals, a UEI, which can be obtained online at *https://sam.gov/.*

* * * * *

PART 4280—LOANS AND GRANTS

■ 21. The authority citation for part 4280 continues to read as follows:

Authority: 7 U.S.C. 1989(a), 7 U.S.C. 2008s.

Subpart E—Rural Business Development Grants

■ 22. Amend § 4280.416 by revising paragraph (c)(3) to read as follows:

§ 4280.416 Applicant eligibility.

* * * * *

(c) * * *

(3) Provide its Unique Entity Identifier (UEI) in each application it submits to the Agency. The UEI is included on the Standard Form (SF) 424, ''Application for Federal Assistance.''

* * * * *

PART 4288—PAYMENT PROGRAMS

■ 23. The authority citation for part 4288 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—Repowering Assistance Payments to Eligible Biorefineries

■ 24. Amend § 4288.20 by revising paragraph (b) introductory text to read as follows:

§ 4288.20 Submittal of applications.

* * * * *

(b) *Content and form of submission.* Applicants must submit a signed original and one copy of an application containing the information specified in this section. The applicant must also furnish the Agency the required documentation identified in Form RD 4288–4, ''Repowering Assistance Program Application,'' to verify compliance with program provisions before acceptance into the program. Note that applicants are required to have a Unique Entity Identifier (UEI) (unless the applicant is an individual). Instructions for obtaining the UEI are available at *https://sam.gov/.* Applicants must submit to the Agency the documents specified in paragraphs (b)(1) through (6) of this section.

* * * * *

Basil I. Gooden,

Under Secretary, Rural Development, United States Department of Agriculture.

[FR Doc. 2024–09447 Filed 4–30–24; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 1780 and 1940

[Docket No. RUS–24–AGENCY–0004]

Update to Methodology and Formulas for Allocation of Loan and Grant Program Funds

AGENCY: Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service (RBCS, RHS, RUS, or collectively referred to as the Agency), of the Rural Development (RD) mission area within the U.S. Department of Agriculture (USDA), is issuing this final rule to update the data it uses to determine a State's percentage of national nonmetropolitan unemployment income. The Agency is amending two regulations to correct the source for the data and provide transparency on its process of determining state funding allocations for various Agency programs.

DATES: The effective date of this final rule is May 1, 2024.

FOR FURTHER INFORMATION CONTACT: John Delaney at *john.delaney@usda.gov,* Senior Policy Advisor, Rural Development Innovation Center, USDA, 1400 Independence Avenue SW, Mail Stop 0793, Room 6138-South, Washington, DC 20250–0793; or call (202) 720–9705.

SUPPLEMENTARY INFORMATION:

Background

Rural Development is a mission area within USDA comprised of RBCS, RHS and RUS. Rural Development's mission is to increase economic opportunity and improve the quality of life for all rural Americans and RD meets its mission by providing loans, grants, loan guarantees, and technical assistance through a multitude of programs aimed at creating and improving businesses, housing and infrastructure throughout rural America.

The Agency receives funding through the annual appropriations process. Several programs under the Agency apply a formula to determine how much each state should receive in a funding allocation for a given fiscal year. Where applicable, the formulas have multiple components that include a state's percentage of the national nonmetropolitan unemployment income figure. The regulations that are part of this rulemaking currently cite the Bureau of Labor Statistics (BLS) as the source for the national nonmetropolitan unemployment information, but this data is not publicly available. The Agency is changing the cited data source to the Census Bureau's American Community Survey (ACS).

The Agency is amending the regulations associated with this rulemaking to make the source of data clear. This amendment is not changing a current process or procedure.

Summary of Changes

7 CFR 1780

1. Section 1780.18(c)(2)(ii)(C) was amended to change the Bureau of Labor Statistics to 5-year income data from the ACS to correctly cite the source of data used as part of the allocation calculation.

7 CFR 1940

2. Sections 1940.585(b)(2), 1940.588(a)(2)(ii)(C), and 1940.591(b)(2) were amended to show that the 5-year income data from the ACS should be used for nonmetropolitan unemployment income and not BLS. These changes were made to correctly cite the source of data.

Executive Orders/Acts

Executive Order 12866—Classification

This rule is not subject to the provisions of Executive Order 12866 because it has no impact on borrowers or other members of the public. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comments, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. The action, however, is not published for proposed rulemaking because it involves only internal agency management and publication for comment is unnecessary.

Congressional Review Act

This rule is not subject to the Congressional Review Act (''CRA'', 5 U.S.C. 801 *et seq.*) as the CRA provides an exemption for any rule relating to agency management or personnel and for rules relating agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

Assistance Listing Number (Formally Known as the Catalog of Federal Domestic Assistance)

The amendments in this final rule apply to an interagency process and are not directly tied to a funding program where an Assistance Listing Number is required.

Executive Order 12372—Intergovernmental Consultation

This final rule is amending incorrect citations for an interagency process and is not subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs''.

Paperwork Reduction Act

This final rule contains no new reporting or recordkeeping burdens that would require approval under the Paperwork Reduction Act.

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (''Environmental Policies and Procedures''). The Agency has determined that (i) this action meets the criteria established in 7 CFR 1970.53(f); (ii) no extraordinary circumstances exist; and (iii) the action is not ''connected'' to other actions with potentially significant impacts, is not considered a ''cumulative action'' and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–602) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (''APA'') or any other statute. The Administrative Procedures Act exempts from notice and comment requirements rules ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts'' (5 U.S.C. 553(a)(2)), so therefore an analysis has not been prepared for this rule.

Executive Order 12988—Civil Justice Reform

This final rule is amending incorrect citations for an interagency process and is not subject to the requirement of Executive Order 12988.

Unfunded Mandates Reform Act (UMRA)

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and Tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132—Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the States is not required.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This final rule is amending incorrect citations for an interagency process and is not subject to the requirement of Executive Order 13175.

E-Government Act Compliance

Rural Development is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible and to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Civil Rights Impact Analysis

Rural Development has reviewed this rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis, to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, marital or familial status. Based on the review and analysis of the rule and all available data, issuance of this final rule is not likely to negatively impact low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status. No major civil rights impact is likely to result from this final rule.

USDA Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, 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:

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

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

c. *Email: program.intake@usda.gov.*

List of Subjects

7 CFR Part 1780

Community development, Community facilities, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

7 CFR Part 1940

Administrative practice and procedure, Agriculture, Environmental protection, Flood plains, Grant programs—agriculture, Grant programs—housing and community development, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas, Truth in lending.

Accordingly, for the reasons discussed in the preamble, the Agency amends 7 CFR parts 1780 and 1940 as follows:

PART 1780—WATER AND WASTE LOANS AND GRANTS

■ 1. The authority citation for part 1780 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—General Policies and Requirements

■ 2. Amend § 1780.18 by revising paragraphs (c)(2)(ii)(B) and (C) to read as follows:

§ 1780.18 Allocation of program funds.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) For the criterion specified in paragraph (b)(2)(i)(B) of this section, 5-year income data from the American Community Survey (ACS).

(C) For the criterion specified in paragraph (b)(2)(i)(C) of this section, the 5-year data from the ACS.

* * * * *

PART 1940—GENERAL

■ 3. The authority citation for part 1940 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

■ 4. Amend § 1940.585 by revising paragraph (b)(2) to read as follows:

§ 1940.585 Community Facility loans.

* * * * *

(b) * * *

(2) The data source for the first criterion is the most recent decennial Census data. The data source for the second and third criteria is the 5-year data from the American Community Survey (ACS). Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed 0.05.

Equation 1 to Paragraph (b)

SF = (criterion (b)(1)(i) × 50 percent) + (criterion (b)(1)(ii) × 25 percent) + (criterion (b)(1)(iii) × 25 percent)

* * * * *

■ 5. Amend § 1940.588 by revising paragraph (a)(2)(ii)(C) to read as follows:

§ 1940.588 Business and Industry Guaranteed and Direct Loans, Rural Business Development Grants, and Intermediary Relending Program.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(C) For the criterion specified in paragraph (a)(2)(i)(C) of this section, the 5-year data from the ACS.

* * * * *

■ 6. Amend § 1940.591 by revising paragraph (b)(2) to read as follows:

§ 1940.591 Community Program Guaranteed loans.

* * * * *

(b) * * *

(2) The data source for the first criterion is the most recent decennial Census data. The data source for the second and third criteria is the 5-year data from the American Community Survey (ACS). Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed 0.05.

Equation 1 to Paragraph (b)

SF = (criterion (b)(1)(i) × 50 percent) + (criterion (b)(1)(ii) × 25 percent) + (criterion (b)(1)(iii) × 25 percent)

* * * * *

Basil I. Gooden,

Under Secretary, USDA, Rural Development.

[FR Doc. 2024–09446 Filed 4–30–24; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2139; Project Identifier MCAI–2023–00435–T; Amendment 39–22713; AD 2024–06–08]

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–700–2A12 airplanes. This AD was prompted by reports from the supplier that some overheat detection sensing elements of the bleed air leak detection system were manufactured with insufficient salt fill, which can result in an inability to detect hot bleed air leaks. This AD requires maintenance records verification, and if an affected part is installed, prohibits the use of certain Master Minimum Equipment List (MMEL) items under certain conditions by requiring revising the operator's existing Minimum Equipment List (MEL). This AD also requires testing the overheat detection sensing elements, marking each serviceable sensing element with a witness mark, and replacing each nonserviceable part with a serviceable part. This AD also prohibits the installation of affected parts under certain conditions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 5, 2024.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 5, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2139; 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 Bombardier 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*.
- For Liebherr-Aerospace Toulouse SAS service information identified in this final rule, contact Liebherr-Aerospace Toulouse SAS, 408, Avenue des Etats-Unis—B.P.52010, 31016 Toulouse Cedex, France; telephone +33 (0)5.61.35.28.28; fax +33 (0)5.61.35.29.29; email: *techpub.toulouse@liebherr.com;* website: *www.liebherr.aero.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2023–2139.

FOR FURTHER INFORMATION CONTACT: Steven Dzierzynski, 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–700–2A12 airplanes. The NPRM published in the **Federal Register** on November 8, 2023 (88 FR 77044). The NPRM was prompted by AD CF–2023–18, dated March 9, 2023, issued by Transport Canada, which is the aviation authority for Canada (Transport Canada AD CF–2023–18) (also referred to as the MCAI). The MCAI states that Bombardier received reports from the supplier of the overheat detection sensing elements of a manufacturing quality escape. Some of the sensing elements of the bleed air leak detection system were manufactured with insufficient salt fill. This condition can result in an inability to detect hot bleed air leaks, which can cause damage to surrounding structures and systems and prevent continued safe flight and landing.

In the NPRM, the FAA proposed to require maintenance records verification, and if an affected part is installed, prohibit the use of certain MMEL items under certain conditions by requiring revising the operator's existing MEL. The NPRM also proposed to require testing the overheat detection sensing elements, marking each serviceable sensing element with a witness mark, and replacing each nonserviceable part with a serviceable part. The NPRM also proposed to prohibit the installation of affected parts under certain conditions. 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–2023–2139.

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 to the comment.

Request for Clarification on Location of Date of Manufacture

NetJets requested a statement be added to paragraph (h) of the proposed AD indicating that the date of manufacture can be found in the aircraft maintenance logbook, in addition to the identification plate of the airplane on certain airplanes. This information is stated in Transport Canada AD CF–2023–18, Part II, paragraph A. NetJets further stated that Bombardier no longer stamps a date on the airframe data plate.

The FAA agrees the date of manufacture can be found either on the identification plate of certain airplanes or in the aircraft maintenance logbook. The FAA has amended paragraph (h) of this AD to specify the two locations where the date of manufacture can be found.

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, 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 Liebherr Service Bulletin CFD–F1958–26–01, dated May 6, 2022, which specifies part numbers for affected sensing elements.

The FAA reviewed Bombardier Service Bulletin 700–36–7503, dated December 23, 2022, which specifies procedures for testing each leak detection loop (LDL) sensing element installed on the airplane, marking each serviceable sensing element with a witness mark, and replacing each nonserviceable part with a serviceable part.

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 19 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
Up to 214 work-hours × $85 per hour = Up to $18,190	$0	Up to $18,190	Up to $345,610.

The FAA has received no definitive data on which to base the cost estimates for the on-condition actions specified in this AD. The FAA estimates it takes up to 1.5 hours to replace a sensing element.

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:

2024–06–08 Bombardier, Inc.: Amendment 39–22713; Docket No. FAA–2023–2139; Project Identifier MCAI–2023–00435–T.

(a) Effective Date

This airworthiness directive (AD) is effective June 5, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–2A12 airplanes, certificated in any category, having serial numbers 70005 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code: 36, Pneumatic.

(e) Unsafe Condition

This AD was prompted by reports that some overheat detection sensing elements of the bleed air leak detection system were manufactured with insufficient salt fill. The FAA is issuing this AD to address non-conforming sensing elements of the bleed air leak detection system. The unsafe condition, if not addressed, could result in an inability to detect hot bleed air leaks and consequent damage to surrounding structures and systems, which could prevent continued safe flight and landing.

(f) Compliance

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

(g) Definitions

For the purpose of this AD, the definitions specified in paragraphs (g)(1) and (2) of this AD apply.

(1) An affected part is a sensing element marked with a date code before A2105 and having an LTS/Kidde part number specified in Liebherr Service Bulletin CFD–F1958–26–01, dated May 6, 2022, unless that sensing element meets the criteria specified in paragraph (g)(1)(i) or (ii) of this AD.

(i) The sensing element has been tested as specified in Section 3 of the Accomplishment Instructions of Kidde Aerospace and Defense Service Bulletin CFD–26–1, Revision 6, dated February 28, 2022, or earlier revisions, and has been found to be serviceable; and the sensing element has been marked on one face of its connector hex nut and packaged as specified in Section 3.C. of the Accomplishment Instructions of Kidde Aerospace and Defense Service Bulletin CFD–26–1, Revision 6, dated February 28, 2022, or earlier revisions.

(ii) The sensing element has been tested and found to be serviceable as specified in paragraph (j) of this AD; and the sensing element has been marked on one face of one connector hex nut with one green mark, as specified in Figure 33 of Bombardier Service Bulletin 700–36–7503, dated December 23, 2022, as applicable (the figure is representative for all sensing elements).

(2) A serviceable part is a sensing element that is not an affected part.

(h) Maintenance Records Verification

For airplane serial numbers 70097 and subsequent whose airplane date of manufacture, as identified on the identification plate of the airplane or in the aircraft maintenance logbook, is on or before the effective date of this AD: Within 60 days after the effective date of this AD, examine the airplane maintenance records to verify whether any affected part has been installed since the airplane date of manufacture, as identified on the identification plate of the airplane or in the aircraft maintenance logbook.

(1) If the maintenance records confirms that an affected part has been installed, or if it cannot be confirmed that an affected part has not been installed, paragraphs (i) and (j) of this AD must be complied with within the compliance time specified in paragraphs (i) and (j) of this AD.

(2) If the maintenance records confirm that no affected parts have been installed since airplane date of manufacture, then paragraphs (i) and (j) of this AD are not applicable.

(i) Minimum Equipment List (MEL) Revision

For all airplanes: Within 90 days after the effective date of this AD, revise the operator's existing MEL by incorporating the information specified in figures 1 through 7 to paragraph (i) of this AD, as applicable. This may be done by inserting a copy of this information into the operator's existing MEL.

Figure 1 to Paragraph (i)—MMEL Item 21–0425

BILLING CODE 4910–13–P

MMEL Item 21-0425

Crew Alerting System (CAS) Message	1. Repair Category	2. Dispatch Consideration
21 AIR COND / PRESS – TRIM LOOP ONE ELEMENT INOP	C	(O) May be displayed provided none of the following messages are displayed: – 21 AIR COND / PRESS – IASC 1B INOP – 21 AIR COND / PRESS – IASC 2B INOP – 21 AIR COND / PRESS – IASC 1B FAULT – 21 AIR COND / PRESS – IASC 2B FAULT

1. OPERATIONS (O)

Before each flight:

(1) Make sure that the airplane is not powered on and that engines and APU are OFF.

a. Connect electrical power to the airplane as follows:

Note: Do not use a Jet Airstart Cart or High Pressure Ground Cart.

i. Connect external AC power, OR

ii. Start the APU as follows:

1. On the ELECTRICAL control panel, set the MAIN BATT and APU BATT switches to ON.

2. On the BLEED/AIR COND control panel, make sure that the APU BLEED switch is set to OFF.

3. On the APU control panel, turn the APU switch to START.

b. When external AC power is on or APU is running, wait a minimum of 6 minutes.

c. After 6 minutes, check for the 21 AIR COND / PRESS – TRIM LOOP ONE ELEMENT INOP info message as follows:

i. If the 21 AIR COND / PRESS – TRIM LOOP ONE ELEMENT INOP info message shows – DISPATCH IS PERMITTED.

Note: The INFO message confirms it is not heat related and therefore cannot be a potential leak in the presence of an affected part.

ii. If the 21 AIR COND / PRESS – TRIM LOOP ONE ELEMENT INOP info message does not show – DISPATCH IS NOT PERMITTED.

Note: No INFO message confirms that it is heat related and therefore could be a potential leak in the presence of an affected part.

d. If required, remove external AC power from the airplane.

e. If required, set APU BLEED to AUTO.

(2) On the INFO synoptic page, make sure that the messages that follow do not show:

Note: Confirm the airplane has electrical power to activate the synoptic page.

– 21 AIR COND / PRESS – IASC 1B INOP info

– 21 AIR COND / PRESS – IASC 2B INOP info

– 21 AIR COND / PRESS – IASC 1B FAULT info

– 21 AIR COND / PRESS – IASC 2B FAULT info

Figure 2 to Paragraph (ii)—MMEL Item 30–0055

MMEL Item 30-0055

CAS Message	1. Repair Category	2. Dispatch Consideration
30 ICE PROT – L WING LOOP ONE ELEMENT INOP	C	(O) May be displayed provided none of the following messages are displayed: – 21 AIR COND / PRESS – IASC 1B INOP – 21 AIR COND / PRESS – IASC 2B INOP – 21 AIR COND / PRESS – IASC 1B FAULT – 21 AIR COND / PRESS – IASC 2B FAULT

1. OPERATIONS (O)

Before each flight:

(1) Make sure that the airplane is not powered on and that engines and APU are OFF.

a. Connect electrical power to the airplane as follows:

Note: Do not use a Jet Airstart Cart or High Pressure Ground Cart.

i. Connect external AC power, OR

ii. Start the APU as follows:

1. On the ELECTRICAL control panel, set the MAIN BATT and APU BATT switches to ON.

2. On the BLEED/AIR COND control panel, make sure that the APU BLEED switch is set to OFF.

3. On the APU control panel, turn the APU switch to START.

b. When external AC power is on or APU is running, wait a minimum of 6 minutes.

c. After 6 minutes, check for the 30 ICE PROT – L WING LOOP ONE ELEMENT INOP info message as follows:

i. If the 30 ICE PROT – L WING LOOP ONE ELEMENT INOP info message shows – DISPATCH IS PERMITTED.

Note: The INFO message confirms it is not heat related and therefore cannot be a potential leak in the presence of an affected part.

ii. If the 30 ICE PROT – L WING LOOP ONE ELEMENT INOP info message does not show – DISPATCH IS NOT PERMITTED.

Note: No INFO message confirms that it is heat related and therefore could be a potential leak in the presence of an affected part.

d. If required, remove external AC power from the airplane.

e. If required, set APU BLEED to AUTO.

(2) On the INFO synoptic page, make sure that the messages that follow do not show:

Note: Confirm the airplane has electrical power to activate the synoptic page.

– 21 AIR COND / PRESS – IASC 1B INOP info

– 21 AIR COND / PRESS – IASC 2B INOP info

– 21 AIR COND / PRESS – IASC 1B FAULT info

– 21 AIR COND / PRESS – IASC 2B FAULT info

Figure 3 to Paragraph (i)—MMEL Item 30–0060

MMEL Item 30-0060

CAS Message	1. Repair Category	2. Dispatch Consideration
30 ICE PROT – L WIPS LOOP ONE ELEMENT INOP	C	(O) May be displayed provided none of the following messages are displayed: – 21 AIR COND / PRESS – IASC 1B INOP – 21 AIR COND / PRESS – IASC 2B INOP – 21 AIR COND / PRESS – IASC 1B FAULT – 21 AIR COND / PRESS – IASC 2B FAULT

1. OPERATIONS (O)

Before each flight:

(1) Make sure that the airplane is not powered on and that engines and APU are OFF.

a. Connect electrical power to the airplane as follows:

Note: Do not use a Jet Airstart Cart or High Pressure Ground Cart.

i. Connect external AC power, OR

ii. Start the APU as follows:

1. On the ELECTRICAL control panel, set the MAIN BATT and APU BATT switches to ON.

2. On the BLEED/AIR COND control panel, make sure that the APU BLEED switch is set to OFF.

3. On the APU control panel, turn the APU switch to START.

b. When external AC power is on or APU is running, wait a minimum of 6 minutes.

c. After 6 minutes, check for the 30 ICE PROT – L WIPS LOOP ONE ELEMENT INOP info message as follows:

i. If the 30 ICE PROT – L WIPS LOOP ONE ELEMENT INOP info message shows – DISPATCH IS PERMITTED.

Note: The INFO message confirms it is not heat related and therefore cannot be a potential leak in the presence of an affected part.

ii. If the 30 ICE PROT – L WIPS LOOP ONE ELEMENT INOP info message does not show – DISPATCH IS NOT PERMITTED.

Note: No INFO message confirms that it is heat related and therefore could be a potential leak in the presence of an affected part.

d. If required, remove external AC power from the airplane.

e. If required, set APU BLEED to AUTO.

(2) On the INFO synoptic page, make sure that the messages that follow do not show:

Note: Confirm the airplane has electrical power to activate the synoptic page.

– 21 AIR COND / PRESS – IASC 1B INOP info

– 21 AIR COND / PRESS – IASC 2B INOP info

– 21 AIR COND / PRESS – IASC 1B FAULT info

– 21 AIR COND / PRESS – IASC 2B FAULT info

Figure 4 to Paragraph (i)—MMEL Item 30–0090

MMEL Item 30-0090

CAS Message	1. Repair Category	2. Dispatch Consideration
30 ICE PROT – R WING LOOP ONE ELEMENT INOP	C	(O) May be displayed provided none of the following messages are displayed: – 21 AIR COND / PRESS – IASC 1B INOP – 21 AIR COND / PRESS – IASC 2B INOP – 21 AIR COND / PRESS – IASC 1B FAULT – 21 AIR COND / PRESS – IASC 2B FAULT

1. OPERATIONS (O)

Before each flight:

(1) Make sure that the airplane is not powered on and that engines and APU are OFF.

a. Connect electrical power to the airplane as follows:

Note: Do not use a Jet Airstart Cart or High Pressure Ground Cart.

i. Connect external AC power, OR

ii. Start the APU as follows:

1. On the ELECTRICAL control panel, set the MAIN BATT and APU BATT switches to ON.

2. On the BLEED/AIR COND control panel, make sure that the APU BLEED switch is set to OFF.

3. On the APU control panel, turn the APU switch to START.

b. When external AC power is on or APU is running, wait a minimum of 6 minutes.

c. After 6 minutes, check for the 30 ICE PROT – R WING LOOP ONE ELEMENT INOP info message as follows:

i. If the 30 ICE PROT – R WING LOOP ONE ELEMENT INOP info message shows – DISPATCH IS PERMITTED.

Note: The INFO message confirms it is not heat related and therefore cannot be a potential leak in the presence of an affected part.

ii. If the 30 ICE PROT – R WING LOOP ONE ELEMENT INOP info message does not show – DISPATCH IS NOT PERMITTED.

Note: No INFO message confirms that it is heat related and therefore could be a potential leak in the presence of an affected part.

d. If required, remove external AC power from the airplane.

e. If required, set APU BLEED to AUTO.

(2) On the INFO synoptic page, make sure that the messages that follow do not show:

Note: Confirm the airplane has electrical power to activate the synoptic page.

– 21 AIR COND / PRESS – IASC 1B INOP info

– 21 AIR COND / PRESS – IASC 2B INOP info

– 21 AIR COND / PRESS – IASC 1B FAULT info

– 21 AIR COND / PRESS – IASC 2B FAULT info

Figure 5 to Paragraph (i)—MMEL Item 30–0095

MMEL Item 30-0095

CAS Message	1. Repair Category	2. Dispatch Consideration
30 ICE PROT – R WIPS LOOP ONE ELEMENT INOP	C	(O) May be displayed provided none of the following messages are displayed: – 21 AIR COND / PRESS – IASC 1B INOP – 21 AIR COND / PRESS – IASC 2B INOP – 21 AIR COND / PRESS – IASC 1B FAULT – 21 AIR COND / PRESS – IASC 2B FAULT

1. OPERATIONS (O)

Before each flight:

(1) Make sure that the airplane is not powered on and that engines and APU are OFF.

a. Connect electrical power to the airplane as follows:

Note: Do not use a Jet Airstart Cart or High Pressure Ground Cart.

i. Connect external AC power, OR

ii. Start the APU as follows:

1. On the ELECTRICAL control panel, set the MAIN BATT and APU BATT switches to ON.

2. On the BLEED/AIR COND control panel, make sure that the APU BLEED switch is set to OFF.

3. On the APU control panel, turn the APU switch to START.

b. When external AC power is on or APU is running, wait a minimum of 6 minutes.

c. After 6 minutes, check for the 30 ICE PROT – R WIPS LOOP ONE ELEMENT INOP info message as follows:

i. If the 30 ICE PROT – R WIPS LOOP ONE ELEMENT INOP info message shows – DISPATCH IS PERMITTED.

Note: The INFO message confirms it is not heat related and therefore cannot be a potential leak in the presence of an affected part.

ii. If the 30 ICE PROT – R WIPS LOOP ONE ELEMENT INOP info message does not show – DISPATCH IS NOT PERMITTED.

Note: No INFO message confirms that it is heat related and therefore could be a potential leak in the presence of an affected part.

d. If required, remove external AC power from the airplane.

e. If required, set APU BLEED to AUTO.

(2) On the INFO synoptic page, make sure that the messages that follow do not show:

Note: Confirm the airplane has electrical power to activate the synoptic page.

– 21 AIR COND / PRESS – IASC 1B INOP info

– 21 AIR COND / PRESS – IASC 2B INOP info

– 21 AIR COND / PRESS – IASC 1B FAULT info

– 21 AIR COND / PRESS – IASC 2B FAULT info

Figure 6 to Paragraph (i)—MMEL Item 36–0050

MMEL Item 36-0050

CAS Message	1. Repair Category	2. Dispatch Consideration
36 BLEED – L BLEED LOOP ONE ELEMENT INOP	C	(O) May be displayed provided none of the following messages are displayed: – 21 AIR COND / PRESS – IASC 1B INOP – 21 AIR COND / PRESS – IASC 2B INOP – 21 AIR COND / PRESS – IASC 1B FAULT – 21 AIR COND / PRESS – IASC 2B FAULT

1. OPERATIONS (O)

Before each flight:

(1) Make sure that the airplane is not powered on and that engines and APU are OFF.

a. Connect electrical power to the airplane as follows:

Note: Do not use a Jet Airstart Cart or High Pressure Ground Cart.

i. Connect external AC power, OR

ii. Start the APU as follows:

1. On the ELECTRICAL control panel, set the MAIN BATT and APU BATT switches to ON.

2. On the BLEED/AIR COND control panel, make sure that the APU BLEED switch is set to OFF.

3. On the APU control panel, turn the APU switch to START.

b. When external AC power is on or APU is running, wait a minimum of 6 minutes.

c. After 6 minutes, check for the 36 BLEED – L BLEED LOOP ONE ELEMENT INOP info message as follows:

i. If the 36 BLEED – L BLEED LOOP ONE ELEMENT INOP info message shows – DISPATCH IS PERMITTED.

Note: The INFO message confirms it is not heat related and therefore cannot be a potential leak in the presence of an affected part.

ii. If the 36 BLEED – L BLEED LOOP ONE ELEMENT INOP info message does not show – DISPATCH IS NOT PERMITTED.

Note: No INFO message confirms that it is heat related and therefore could be a potential leak in the presence of an affected part.

d. If required, remove external AC power from the airplane.

e. If required, set APU BLEED to AUTO.

(2) On the INFO synoptic page, make sure that the messages that follow do not show:

Note: Confirm the airplane has electrical power to activate the synoptic page.

– 21 AIR COND / PRESS – IASC 1B INOP info

– 21 AIR COND / PRESS – IASC 2B INOP info

– 21 AIR COND / PRESS – IASC 1B FAULT info

– 21 AIR COND / PRESS – IASC 2B FAULT info

Figure 7 to Paragraph (i)—MMEL Item 36–0105

MMEL Item 36-0105

CAS Message	1. Repair Category	2. Dispatch Consideration
36 BLEED – R BLEED LOOP ONE ELEMENT INOP	C	(O) May be displayed provided none of the following messages are displayed: – 21 AIR COND / PRESS – IASC 1B INOP – 21 AIR COND / PRESS – IASC 2B INOP – 21 AIR COND / PRESS – IASC 1B FAULT – 21 AIR COND / PRESS – IASC 2B FAULT

1. OPERATIONS (O)

Before each flight:

(1) Make sure that the airplane is not powered on and that engines and APU are OFF.

a. Connect electrical power to the airplane as follows:

Note: Do not use a Jet Airstart Cart or High Pressure Ground Cart.

i. Connect external AC power, OR

ii. Start the APU as follows:

1. On the ELECTRICAL control panel, set the MAIN BATT and APU BATT switches to ON.

2. On the BLEED/AIR COND control panel, make sure that the APU BLEED switch is set to OFF.

3. On the APU control panel, turn the APU switch to START.

b. When external AC power is on or APU is running, wait a minimum of 6 minutes.

c. After 6 minutes, check for the 36 BLEED – R BLEED LOOP ONE ELEMENT INOP info message as follows:

i. If the 36 BLEED – R BLEED LOOP ONE ELEMENT INOP info message shows – DISPATCH IS PERMITTED.

Note: The INFO message confirms it is not heat related and therefore cannot be a potential leak in the presence of an affected part.

ii. If the 36 BLEED – R BLEED LOOP ONE ELEMENT INOP info message does not show – DISPATCH IS NOT PERMITTED.

Note: No INFO message confirms that it is heat related and therefore could be a potential leak in the presence of an affected part.

d. If required, remove external AC power from the airplane.

e. If required, set APU BLEED to AUTO.

(2) On the INFO synoptic page, make sure that the messages that follow do not show:

Note: Confirm the airplane has electrical power to activate the synoptic page.

– 21 AIR COND / PRESS – IASC 1B INOP info

– 21 AIR COND / PRESS – IASC 2B INOP info

– 21 AIR COND / PRESS – IASC 1B FAULT info

– 21 AIR COND / PRESS – IASC 2B FAULT info

BILLING CODE 4910–13–C

(j) Testing and Replacement of Affected Overheat Detection Sensing Elements

For airplane serial numbers 70005 and subsequent: Within 3,500 flight hours or 120 months, whichever occurs first, from the effective date of this AD, test the overheat detection sensing elements to determine if they are serviceable, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 700–36–7503, dated December 23, 2022.

(1) For each sensing element that is serviceable, before further flight, mark the sensing element with a witness mark in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 700–36–7503, dated December 23, 2022.

(2) For each sensing element that is not serviceable, before further flight, replace the sensing element with a serviceable part in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 700–36–7503, dated December 23, 2022.

(k) Parts Installation Prohibition

As of the effective date of this AD, no person may install, on any airplane, any affected part unless it is a serviceable part.

(l) No Reporting Requirement

Although Bombardier Service Bulletin 700–36–7503, dated December 23, 2022, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(m) 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 (n)(2) of this AD or email to: *9-avs-nyaco-cos@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.

(n) Additional Information

(1) Refer to Transport Canada AD CF–2023–18, dated March 9, 2023, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–2139.

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

(o) 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 700–36–7503, dated December 23, 2022.

(ii) Liebherr Service Bulletin CFD–F1958–26–01, dated May 6, 2022.

(3) For Bombardier 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) For Liebherr-Aerospace Toulouse SAS service information identified in this AD, contact Liebherr-Aerospace Toulouse SAS, 408, Avenue des Etats-Unis—B.P.52010, 31016 Toulouse Cedex, France; telephone +33 (0)5.61.35.28.28; fax +33 (0)5.61.35.29.29; email: *techpub.toulouse@liebherr.com;* website: *www.liebherr.aero.*

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

(6) 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 March 18, 2024.

Victor Wicklund,

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

[FR Doc. 2024–09341 Filed 4–30–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2240; Project Identifier MCAI–2023–00936–T; Amendment 39–22717; AD 2024–06–12]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–24–20, which applied to all Airbus SAS Model A350–941 and –1041 airplanes, and AD 2023–03–05, which applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2021–24–20 required repetitive water drainage and plug cleaning of the left- and right-hand slat geared rotary actuators (SGRAs) having a certain part number installed on slat 5 track 12 with certain functional item numbers. AD 2023–03–05 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD continues to require certain actions in AD 2021–24–20 and AD 2023–03–05 and 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 June 5, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 5, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of March 23, 2023 (88 FR 10011, February 16, 2023).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of January 27, 2022 (86 FR 72838, December 23, 2021).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2240; 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 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–2023–2240.

FOR FURTHER INFORMATION CONTACT: Dat Le, 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 to supersede AD 2021–24–20, Amendment 39–21841 (86 FR 72838, December 23, 2021) (AD 2021–24–20) and AD 2023–03–05, Amendment 39–22330 (88 FR 10011, February 16, 2023) (AD 2023–03–05). AD 2021–24–20 applied to all Airbus SAS Model A350–941 and –1041 airplanes. AD 2021–24–20 required repetitive water drainage and plug cleaning of the left- and right-hand SGRAs having a certain part number installed on slat 5 track 12 with certain functional item numbers. The FAA issued AD 2021–24–20 to address SGRA jams, which could result in reduced control of the airplane.

AD 2023–03–05 applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2023–03–05 required revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations. The FAA issued AD 2023–03–05 to address an unsafe condition.

The NPRM published in the **Federal Register** on December 15, 2023 (88 FR 86840). The NPRM was prompted by AD 2023–0157, dated July 31, 2023, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2023–0157) (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 continue to require certain actions in AD 2021–24–20 and AD 2023–03–05 and 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 2023–0157. 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–2023–2240.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from Air Line Pilots Association, International, who supported the NPRM without change.

The FAA received additional comments from Delta Air Lines (DAL). The following presents the comments received on the NPRM and the FAA's response.

Request for Clarification of Applicability to Newly Delivered Airplanes

DAL requested whether airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after June 1, 2023, must continue to comply with AD 2019–20–01, Amendment 39–19754 (84 FR 55495, October 17, 2019) (AD 2019–20–01), and AD 2021–24–20, Amendment 39–21841 (86 FR 72838, December 23, 2021) (AD 2021–24–20), since the new AD does not apply to those airplanes.

The FAA agrees to clarify. For airworthiness limitation ADs, applicability is limited to airplanes that are certificated without the new airworthiness limitation document and thus do not apply to airplanes in production. Hence the AD identifies airplanes that were certificated on or before the publication date of the new airworthiness limitation document (for most manufacturers). In this case, the new airworthiness limitation document was published on June 1, 2023. In the preamble of the NPRM, the FAA explained ''Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after June 1, 2023, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.'' Thus, those airplanes are no longer required to comply with AD 2019–20–01 or AD 2021–24–20 after the effective date of this AD because those operators are complying with the new airworthiness limitation document as part of the approved type design, which addresses the unsafe condition identified in AD 2019–20–01 and AD 2021–24–20. The FAA has not changed this AD in this regard.

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, 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 requires EASA AD 2023–0157. This service information specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This AD also requires EASA AD 2022–0127, dated June 28, 2022, which

the Director of the Federal Register approved for incorporation by reference as of March 23, 2023 (88 FR 10011, February 16, 2023).

This AD also requires EASA AD 2021–0130R1, dated June 10, 2021, which the Director of the Federal Register approved for incorporation by reference as of January 27, 2022 (86 FR 72838, December 23, 2021).

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.

Costs of Compliance

The FAA estimates that this AD affects 30 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR RETAINED ACTIONS FROM AD 2021–24–20

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2021–24–20	4 work-hours × $85 per hour = $340	$0	$340	$10,200

The FAA estimates the total cost per operator for the retained actions from AD 2023–03–05 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 actions 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:

■ a. Removing Airworthiness Directive (AD) 2021–24–20, Amendment 39–21841 (86 FR 72838, December 23, 2021); and AD 2023–03–05, Amendment 39–22330 (88 FR 10011, February 16, 2023); and

■ b. Adding the following new AD:

2024–06–12 Airbus SAS: Amendment 39–22717; Docket No. FAA–2023–2240; Project Identifier MCAI–2023–00936–T.

(a) Effective Date

This airworthiness directive (AD) is effective June 5, 2024.

(b) Affected ADs

(1) This AD replaces AD 2021–24–20, Amendment 39–21841 (86 FR 72838, December 23, 2021) (AD 2021–24–20); and AD 2023–03–05, Amendment 39–22330 (88 FR 10011, February 16, 2023) (AD 2023–03–05).

(2) This AD affects AD 2019–20–01, Amendment 39–19754 (84 FR 55495, October 17, 2019) (AD 2019–20–01).

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 1, 2023.

(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 hazardous or catastrophic airplane system failures.

(f) Compliance

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

(g) Retained Requirements of AD 2021–24–20, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2021–24–20, 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 2021–0130R1, dated June 10, 2021 (EASA AD 2021–0130R1). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (m) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2021–0130R1, With No Changes

This paragraph restates the exceptions specified in paragraph (h) of AD 2021–24–20, with no changes.

(1) Where EASA AD 2021–0130R1 refers to ''the effective date of the original issue of this [EASA] AD,'' this AD requires using January 27, 2022 (the effective date of AD 2021–24–20).

(2) The ''Remarks'' section of EASA AD 2021–0130R1 does not apply to this AD.

(i) Retained No Reporting for EASA AD 2021–0130R1, With No Changes

This paragraph restates the no reporting requirement of paragraph (i) of AD 2021–24–20, with no changes. Although the service information referenced in EASA AD 2021–0130R1 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

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

This paragraph restates the requirements of paragraph (j) of AD 2023–03–05, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before May 2, 2022: 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 2022–0127, dated June 28, 2022 (EASA AD 2022–0127). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (m) of this AD terminates the requirements of this paragraph.

(k) Retained Exceptions to EASA AD 2022–0127, With No Changes

This paragraph restates the exceptions specified in paragraph (k) of AD 2023–03–05, with no changes.

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0127 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0127 specifies to revise ''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 March 23, 2023 (the effective date of AD 2023–03–05).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0127 is at the applicable ''limitations'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0127, or within 90 days after March 23, 2023 (the effective date of AD 2023–03–05), whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0127 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2022–0127 does not apply to this AD.

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

This paragraph restates the requirements of paragraph (l) of AD 2022–0127, with a new exception. Except as required by paragraph (m) of this AD, 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 2022–0127.

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

Except as specified in paragraph (n) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0157, dated July 31, 2023 (EASA AD 2023–0157). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraphs (g) and (j) of this AD.

(n) Exceptions to EASA AD 2023–0157

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2023–0157.

(2) Paragraph (3) of EASA AD 2023–0157 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 2023–0157 is at the applicable ''limitations'' and ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2023–0157, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2023–0157.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0157.

(o) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (m) 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 2023–0157.

(p) Terminating Action for Certain Tasks Required by AD 2019–20–01

After the maintenance or inspection program has been revised as required by paragraph (j) or (m) of this AD, the repetitive greasing specified in EASA AD 2018–0234R1, dated November 13, 2018, and EASA AD 2018–0234R2, dated September 17, 2019, as required by AD 2019–20–01, is terminated for thrust reverser actuators, having part number (P/N) 351D9908–689, P/N 351D9908–691 or P/N 351D9908–693.

(q) 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 International Validation Branch, send it to the attention of the person identified in paragraph (r) 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.

(r) Additional Information

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

(s) 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 June 5, 2024.

(i) European Union Aviation Safety Agency (EASA) AD 2023–0157, dated July 31, 2023.

(ii) [Reserved]

(4) The following service information was approved for IBR on March 23, 2023 (88 FR 10011, February 16, 2023).

(i) EASA AD 2022–0127, dated June 28, 2022.

(ii) [Reserved]

(5) The following service information was approved for IBR on January 27, 2022 (86 FR 72838, December 23, 2021).

(i) EASA AD 2021–0130R1, dated June 10, 2021.

(ii) [Reserved]

(6) For EASA ADs 2021–0130R1, 2022–0127, and 2023–0157, 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 these EASA ADs on the EASA website at *ad.easa.europa.eu.*

(7) 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.

(8) 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 March 22, 2024.

Victor Wicklund,

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

[FR Doc. 2024–09339 Filed 4–30–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0031; Project Identifier MCAI–2022–01307–T; Amendment 39–22729; AD 2024–07–08]

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 Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702); CL–600–2C11 (Regional Jet Series 550); CL–600–2D15 (Regional Jet Series 705); and CL–600–2D24 (Regional Jet Series 900) airplanes. This AD was prompted by a determination that a potential crack of the tombstone fitting lug cannot be detected as the bushings remain in place during accomplishment of the special detailed inspection (SDI) required by a certain airworthiness limitation (ALI) task. This AD requires inspecting the tombstone fitting lug with a new SDI sub-surface ultrasound procedure when accomplishing the ALI task, as specified in a Transport Canada AD, which is incorporated by reference. This AD also requires corrective actions if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 5, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 5, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0031; 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 material incorporated by reference in this AD, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca;* website *tc.canada.ca/en/aviation.*
- 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–2024–0031.

FOR FURTHER INFORMATION CONTACT: Yaser Osman, 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 Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702); CL–600–2C11 (Regional Jet Series 550); CL–600–2D15 (Regional Jet Series 705); and CL–600–2D24 (Regional Jet Series 900) airplanes. The NPRM published in the **Federal Register** on January 16, 2024 (89 FR 2517). The NPRM was prompted by Transport Canada AD CF–2022–54R1, dated October 4, 2022, issued by Transport Canada, which is the aviation authority for Canada (Transport Canada AD CF–2022–54R1) (also referred to as the MCAI). Transport Canada AD CF–2022–54R1 superseded Transport Canada AD CF–2022–54, dated September 13, 2022, to correct a reference to an incorrect maintenance requirements manual number. The MCAI states that MHI RJ discovered that the MHI RJ Non-Destructive Testing Manual (NDTM) Part 6, Procedure 53–61–121–250, associated with ALI Task 53–61–121, is not adequate to detect a potential crack of the tombstone fitting lug before the critical crack size is reached as the bushings remain in place during the SDI. Transport Canada AD CF–2022–54R1 mandates the use of new ultrasonic MHI RJ NDTM Part 4, Procedure 53–61–121–270, in conjunction with NDTM Part 6, Procedure 53–61–121–250, during accomplishment of the SDIs required by ALI Task 53–61–121.

In the NPRM, the FAA proposed to require inspecting the tombstone fitting lug with a new SDI sub-surface ultrasound procedure when accomplishing the ALI task, as specified in Transport Canada AD CF–2022–54R1. The NPRM also proposed to require corrective actions (repairing cracks) if necessary. The FAA is issuing this AD to address the undetected cracking of the tombstone fitting lug. If the crack is not detected, the tombstone fitting lug will eventually fail. The failure will cause a transfer of load to other engine attachment points, which will then be overloaded and compromised in their structural integrity. This can lead to a rapid failure mode, potentially resulting in the loss of the engine.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–0031.

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

Transport Canada AD CF–2022–54R1 specifies procedures for accomplishing a special detailed inspection for cracks of the engine forward support frame's tombstone top and bottom fitting lugs at frame fuselage station (FS) 1051.30, during the accomplishment of the SDIs required by ALI Task 53–61–121. 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.

Costs of Compliance

The FAA estimates that this AD affects 597 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 (per interval)	Cost on U.S. operators (per interval)
2 work-hours × $85 per hour = $170 (per interval)	$0	$170	$101,490

The FAA has received no definitive data on which to base the cost estimates for the repairs specified in this AD.

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:

2024–07–08 MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–22729; Docket No. FAA–2024–0031; Project Identifier MCAI–2022–01307–T.

(a) Effective Date

This airworthiness directive (AD) is effective June 5, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702); CL–600–2C11 (Regional Jet Series 550); CL–600–2D15 (Regional Jet Series 705); and CL–600–2D24 (Regional Jet Series 900) airplanes, certificated in any category, as identified in Transport Canada AD CF–2022–54R1, dated October 4, 2022 (Transport Canada AD CF–2022–54R1).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a determination that the MHI RJ Non-Destructive Testing Manual (NDTM) Part 6, Procedure 53–61–121–250, associated with Airworthiness Limitations (ALI) Task 53–61–121, is not adequate to detect a potential crack of the tombstone fitting lug as the bushings remain in place during the special detailed inspection (SDI). The FAA is issuing this AD to address the undetected cracking of the tombstone fitting lug. If the crack is not detected, the tombstone fitting lug will eventually fail. The failure will cause a transfer of load to other engine attachment points, which will then be overloaded and compromised in their structural integrity. This can lead to a rapid failure mode, potentially resulting in the loss of the engine.

(f) Compliance

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

(g) Requirements

Except as required by paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Transport Canada CF–2022–54R1.

(h) Exceptions To Transport Canada CF–2022–54R1

(1) Where Transport Canada AD CF–2022–54R1 refers to the effective date of AD CF–2022–54 (September 27, 2022), this AD requires using the effective date of this AD.

(2) Where paragraph A. of Transport Canada AD CF–2022–54R1 specifies inspecting ''For aeroplanes that, as of the effective date of AD CF–2022–54 (27 September 2022), have not been inspected as required by MRM CSP B–053 Part 2 ALI Task 53–61–121,'' this AD requires replacing that text with ''For all airplanes.''

(3) This AD does not adopt paragraph B. of Transport Canada AD CF–2022–54R1.

(4) Where paragraph A. of Transport Canada AD CF–2022–54R1 specifies inspecting ''within the intervals in MRM CSP B–053 Part 2 for ALI Task 53–61–121,'' for this AD, the initial compliance time for the task is within the ''threshold'' specified in the service information identified in paragraph A. of Transport Canada AD CF–2022–54R1 or within 90 days after the effective date of this AD, whichever occurs later.

(i) Crack Repair

If any cracking is found during the actions required by paragraph (g) of this AD, repair the cracking before further flight 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 DOA-authorized signature.

(j) No Reporting Requirement

Although the service information referenced in Transport Canada AD CF–2022–54R1 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(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. Information may be emailed to: *9-AVS-NYACO-COS@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

For more information about this AD, contact Yaser Osman, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@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) Transport Canada AD CF–2022–54R1, dated October 4, 2022.

(ii) [Reserved]

(3) For Transport Canada AD CF–2022–54R1, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca.* You may find this Transport Canada AD on the Transport Canada website at *tc.canada.ca/en/aviation.*

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

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

Issued on April 2, 2024.

Victor Wicklund,

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

[FR Doc. 2024–09340 Filed 4–30–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1214; Project Identifier AD–2023–00181–T; Amendment 39–22726; AD 2024–07–05]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 757–200, 757–200CB, and 757–300 airplanes. This AD was prompted by cracks on both sides of the airplane in the station (STA) 1640 frame web between S–14 and S–15. This AD requires an inspection or maintenance records check for existing liner holes in the STA 1640 frame web between S–14 and S–15, and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 5, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 5, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1214; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The 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 Boeing material, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–1214.

FOR FURTHER INFORMATION CONTACT: Wayne Ha, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: 562–627–5238; email: *Wayne.Ha@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 The Boeing Company Model 757–200, 757–200CB, and 757–300 airplanes. The NPRM published in the **Federal Register** on July 21, 2023 (88 FR 47090). The NPRM was prompted by cracks on both sides of the airplane at certain stringers. In the NPRM, the FAA proposed to require an inspection or a maintenance records check for existing liner holes at certain stringers, and applicable on-condition actions. The FAA is issuing this AD to address liner holes that could create a stress concentration around the hole and lead to cracks, which could result in the inability of a structural element to sustain limit load and could adversely affect the structural integrity of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from the Air Line Pilots Association, International, who supported the NPRM without change, and additional comments from Aviation Partners Boeing (APB), Boeing, Delta Air Lines, FedEx, and United Airlines. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request to Clarify Location of Crack Findings

Boeing requested that the **SUMMARY** section of the NPRM be revised to clarify the location of the cracks by replacing the phrase ''at certain stringers'' with ''in the STA 1640 frame web between S–14 and S–15'' in two places. Boeing stated that cracks were not detected at the stringer locations, but rather in the frame web between S–14 and S–15.

The FAA concurs with the change and has revised this final rule accordingly.

Request To Clarify Applicable On-Condition Actions

Boeing requested a revision to the NPRM section ''Related Service Information Under 1 CFR part 51'' to clarify that all on-condition actions depend on the airplane configuration and may include a combination of the actions.

The FAA concurs with the request and has revised this final rule accordingly.

Request To Clarify Required Actions

Paragraph (e) of the proposed AD stated that the AD would address ''unplugged liner holes'' that could create a stress concentration around ''the unplugged hole'' and lead to cracks. Boeing requested that the word ''unplugged'' be removed in both locations. Boeing stated that although the primary concern is unplugged liner holes, the proposed AD would also require actions for certain plugged holes.

The FAA agrees with the request and has changed paragraph (e) of this AD accordingly.

Request To Change Grouping for Certain Airplanes

FedEx stated that all its airplanes affected by the NPRM are Model 757–200 airplanes, and all of these airplanes are currently considered to be Group 1 airplanes, as defined by Boeing Alert Requirements Bulletin 757–53A0120 RB, dated January 17, 2022. FedEx added that its Model 757–200 airplanes were converted to a configuration similar to Boeing Model 757–200SF airplanes (special freighter airplanes with supplemental type certificate (STC) ST00916WI–D) per VT Mobile Aerospace Engineering STC ST03562AT, and therefore its airplanes are no longer configured as passenger airplanes. Because the inspection areas for its airplanes have been modified by STC ST03562AT, FedEx stated that the inspection areas specified for Group 1 airplanes are no longer applicable. FedEx therefore requested that Group 1 airplanes modified by STC ST03562AT be considered Group 3 airplanes, and required to follow all inspections, methods, and compliance times for Group 3 airplanes. FedEx requested this change to avoid the need for an alternative method of compliance (AMOC) for its airplanes when the AD becomes effective.

The FAA agrees that airplanes modified in accordance with STC ST03562AT are no longer Group 1 airplanes, as identified in Boeing Alert Requirements Bulletin 757–53A0120 RB, dated January 17, 2022, and are now Group 3. Paragraph (h)(4) of this AD has been added to specify that Group 1 airplanes that have been converted from a passenger to freighter configuration with STC ST03562AT must do the applicable actions specified for Group 3 airplanes.

Request To Extend Compliance Time

FedEx requested an extension of the initial compliance time to 3,000 flight cycles for actions in Tables 13 through 16 of Boeing Alert Requirements Bulletin 757–53A0120 RB, dated January 17, 2022. FedEx reported that not all of its airplanes will be scheduled for a heavy maintenance visit within the proposed compliance time, and that a 3,000-flight-cycle compliance time would match the Model 757–200SF heavy maintenance schedule. FedEx added that any compliance time requirement sooner than 3,000 flight cycles would force FedEx to schedule airplanes at inopportune times and locations, and would become an even bigger burden to repair any cracking found during the inspections.

The FAA does not agree to change the compliance time. In developing an appropriate compliance time for this action, the FAA considered the recommendations of the manufacturer, the urgency associated with the subject unsafe condition, and the practical aspect of compliance with the AD within a period of time that corresponds to the normal scheduled maintenance for most affected operators. In consideration of these items, the FAA determined that the compliance time, as proposed, will ensure an acceptable level of safety. The FAA has not changed this AD as a result of this comment. However, under the provisions of paragraph (i) of this AD, the FAA will consider requests for approval of alternative compliance times if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety.

Request To Clarify Compliance Times for Airplanes With STC

Delta reported that it operates a number of Boeing Model 757 airplanes with STC ST01518SE installed but without winglets–a configuration approved under STC ST01518SE. Delta noted that paragraph (h)(3) of the proposed AD did not address this configuration. Delta requested that the proposed AD be revised to clarify whether the reduced compliance time specified in paragraph (h)(3) of this AD applies only to airplanes with winglets installed.

The FAA provides the following clarification. A compliance time for airplanes with STC ST01518SE but without winglets has not been evaluated; therefore, that compliance-time requirement applies to all configurations with the STC ST01518SE modification. For clarification, paragraph (h)(3) of this AD has been revised to specify that the reduced compliance time applies to airplanes modified in accordance STC ST01518SE, with or without blended or scimitar blended winglets installed. However, as specified in paragraph (i) of this AD, the FAA will consider requests for approval of alternative compliance times if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety.

Request To Require Different Service Information

APB requested that the proposed AD be revised to require using Aviation Partners Boeing Service Bulletin AP757–53–004, Revision 1, dated February 15, 2023, for airplanes on which APB blended or scimitar blended winglets are installed by STC ST01518SE. APB provided no justification for this request.

Delta requested that paragraph (h)(3) of the proposed AD be revised, for airplanes with STC ST01518SE, to provide the less restrictive compliance times and methods than those specified in the proposed AD by using Aviation Partners Boeing Service Bulletin AP757–53–004, Revision 1, dated February 15, 2023. Delta stated that the conservative compliance times and repeat intervals specified in paragraph (h)(3) of the proposed AD would impose a great operational burden on Delta. Delta reported that it would be unable to accomplish the inspection in a regularly scheduled check environment within the proposed 1,000-flight-cycle compliance time. Delta added that the subject inspections require significant access procedures, which would result in extended unscheduled ground time, and could similarly affect all operators. Delta stated that APB, in its comments on the NPRM, reported that APB Service Bulletin AP757–53–004, Revision 1, dated February 15, 2023, had been independently reviewed by a designated engineering representative (DER) and recommended for FAA approval.

The FAA disagrees with the requests. The FAA has not reviewed nor approved the APB service bulletin. And given the urgency of the identified unsafe condition, the FAA has determined that delaying this AD while this service bulletin is reviewed and approved would be inappropriate. However, under the provisions of paragraph (i) of this AD, the FAA will consider requests for approval of alternative actions and compliance times if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. The FAA has not changed this AD as a result of this comment.

Conclusion

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 these products. 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 Boeing Alert Requirements Bulletin 757–53A0120 RB, dated January 17, 2022. This service information specifies procedures for a general visual inspection or maintenance records check of the STA 1640 fuselage frame web between S–14 and S–15, left and right sides, for an existing liner hole, and applicable on-condition actions. Depending on the airplane configuration, on-condition actions include repetitive surface high frequency eddy current (HFEC) inspections for cracks of the web around the fastener (plug), zero-timing the liner hole, plugging the liner hole, repetitive open-hole HFEC inspections of the web for cracks, and crack repair, or some combination of these actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 419 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	69 work-hours × $85 per hour = $5,865	$0	$5,865	$2,457,435

The FAA estimates the following costs to do any necessary on-condition actions 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 on-condition actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
HFEC inspections, plugging the liner hole, zero-timing of plugged liner hole.	2 work-hours × $85 per hour = $340	$5	$345

The FAA has received no definitive data on which to base the cost estimates for the crack repair specified in this AD.

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:

2024–07–05 The Boeing Company: Amendment 39–22726; Docket No. FAA–2023–1214; Project Identifier AD–2023–00181–T.

(a) Effective Date

This airworthiness directive (AD) is effective June 5, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 757–200, 757–200CB, and 757–300 airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 757–53A0120 RB, dated January 17, 2022.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by cracks on both sides of the airplane in the station (STA) 1640 frame web between stringer S–14 and S–15. The FAA is issuing this AD to address liner holes that could create a stress concentration around the holes and lead to cracks. The unsafe condition, if not addressed, could result in the inability of a structural element to sustain limit load and could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–53A0120 RB, dated January 17, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–53A0120 RB, dated January 17, 2022. Actions identified as terminating action in Boeing Alert Requirements Bulletin 757–53A0120 RB, dated January 17, 2022, terminate the applicable required actions of this AD, provided the terminating action is done in accordance with the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–53A0120 RB, dated January 17, 2022.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 757–53A0120, dated January 17, 2022, which is referred to in Boeing Alert Requirements Bulletin 757–53A0120 RB, dated January 17, 2022.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–53A0120 RB, dated January 17, 2022, refer to the original issue date of Requirements Bulletin 757–53A0120 RB, this AD requires using the effective date of this AD.

(2) Where Boeing Alert Requirements Bulletin 757–53A0120 RB, dated January 17, 2022, specifies contacting Boeing for repair instructions: This AD requires doing the repair before further flight using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(3) For airplanes that have been modified in accordance with supplemental type certificate (STC) ST01518SE, with or without blended or scimitar blended winglets installed: This AD requires all compliance times and repetitive intervals required by this AD, as specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–53A0120 RB, dated January 17, 2022, to be divided by a factor of 2.

(4) For airplanes identified as Group 1 in Boeing Alert Requirements Bulletin 757–53A0120 RB, dated January 17, 2022, that have been converted from a passenger to freighter configuration with VT Mobile Aerospace Engineering (MAE) STC ST03562AT: This AD requires compliance with all applicable actions and compliance times specified for Group 3 airplanes.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

(1) For more information about this AD, contact Wayne Ha, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: 562–627–5238; email: *Wayne.Ha@faa.gov.*

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

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(i) Boeing Alert Requirements Bulletin 757–53A0120 RB, dated January 17, 2022.

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Issued on March 29, 2024.

Victor Wicklund,

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

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 23 and 37

RIN 3038–AF34

Swap Confirmation Requirements for Swap Execution Facilities

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is amending its swap execution facility (SEF) regulations related to uncleared swap confirmations, and making associated technical and conforming changes.

DATES: This rule is effective May 31, 2024.

FOR FURTHER INFORMATION CONTACT: Roger Smith, Associate Chief Counsel, (202) 418–5344, *rsmith@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, 77 West Jackson Blvd., Suite 800, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Regulatory History: The Part 37 Rules

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Commodity Exchange Act (CEA or Act) by adding section 5h, which establishes registration requirements and core principles for SEFs.[1] The Commission implemented CEA section 5h by adopting part 37 of its regulations, which, among other things, sets forth operational requirements for SEFs and establishes various requirements for the trading of swaps on SEFs.[2] As part of the implementing SEF regulations, the Commission adopted § 37.6(b), which requires a SEF to provide each counterparty to a swap transaction that is entered into on or pursuant to the rules of the SEF—whether cleared or uncleared—with a written record of all of the terms of the transaction, ''which shall legally supersede any previous agreement and serve as a confirmation of the transaction.'' [3] Pursuant to § 37.6(b), the confirmation of all terms of the transaction must take place at the same time as execution, subject to a limited exception for certain information related to accounts included in bunched orders.[4]

In November 2018, the Commission issued a comprehensive proposal to amend the SEF regulatory framework.[5] In the 2018 SEF Proposal, the Commission proposed to amend § 37.6(b) to establish separate swap transaction documentation requirements for cleared and uncleared swaps.[6] For uncleared swap transactions, the Commission proposed to amend § 37.6(b) to require a SEF to provide the counterparties to the transaction with a ''trade evidence record'' that would memorialize the terms of the transaction agreed upon between the counterparties on the SEF.[7] Under the 2018 SEF Proposal, a ''trade evidence record'' was defined as a legally binding written documentation (electronic or otherwise) that memorializes the terms of a swap transaction agreed upon by the counterparties and legally supersedes any conflicting term in any previous agreement (electronic or otherwise) that relates to the swap transaction between the counterparties.[8] In 2021, the Commission withdrew the unadopted portions of the 2018 SEF Proposal,[9] including the proposed amendments to § 37.6, from further consideration.[10]

Pursuant to section 731 of the Dodd-Frank Act, which added section 4s(i) to the CEA,[11] the Commission has adopted regulations to prescribe documentation standards for swap dealers (SDs) and major swap participants (MSPs) related to the timely and accurate confirmation, processing, netting, documentation, and valuation of swaps. The Commission adopted § 23.501 to specifically address swap confirmation requirements for SDs and MSPs, including for those swaps executed on a SEF or designated contract market (DCM).[12] Among other things, § 23.501 provides that any swap transaction executed on a SEF or DCM shall be deemed to satisfy the swap confirmation requirements set forth in § 23.501, provided that the rules of the SEF or DCM establish that confirmation of all terms of the transaction shall take place at the same time as execution.[13]

B. Summary of Amendments to § 37.6

During the implementation of part 37, SEFs informed the Commission that the confirmation requirement for uncleared swaps under § 37.6(b) was operationally and technologically difficult and impractical to implement. As discussed more fully below, Commission staff from the Division of Market Oversight (DMO) acknowledged these technological and operational challenges and provided no-action positions for SEFs with respect to certain provisions of the Commission's regulations related to uncleared swap confirmations.[14] In particular, DMO most recently issued CFTC No-Action Letter No. 17–17 (NAL No. 17–17), which provides a no-action position with respect to the obligation to obtain copies of underlying, previously negotiated agreements between the counterparties, as discussed in greater detail below, for a SEF that seeks for uncleared swaps to satisfy the confirmation requirement in § 37.6(b) by incorporating by reference terms of such underlying agreements.[15]

On August 25, 2023, the Commission released a proposal [16] to amend its SEF regulations related to uncleared swap confirmations to address issues which have been addressed in staff no-action letters, including most recently NAL No. 17–17. In particular, the Commission proposed to amend § 37.6(b) to enable SEFs to incorporate terms of underlying, previously negotiated agreements between the counterparties by reference in an uncleared swap confirmation without being required to obtain such underlying, previously negotiated agreements. Further, the Commission proposed to amend § 37.6(b), which currently requires confirmation of all terms of a swap transaction to ''take place at the same time as execution,'' to require such confirmation to take place ''as soon as technologically practicable'' after the execution of the swap transaction on the SEF for both cleared and uncleared swap transactions. The Commission also proposed to amend § 37.6(b) to make clear that the SEF-provided confirmation under § 37.6(b) shall legally supersede any *conflicting terms* in a previous agreement, rather than the entire agreement. In addition, the Commission proposed to make conforming amendments to

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[1] 7 U.S.C. 7b–3.

[2] Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476 (June 4, 2013) (SEF Core Principles Final Rule). The SEF Core Principles Final Rule also articulates, where appropriate, guidance and acceptable practices for complying with the SEF core principles set forth in CEA section 5h.

[3] 17 CFR 37.6(b).

[4] 17 CFR 37.6(b). Specific customer identifiers for accounts included in bunched orders involving swaps need not be included in confirmations provided by a SEF if the applicable requirements of 17 CFR 1.35(b)(5) are met.

[5] Swap Execution Facilities and Trade Execution Requirement, 83 FR 61946 (Nov. 30, 2018) (2018 SEF Proposal).

[6] *Id.*

[7] *Id.* at 62096.

[8] *Id.* at 61973; 62067.

[9] The following final rulemakings of the Commission adopted certain portions of the 2018 SEF Proposal: (i) Exemptions From Swap Trade Execution Requirement, 86 FR 8993 (Feb. 11, 2021); and (ii) Swap Execution Facilities, 86 FR 9224 (Feb. 11, 2021).

[10] *See* Swap Execution Facilities and Trade Execution Requirement, 86 FR 9304 (Feb. 12, 2021).

[11] 7 U.S.C. 6s(i).

[12] 17 CFR 23.501(a)(4)(i).

[13] *Id.*

[14] NAL No. 17–17, Re: Extension of No-Action Relief for Swap Execution Facility Confirmation and Recordkeeping Requirements under Commodity Futures Trading Commission Regulations 37.6(b), 37.1000, 37.1001, 45.2, and 45.3(a) (Mar. 24, 2017). NAL No. 17–17 extended the no-action position previously provided by Commission staff. *See* CFTC Letter No. 16–25, Re: Extension of No-Action Relief for Swap Execution Facility Confirmation and Recordkeeping Requirements under Commodity Futures Trading Commission Regulations 37.6(b), 37.1000, 37.1001, 45.2, and 45.3(a) (Mar. 14, 2016) (NAL No. 16–25); CFTC Letter 15–25, Re: Extension of No-Action Relief for SEF Confirmation and Recordkeeping Requirements under Commission Regulations 37.6(b), 37.1000, 37.1001, and 45.2, and Additional Relief for Confirmation Data Reporting Requirements under Commission Regulation 45.3(a) (Apr. 22, 2015) (NAL No. 15–25); and CFTC Letter No. 14–108, Staff No-Action Position Regarding SEF Confirmations and Recordkeeping Requirements under Certain Provisions Included in Regulations 37.6(b) and 45.2 (Aug. 18, 2014) (NAL No. 14–108). *See also* CFTC Letter No. 13–58, Time-Limited No-Action Relief to Temporarily Registered Swap Execution Facilities from Commission Regulation 37.6(b) for Non-Cleared Swaps in All Asset Classes (Sept. 30, 2013) (NAL No. 13–58).

[15] *See* NAL No. 17–17. Upon the effective date of the amendments set forth herein, NAL No. 17–17 will expire pursuant its terms. In particular, NAL No. 17–17 states that the no-action position ''shall expire on the effective date of any changes [to § 37.6(b)].'' *See Id.* at 5.

[16] Swap Confirmation Requirements for Swap Execution Facilities, 88 FR 58145 (Aug. 25, 2023) (the Proposal).

§ 23.501(a)(4)(i) to correspond with the proposed amendments to § 37.6(b). Finally, the Commission proposed to make certain non-substantive amendments to § 37.6(a) and (b) to enhance clarity.

The Commission received four relevant comment letters regarding the Proposal.[17] After considering the comments, the Commission is adopting the rule amendments described herein as proposed. The Commission believes the amendments will reduce administrative burdens for SEFs and market participants, address technological and operational challenges, reduce the cost of SEFs' compliance with the confirmation requirement in § 37.6(b), and lead to a more effective regulatory framework for SEF swap confirmations.

C. Consultation With Other U.S. Financial Regulators

In developing these rule amendments, the Commission has consulted with the Securities and Exchange Commission (SEC), pursuant to section 712(a)(1) of the Dodd-Frank Act.[18]

II. Amended Regulations

A. § 37.6—Enforceability

1. § 37.6(b)(1)—Uncleared Swap Confirmations: Incorporation by Reference of Underlying Previously Negotiated Agreements

a. Proposed Regulations

Section 37.6(b) requires a SEF to provide each counterparty to a swap transaction that is entered into on or pursuant to the rules of the SEF, whether cleared or uncleared, with a ''confirmation''—a written record that contains all of the terms of the transaction—at the time of execution.[19] The terms of a swap transaction include economic terms that are specific to the transaction, *e.g.,* swap product, price, and notional amount, and can also include non-specific ''relationship terms'' that generally govern all transactions between two counterparties—including, for example, relationship-level default, margin, or governing law provisions.

For uncleared swap transactions,[20] the Commission is aware that many relationship terms that may govern certain aspects of the transaction are often negotiated and agreed upon in written documentation between the counterparties prior to execution.[21] The Commission previously stated that, for purposes of satisfying the requirements of § 37.6(b), a SEF's confirmation terms for uncleared swap transactions may incorporate by reference relevant terms set forth in such underlying agreements, as long as those agreements have been submitted to the SEF prior to execution.[22] As applied, § 37.6(b) requires that the SEF incorporate this documentation by reference into the issued confirmation, which is intended in part to provide SEF participants with legal certainty with respect to the terms of uncleared swap transactions.[23]

The requirement that the underlying agreements be submitted to the SEF prior to execution has, however, created impractical burdens for SEFs. Based upon feedback from SEFs, the Commission understands that SEFs have encountered many issues in trying to comply with the requirement, including high financial, administrative, and logistical burdens in order to collect and maintain bilateral transaction agreements from many individual counterparties. SEFs have stated that they are unable to develop a cost-effective method to request, accept, and maintain a library of every relevant previous agreement between counterparties.[24] SEFs have also noted that the potential number of previous agreements is considerable, given that SEF counterparties often enter into agreements with many other parties and may have multiple agreements for different asset classes.[25]

Commission staff from DMO has acknowledged these technological and operational challenges and has accordingly granted no-action positions, most recently in NAL No. 17–17.[26] Based on these no-action positions, many SEFs have incorporated by reference applicable relationship terms from previously negotiated underlying agreements between counterparties in confirmations for uncleared swaps, without obtaining copies of these agreements prior to the execution of a swap and without maintaining copies of such underlying agreements on an ongoing basis.[27]

Based on its experience with the part 37 implementation, in the Proposal the Commission acknowledged that cleared and uncleared swap transactions raise different issues with respect to

[17] The following entities submitted relevant comment letters: Bloomberg SEF LLC (BSEF); Cboe SEF, LLC (Cboe SEF); the International Swaps and Derivatives Association (ISDA); and the Wholesale Markets Brokers' Association, America (WMBAA).

[18] Dodd-Frank Act, Public Law 111–203, tit. VII, section 712(a)(1), 124 Stat. 1376 (2010). On November 2, 2023, the SEC adopted final rules for security-based swap execution facilities (SB SEFs). *See* Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities, 88 FR 87156 (December 15, 2023) (SEC SB SEF Final Rules). As part of the SEC SB SEF Final Rules, the SEC adopted SEC rule 242.812 (SB SEF Rule 812), which was modelled after existing § 37.6 with some modifications. In particular, SB SEF Rule 812 will require an SB SEF to as soon as technologically practicable after the time of execution of a transaction entered into on or pursuant to the rules of the facility, provide a written record to each counterparty of all of the terms of the transaction that were agreed to on the facility, which shall legally supersede any previous agreement regarding such terms. *Id.* at 87294. WMBAA in its comment letter on the Proposal encouraged the SEC to adopt the changes the Commission had proposed in the Proposal. WMBAA at 3. The Commission notes that the SEC SB SEF rules are outside of the scope of this rulemaking. As such, WMBAA's comment is not addressed further in this rulemaking.

[19] 17 CFR 37.6(b). *See also* 17 CFR 23.500(c) (providing a similar definition of ''confirmation'' that is applicable to SDs and MSPs).

[20] The Commission notes that swap trading relationship documentation is not required for swaps cleared by a derivatives clearing organization. *See* 17 CFR 23.504(a)(1).

[21] SEF Core Principles Final Rule at 33491, n.195. *See* Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55904, 55906 (Sept. 11, 2012) (noting that swap counterparties have typically relied on the use of industry-standard legal documentation to document their swap trading relationships. This documentation, such as the ISDA Master Agreement and related Schedule and Credit Support Annex (ISDA Agreement), as well as related documentation specific to particular asset classes, offers a framework for documenting uncleared swap transactions between counterparties); *see also* 17 CFR 23.504(b) (for uncleared swap transactions, § 23.504(b) requires written swap trading relationship documentation that includes all terms governing the trading relationship between an SD or MSP and its counterparty).

[22] SEF Core Principles Final Rule at 33491, n.195. While the Commission's statement specifically referenced the incorporation by reference of previously negotiated terms from ''a freestanding master agreement,'' the Commission recognizes that other previously negotiated freestanding agreements similarly may contain terms that are relevant to an uncleared swap confirmation. *Id.*

[23] To ensure that the SEF confirmation provides legal certainty, the Commission has stated that counterparties choosing to execute a swap transaction on or pursuant to the rules of a SEF must have all terms, including possible long-term credit support arrangements, agreed to no later than execution, such that the SEF can provide a written confirmation inclusive of those terms. *See* SEF Core Principles Final Rule at 33491.

[24] Many of these agreements are maintained in paper form or as scanned PDF files that are difficult to quickly digitize in a cost-effective manner. *See* WMBAA, Request for Extended Relief from Certain Requirements under Parts 37 and 45 Related to Confirmations and Recordkeeping for Swaps Not Required or Intended to be Cleared at 3 (Mar. 1, 2016). Further, some SEFs have cited the considerable resource cost of obtaining the number of different agreements that exist to accommodate different types of counterparties and asset classes. *Id.*

[25] *Id.*

[26] *See supra* note 14.

[27] *Id.* As a condition of staff's no-action positions, a SEF has been required to have a rule in its rulebook that requires its participants to provide copies of the underlying agreements to the SEF on request, as well as a rule in its rulebook that requires the SEF to (i) request from a participant an underlying agreement upon request from the Commission, and (ii) to furnish such agreement to the Commission as soon as it is available.

confirmation requirements [28] and that the current § 37.6(b) requirements create difficulties for the latter type of swap transaction. As such, the Commission proposed to amend § 37.6(b) by adding § 37.6(b)(1) to permit SEFs to incorporate relevant terms from underlying, previously negotiated agreements by reference in a confirmation for an uncleared swap transaction without obtaining such incorporated agreements.[29]

b. Public Comments

All of the relevant comments the Commission received supported the proposal to permit SEFs to incorporate relevant terms from underlying, previously negotiated agreements by reference in a confirmation for an uncleared swap transaction without obtaining such incorporated agreements.[30]

WMBAA commended the Commission for ''recognizing the practical complexities faced by market participants with respect to complying with'' the requirement that the underlying agreements be submitted to the SEF prior to execution.[31] WMBAA stated that it believes that codifying the relevant no-action position in NAL No. 17–17 ''into the regulatory framework through the [Proposal] is a prudent and necessary step forward.'' [32] Further, WMBAA stated that the Proposal ''will not only provide legal clarity but also maintain the integrity and efficiency of the uncleared swap market.'' [33] WMBAA also stated that ''codifying the no-action relief will align the regulatory framework with the industry's current practices, promoting consistency and reducing compliance burdens.'' [34]

ISDA stated that it ''strongly support[s] the Commission's proposal to codify its current no-action position that relieves [SEFs] of the obligation to obtain copies of underlying, previously negotiated agreements between trade counterparties, and that enables SEFs to incorporate such terms by reference when issuing swap confirmations.'' [35]

In support of the Proposal, Cboe SEF noted that ''[c]ollecting underlying, previously negotiated agreements is operationally and technologically difficult and impractical—nor is there any benefit to doing so when a SEF and the Commission may request those documents from SEF participants at any time.'' [36]

WMBAA specifically expressed support for not incorporating certain conditions of NAL No. 17–17 into § 37.6(b), in particular the conditions requiring ''(1) participants to provide copies of the underlying previously negotiated freestanding agreements to the SEF on request; and (2) the SEF to request from participants the underlying previously negotiated freestanding agreements on request from the CFTC and requiring the SEF to furnish such documents to the CFTC as soon as they are available.'' [37]

Question 1 of the Proposal asked whether the Commission should ''allow a SEF to issue a confirmation for an uncleared swap transaction that does not . . . include all the terms of the transaction, for example by only including in the confirmation the terms agreed to on the SEF?'' [38] In response to this question, Cboe SEF stated its belief ''that the Commission's current practice (as codified in the Proposal) is the best manner for providing confirmations for an uncleared swap transaction.'' [39] In particular, Cboe SEF explained that it lists foreign-exchange non-deliverable forwards [40] and that ''[g]iven the over-the-counter nature of the FX NDF market, it is critical to be able to incorporate by reference such industry definitions, templates, etc. as well as the

[28] *See supra* note 20.

[29] In addition to stating that DMO will not recommend enforcement action if a SEF incorporates by reference relevant terms from underlying, previously negotiated agreements in confirmations for uncleared swap transactions, without obtaining copies of such agreements, which the Commission codifies in this release, NAL No. 17–17 also provides no-action positions with respect to the requirement to maintain copies of such agreements in order to comply with SEF recordkeeping obligations under §§ 37.1000, 37.1001, and 45.2. Among other things, these requirements obligate a SEF to maintain ''records of all activities relating to the business of'' the SEF. The Commission believes that allowing a SEF to incorporate by reference relevant terms from the underlying, previously negotiated agreements without obtaining such agreements will rectify the compliance issues posed with respect to §§ 37.1000, 37.1001, and 45.2. As a SEF would no longer be required to obtain the underlying, previously negotiated agreements, the Commission believes that these agreements would not, as a general category, constitute records relating to the SEF's business for purposes of §§ 37.1000, 37.1001, and 45.2. The Commission notes, however, that if a SEF did obtain such an underlying, previously negotiated agreement, including at the request of the Commission or its staff or in connection with the fulfillment of the SEF's regulatory obligations, the SEF would, with respect to such agreement, need to comply with its recordkeeping obligations under §§ 37.1000, 37.1001, and 45.2. NAL No. 17–17 also provides a no-action position with respect to the swap data reporting requirements that apply to a SEF under § 45.3(a). In November 2020, the Commission amended its swap data reporting regulations, which amendments included the removal of the terms ''primary economic terms'' and ''confirmation data'' from § 45.3(a). *See* Swap Data Recordkeeping and Reporting Requirements, 85 FR 75503 (Nov. 25, 2020) (Amended Part 45 Rules). Currently, SEFs are required to report as specified in the technical specification published on the Commission's website, *available at https://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_18_RealTimeReporting/index.htm.* As relevant in this context, the technical specification sets out the required validations and message types, including when, for swap data reporting purposes, specific data fields are mandatory, conditional, or optional. For example, the technical specification distinguishes between transaction, collateral, and valuation reporting. In general, SEFs will report transaction message types and not valuation and collateral message types. Those data elements in the technical specification relevant to on-SEF transactions that are contained in the transaction message type are readily available for a SEF to fulfil its reporting obligations under Commission regulations in part 45. As further evidence of this, the defined term ''confirmation data'' no longer exists in § 45.3(a). Therefore, the no-action position stated in NAL No. 17–17 that ''the Division will not recommend that the Commission take enforcement action against a SEF for failure to report certain confirmation data pursuant to Commission Regulation 45.3(a) . . .'', *see* NAL No. 17–17 at 3–4, has not been in effect since the implementation of the Commission's Amended Part 45 Rules. Commission staff have not received a related, updated request for a no-action position with respect to SEF reporting requirements. The Commission believes the Amended Part 45 Rules and the associated technical specification requirements eliminate the need for the no-action position related to § 45.3(a) in NAL No. 17–17. Finally, in the Proposal the Commission did not propose to codify certain conditions from NAL No. 17–17, including conditions that require a SEF to have rules in its rulebook that (i) require a SEF confirmation to state, where applicable, that it incorporates by reference the terms of the underlying previously negotiated freestanding agreements between the counterparties, and (ii) state that in the event of any inconsistency between a SEF confirmation and the underlying previously negotiated freestanding agreements, the terms of the SEF confirmation legally supersede any contradictory terms and that require the SEF's confirmations to state the same. The Commission believes that the amendments adopted herein clarify the requirements for uncleared swap confirmations issued by SEFs in a manner that obviates the need to codify these conditions. *See also* the discussion, *infra,* of those conditions in NAL No. 17–17 that address the SEF's ability to obtain, upon request, copies of the underlying previously negotiated freestanding agreements that have been incorporated by reference into an uncleared swap confirmation.

[30] BSEF at 1, Cboe SEF at 1, ISDA at 1, and WMBAA at 2, 4.

[31] WMBAA at 2.

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] ISDA at 1.

[36] Cboe SEF at 1.

[37] WMBAA at 2–3.

[38] The Proposal at 58149.

[39] Cboe SEF at 1.

[40] Cboe SEF explained that it issues confirmations that ''incorporate by reference the terms of the underlying previously-negotiated freestanding agreements (including, without limitation, master agreement, master confirmation agreement and incorporated industry definitions) between the parties governing the Transaction (Master Agreement).'' Further, Cboe SEF explained that the confirmations it issues ''incorporate by reference the terms set forth on the Template Terms for Non-Deliverable FX Transactions in respect of the relevant CCY Pair as recommended by the Emerging Markets Traders Association and in effect as of the Trade Date of the Transaction (NDF Template Terms).'' Finally, Cboe SE noted that its rulebook ''provides that in the event of any inconsistency between the NDF Template Terms and the terms of the Master Agreement, the terms of the Master Agreement will prevail.'' Cboe SEF at 1–2.

counterparties' separately negotiated underlying agreements.''[41] Therefore, Cboe SEF stated its belief that ''it is best for the Commission to not permit uncleared swap confirmations to exclude terms from underlying, previously-negotiated freestanding agreements.''[42]

c. Commission Determination

The Commission is adopting, as proposed and as supported by commenters, new § 37.6(b)(1) to permit SEFs to incorporate relevant terms from underlying, previously negotiated agreements by reference in a confirmation for an uncleared swap transaction without obtaining such incorporated agreements.[43] The Commission believes, following staff's observation of SEFs and market participants operating under the existing no-action position in NAL No. 17–17 and precursor no-action letters, that new § 37.6(b)(1) would not compromise the legal certainty of confirmations issued by SEFs for uncleared swap transactions, as the previously negotiated agreements that are referred to in the confirmation are in effect at the time of the trade. Therefore, § 37.6(b)(1) is an appropriate alternative for SEFs to comply with the confirmation requirement under § 37.6(b), as it applies to uncleared swaps.

The Commission believes that § 37.6(b)(1) will address technological and operational challenges that have prevented SEFs from fully complying with § 37.6(b), as it will permit SEFs to incorporate relevant terms from underlying, previously negotiated agreements by reference in a confirmation for an uncleared swap transaction without obtaining such incorporated agreements before execution. The Commission believes that § 37.6(b)(1) will reduce logistical, administrative, and financial burdens for SEFs, who will not be required to obtain and maintain a library of every relevant previously negotiated agreement between counterparties, and will also reduce such burdens for market participants themselves, who will not be required to submit to a SEF all of their relevant underlying documentation with other potential counterparties on the SEF.

The Commission agrees with WMBAA that adopting § 37.6(b)(1), which codifies the existing no-action position in NAL No. 17–17, will align the regulatory framework for swap confirmations with the market's current practices, promoting consistency and reducing compliance burdens.[44] As more fully discussed below, the Commission expects that § 37.6(b)(1) will reduce the cost of SEFs' compliance with the confirmation requirement in § 37.6(b).

The Commission agrees with Cboe SEF that uncleared swap confirmations should not exclude terms from underlying, previously-negotiated agreements.[45] As such, the Commission is not changing the existing standard in § 37.6(b) that the confirmation include all of the terms of the transaction, including the terms from underlying, previously-negotiated agreements that are incorporated by reference into the confirmation.

In order to avail themselves of the no-action position under NAL No. 17–17, SEFs must have rules in their rulebooks that, among other things, require:[46] (1) participants to provide copies of the underlying previously negotiated freestanding agreements to the SEF on request; and (2) the SEF to request from participants the underlying previously negotiated freestanding agreements on request from the Commission and the SEF to furnish such documents to the Commission as soon as they are available.[47] The Commission believes that the existing requirements for SEFs under the CEA and the Commission's part 37 regulations sufficiently account for these conditions of NAL No. 17–17, such that these conditions do not need to be incorporated as specific conditions of new § 37.6(b)(1).

In particular, SEF Core Principle 5 and the implementing part 37 regulations require, among other things, that a SEF establish and enforce rules that will allow the SEF to obtain any necessary information to perform any of the functions described in section 5h of the Act; establish and enforce rules that will allow the SEF to have the ability and authority to obtain sufficient information to allow it to fully perform its operational, risk management, governance, and regulatory functions and any requirements under part 37; have rules that allow for its examination of books and records kept by the market participants on its facility; and provide information to the Commission on request.[48] The Commission believes that, pursuant to these requirements and as necessary to carry out its statutory and regulatory functions, a SEF has the ability and authority to request copies of the underlying agreements that are incorporated by reference into a confirmation for an uncleared swap transaction and to provide such agreements to the Commission upon request.[49] The Commission notes that this position is supported by public comment.[50]

Therefore, for the reasons stated above, the Commission is adopting as proposed new § 37.6(b)(1) to permit SEFs to incorporate underlying, previously negotiated agreements between counterparties by reference in a confirmation for an uncleared swap transaction without obtaining such incorporated agreements.[51]

2. Amendment to § 37.6(b)—Timing of Swap Transaction Confirmation

a. Proposed Regulations

Section 37.6(b) requires that confirmation of all the terms of a swap transaction entered into on or pursuant to the rules of a SEF must take place at the same time as execution, except for a limited exception for certain information related to accounts included in bunched orders.[52] The Commission proposed to amend this timing requirement and instead require confirmation of all the terms of a swap transaction ''as soon as technologically practicable'' after the execution of the swap transaction on the SEF.

b. Public Comments

Commenters supported amending § 37.6(b) to require confirmation of all the terms of a swap a transaction ''as soon as technologically practicable'' after the execution of the swap transaction on the SEF.[53] WMBAA

[41] *Id.* at 2.

[42] *Id.*

[43] BSEF at 1, Cboe SEF at 1, ISDA at 1, and WMBAA at 2, 4.

[44] WMBAA at 2.

[45] Cboe SEF at 2.

[46] *See also* note 29, *supra.*

[47] *See* NAL No. 17–17 at 4.

[48] 7 U.S.C. 7b–3(f)(5); 17 CFR 37.500–503.

[49] Further the Commission also has the ability to request information from the SEF under 17 CFR 37.5(a), which requires a SEF to file with the Commission information related to its business as a SEF upon the Commission's request. *See* 17 CFR 37.5.

[50] *See* WMBAA at 2–3 and Cboe SEF at 1. For example, Cboe SEF notes that ''[c]ollecting underlying, previously negotiated agreements is operationally and technologically difficult and impractical—nor is there any benefit to doing so when a SEF and the Commission may request those documents from SEF participants at any time.''

[51] As noted above, upon the effective date of the rules contained herein, NAL No. 17–17 will expire per its terms. *See supra* note 15.

[52] 17 CFR 37.6(b). Specific customer identifiers for accounts included in bunched orders involving swaps need not be included in confirmations provided by a SEF if the applicable requirements of § 1.35(b)(5) are met. *See* 17 CFR 1.35(b)(5), which provides that specific customer identifiers for accounts included in bunched orders executed on DCMs or SEFs need not be recorded at time of order placement or upon report of execution if the requirements set forth in § 1.35(b)(5)(i)–(v) are met.

[53] ISDA at 2 and WMBAA at 2.

stated that it believed that this amendment ''acknowledges the need for flexibility in the uncleared swap confirmation process, while accommodating technological constraints.'' [54]

Similarly, ISDA noted that this amendment, as ''correctly pointed out by the Commission,'' is ''necessary to account for block trades that are executed outside of the SEF's trading system or platform, but pursuant to the rules of the SEF—and the SEF is therefore unaware of the execution until the counterparties report the trade of the SEF.'' [55]

BSEF stated that it supports the Commission clarifying the timing for confirmations of block trades.[56]

c. Commission Determination

The Commission agrees with commenters and, as proposed, is amending § 37.6(b) to require confirmation of all the terms of a swap transaction ''as soon as technologically practicable'' after the execution of the swap transaction on the SEF.[57] The Commission believes that the amended standard—''as soon as technologically practicable'' after execution—will continue to promote the Commission's goals of providing swap counterparties with legal certainty in a prompt manner, while also being consistent with other Commission requirements related to swap confirmations.[58]

For a block trade that is executed ''away from'' a SEF,—*i.e.,* outside of the SEF's trading system or platform, but still ''pursuant to the rules'' of the SEF for purposes of the § 37.6(b) confirmation requirement—a SEF would be unaware of the execution of the trade until the counterparties report the trade details to the SEF. From a temporal perspective, the SEF would consequently be unable to confirm all terms of the block trade at the same time as execution. The Commission agrees with ISDA that amending the timing standard in § 37.6(b) will account for block trades that are executed outside of the SEF's trading system or platform, but pursuant to the rules of the SEF.[59]

The Commission believes that the amended standard reflects existing SEF capabilities while maintaining the Commission's goal of providing swap counterparties with legal certainty for transactions. Given the Commission's understanding that SEFs are complying with the ''at the same time as execution'' timing standard in existing § 37.6(b) for non-block swap transactions or block transactions executed on the SEF, the Commission expects that the impact of the ''as soon as technologically practicable'' timing standard for confirmations for such swap transactions will not be substantive.[60] Rather, the amendment will take into account practical realities for confirming block trades executed away from the SEF but pursuant to the rules of the SEF, while ensuring that confirmation for all SEF-executed trades takes place in as prompt a manner as possible.

Therefore, the Commission is adopting, as proposed, amendments to the timing standard in § 37.6 to require a SEF to confirm the terms of a swap transaction ''as soon as technologically practicable'' after the execution of the swap transaction on the SEF.

3. Proposed Amendment to § 37.6(b)—Conflicting Terms

a. Proposed Regulations

The Commission proposed to amend § 37.6(b) to make clear that the terms of a swap confirmation issued by a SEF shall legally supersede *any conflicting terms of* a previous agreement (*emphasis added*).[61]

b. Public Comments

Commenters generally supported amending § 37.6(b) to make clear that the terms of a swap confirmation issued by a SEF shall legally supersede *any conflicting terms* of a previous agreement (*emphasis added*).[62]

ISDA was ''supportive of the Commission's proposal to make clear that SEF-provided confirmations shall legally supersede any conflicting terms in a previous agreement, rather than the entire agreement.'' [63] ISDA stated that it believes that ''[s]uch an approach strikes the right balance between ensuring that the terms agreed to on the SEF are enforceable, while at the same time, also acknowledging the various documentation and agreements that underlie swap agreements.'' [64]

WMBAA stated that it ''supports the amendment to regulation 37.6(b) to clarify that the SEF-provided confirmation shall legally supersede any conflicting terms in a previous agreement. This clarification appears essential in maintaining certainty in swap transactions, reducing legal uncertainties, and streamlining the confirmation process.'' [65]

While BSEF stated that it believes that ''[t]he proposed amendment to 37.6(b) is sufficiently clear that the terms of a swap confirmation issued by a SEF shall legally supersede any conflicting terms of a previous agreement,'' BSEF stated that ''the Commission should also clarify that the rules of the SEF shall also legally supersede, with respect to the transaction, any conflicting terms of a previous agreement, whether or not specifically addressed in the confirmation.'' [66]

Specifically, BSEF stated that ''to the extent there is anything in the rules of the SEF that conflicts with the terms of any previous agreement, the SEF rulebook would govern the transaction and supersede the previous agreement.'' [67] BSEF stated that it believes that such an approach ''provides additional clarity that both the rules of the SEF and the specific terms stated in the swap confirmation issued by a SEF govern the terms of the trade and supersede any conflicting terms of a previous agreement.'' [68]

Finally, in response to Question 9 in the Proposal,[69] BSEF stated its belief

[54] WMBAA at 2.

[55] ISDA at 2.

[56] BSEF at 1.

[57] The Commission notes that in the context of real-time public reporting, it has defined ''as soon as technologically practicable'' to mean as soon as possible, taking into consideration the prevalence, implementation, and use of technology by *comparable market participants* (*emphasis added*). 17 CFR 43.2. The meaning of this term, in amended § 37.6(b), would be consistent with this definition, except applying to *comparable SEFs.* For example, for purposes of taking into consideration the prevalence, implementation and use of technology by comparable SEFs, the Commission would expect that fully electronic SEFs would be comparable to one another, while SEFs that utilize more manual processes, such as voice processes, would be comparable to each other.

[58] For example, § 23.501(a)(1) and (2) require that an SD or MSP issue a confirmation or acknowledgement for a swap transaction (as applicable) to its counterparty ''as soon as technologically practicable. . . .'' *See* 17 CFR 23.501(a)(1)–(2). Further, the Commission notes that the amended standard is consistent with the SEC's standard for SB SEFs in SB SEF Rule 812. *See* SEC SB SEF Final Rules at 87294.

[59] ISDA at 2.

[60] *See supra* note 57.

[61] While this amendment will apply with respect to both cleared and uncleared swap transactions executed on or pursuant to the rules of the SEF, the Commission notes that swap trading relationship documentation is not required for swaps cleared by a derivatives clearing organization. *See* 17 CFR 23.504(a)(1).

[62] BSEF at 1–2, Cboe SEF at 1, ISDA at 2, WMBAA at 2.

[63] ISDA at 2.

[64] *Id.*

[65] WMBAA at 2.

[66] BSEF at 2. BSEF's comment was specifically in response to Question 8 of the Proposal which asked, ''(1) Does the proposed amendment provide sufficient legal certainty with respect to any contradictory terms that may be contained within previous agreements that are incorporated into an uncleared swap confirmation by reference?''

[67] *Id.*

[68] *Id.*

[69] Question 9 of the Proposal asked whether, ''[f]or uncleared swaps, to avoid any conflict

''that the Commission should require that a SEF's confirmation specifically state that the terms of the confirmation legally supersede any conflicting terms in underlying previously negotiated agreements that have been incorporated by reference.'' [70] BSEF pointed out that a condition of relying on the no-action position in NAL No. 17–17 is that a SEF must have rules that require its confirmations to state that, in the event of any inconsistency between a SEF confirmation and the underlying previously-negotiated freestanding agreements, the terms of the SEF confirmation legally supersede any contradictory terms.[71] BSEFs stated that the Commission should require the specified statement in the SEF's confirmation.[72]

c. Commission Determination

The Commission is adopting, as proposed, amendments to § 37.6(b), making it clear that the terms of a swap confirmation issued by a SEF shall legally supersede *any conflicting terms of* a previous agreement (*emphasis added*).

Under the rules adopted in this final rulemaking, SEFs will be able to incorporate underlying, previously negotiated agreements by reference into confirmations for uncleared swap transactions. This amendment will help ensure legal certainty with respect to the terms of such transactions, and will also clarify the continuing applicability of those terms in the underlying agreements that do not conflict with the confirmation and that may, for example, govern the counterparties' non-SEF transactions.[73] Taking into account comments received on the Proposal, the Commission agrees with ISDA that this approach strikes the right balance between ensuring that the terms agreed to on the SEF are enforceable, while at the same time, acknowledging the various documentation and agreements that underlie swap transactions.[74]

As a condition of relying on the no-action position in NAL No. 17–17, SEFs must have rules which require its confirmations to state that, in the event of any inconsistency between a SEF confirmation and the underlying previously negotiated freestanding agreements, the terms of the SEF confirmation legally supersede any contradictory terms.[75] The amendment to § 37.6(b) reflects the substance of this condition, providing the benefit of continuing to allow SEFs that relied on NAL No. 17–17 to maintain market practices previously established under the no-action position in complying with amended § 37.6(b).[76] To this end, BSEF recommended that the Commission codify the condition of NAL No. 17–17.[77] The Commission notes that SEFs have reasonable discretion, subject to their obligations under the Act and Commission regulations, to establish rules and procedures for their markets. The Commission believes, and BSEF concedes, that the amendment to § 37.6(b) makes clear that in the event of any inconsistency between a SEF confirmation and underlying previously negotiated agreements, the terms of the SEF confirmation legally supersede any contradictory terms. Accordingly, the Commission does not believe that it needs to require the SEF's confirmation to state as such; however, the Commission believes that there is nothing that would preclude a SEF from having rules or procedures that include such a statement in the confirmations it issues.

The Commission acknowledges BSEF's comment recommending that the Commission also clarify that, to the extent that rules of the SEF conflict with the terms of a previous agreement, the rules of the SEF would govern the swap transaction and supersede the terms of the previous agreement.[78] This comment addresses matters that were not addressed in the Proposal. Therefore, the Commission declines to address BSEF's comment in the context of this rulemaking at this time.

For the reasons stated above, the Commission is adopting, as proposed, amendments to § 37.6(b), making it clear that the terms of a swap confirmation issued by a SEF shall legally supersede *any conflicting terms of* a previous agreement (*emphasis added*).

4. Clarification of § 37.6(b)

a. Proposed Regulations

Section 37.6(b) provides that a SEF shall provide each counterparty to a transaction that is entered into on or pursuant to the rules of the SEF with a written record of all of the terms of the transaction.

The Commission proposed a non-substantive amendment to § 37.6(b) to change the phrase ''entered into'' to ''executed'' in order to provide greater consistency within § 37.6(b). Existing § 37.6(b) uses ''entered into'' and ''executed'' interchangeably.

b. Public Comments

The Commission received no comments regarding the proposed non-substantive amendment to § 37.6(b) to change the phrase ''entered into'' to ''executed''.

c. Commission Determination

The Commission received no comments regarding the proposed non-substantive amendment to change the phrase ''entered into'' to ''executed,'' and is adopting this amendment to § 37.6(b) as proposed. This non-substantive amendment will, in conjunction with the non-substantive amendment to § 37.6(a) discussed below, ensure consistent use of ''executed'' throughout § 37.6.

5. Clarification of § 37.6(a)

a. Proposed Regulations

Section 37.6(a) is intended to provide market participants with legal certainty with respect to swap transactions on a SEF and generally clarifies that a swap transaction entered into on or pursuant to the rules of the SEF cannot be void, voidable, subject to rescission, otherwise invalidated, or rendered unenforceable due to a violation by the SEF of section 5h of the Act or part 37 of the Commission's regulations or any proceeding that alters or supplements a rule, term or condition that governs such swap or swap transaction.[79]

The Commission proposed a non-substantive amendment to § 37.6(a) to change the phrase ''entered into'' to ''executed'' in order to provide greater consistency within § 37.6. Currently § 37.6 uses ''entered into'' and ''executed'' interchangeably.

b. Public Comments

The Commission received no comments regarding the proposed non-

between the terms of the swap and the SEF's confirmation, . . . the Commission [should] require that the SEF's confirmation specifically state that the terms of the confirmation legally supersede any conflicting terms in underlying previously negotiated agreements that have been incorporated by reference''.

[70] BSEF at 2.

[71] *Id.*

[72] *Id.*

[73] In the SEF Core Principles Final Rule, the Commission noted that the counterparties to the uncleared swap transaction would need to ensure that nothing in the confirmation terms contradicted the standardized terms intended to be incorporated from the underlying agreement. SEF Core Principles Final Rule at 33491, n.195.

[74] ISDA at 2.

[75] *See* NAL No. 17–17 at 4. Further, as a condition of relying on NAL No. 17–17 the SEF must also have a rule that requires the SEF's confirmations to state ''that in the event of any inconsistency between a SEF confirmation and the underlying previously-negotiated freestanding agreements, the terms of the SEF confirmation legally supersede any contradictory terms''.

[76] As noted above, upon the effective date of the rules contained herein, NAL No. 17–17 will expire per its terms. *See supra* note 15.

[77] BSEF at 2.

[78] *Id.*

[79] 17 CFR 37.6(a).

substantive amendment to § 37.6(a) to change the phrase ''entered into'' to ''executed''.

c. Commission Determination

The Commission received no comments regarding the proposed non-substantive amendment to change the phrase ''entered into'' to ''executed,'' and is adopting this amendment to § 37.6(a) as proposed. This non-substantive amendment will, in conjunction with the proposed non-substantive amendment to § 37.6(b) discussed above, ensure consistent use of ''executed'' throughout § 37.6.

B. Amendments to § 23.501(a)(4)(i)

a. Proposed Regulations

The Commission proposed two amendments to § 23.501(a)(4)(i) to conform to the proposed amendments to § 37.6(b). Section 23.501(a)(4)(i) provides that a swap transaction executed on a SEF or DCM will be deemed to satisfy the swap confirmation requirements set forth for SDs and MSPs in § 23.501(a), provided that the rules of the SEF or DCM establish that confirmation of all terms of the transaction shall take place at the same time as execution. The Commission proposed to clarify that the safe harbor for SDs and MSPs in § 23.501(a)(4)(i) also applies to swap transactions executed ''pursuant to the rules'' of a SEF or DCM, *i.e.,* block trades executed away from the SEF's or DCM's trading system or platform, but pursuant to the SEF's or DCM's rules. This clarification is consistent with the definition of ''block trade'' under § 43.2.[80] To further conform to the proposed amendments to § 37.6(b), the Commission also proposed to amend § 23.501(a)(4)(i) to require confirmation of all terms of a swap transaction as soon as technologically practicable following execution.[81]

b. Public Comments

The Commission received no comments regarding the two proposed amendments to § 23.501(a)(4)(i).

c. Commission Determination

The Commission received no comments regarding the two proposed amendments to § 23.501(a)(4)(i) to conform to § 37.6(b). Therefore, the Commission is adopting these amendments to § 23.501(a)(4)(i) as proposed.

III. Effective Date

The Commission proposed as an effective date, for the rule amendments in the Proposal, the date that is 30 days after publication of final regulations in the **Federal Register**. The Commission received no comments regarding the proposed effective date. Therefore, the Commission is adopting an effective date for these rule amendments that is 30 days after publication of final regulations in the **Federal Register**. The Commission believes that such an effective date will allow SEFs and market participants sufficient time to adapt to the amended confirmation rules in an efficient and orderly manner.[82]

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal agencies to consider whether the regulations they promulgate will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis with respect to such impact.[83] The regulations finalized herein will affect SEFs and their market participants. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[84] The Commission previously concluded that SEFs are not small entities for the purpose of the RFA.[85] The Commission has also previously stated its belief in the context of relevant rulemakings that SEFs' market participants, which are all required to be eligible contract participants (ECPs) [86] as defined in section 1a(18) of the CEA,[87] are not small entities for purposes of the RFA.[88] Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these final regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA), imposes certain requirements on Federal agencies (including the Commission) in connection with conducting or sponsoring any ''collection of information,'' [89] as defined by the PRA. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget (OMB). The PRA is intended, in part, to minimize the paperwork burden created for individuals, businesses, and other persons as a result of the collection of information by federal agencies, and to ensure the greatest possible benefit and utility of information created, collected, maintained, used, shared, and disseminated by or for the federal government. The PRA applies to all information, ''regardless of form or format,'' whenever the government is ''obtaining, causing to be obtained, [or] soliciting'' information, and includes required ''disclosure to third parties or the public, of facts or opinions,'' when the information collection calls for ''answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.'' [90]

This final rulemaking affects regulations that contain collections of information for which the Commission has previously received control numbers from OMB. The titles for these collections of information are ''Swap Documentation, OMB control number 3038–0088'' and ''Core Principles and Other Requirements for Swap Execution Facilities, OMB control number 3038–0074.'' This final rulemaking will modify the information collection requirements associated with OMB control number 3038–0074, as discussed below. The Commission therefore is submitting this final rulemaking to OMB for its review in accordance with the

[80] § 43.2 defines a block trade as the following: Block trade means a publicly reportable swap transaction that: (1) Involves a swap that is listed on a swap execution facility or designated contract market; (2) Is executed on a swap execution facility's trading system or platform that is not an order book as defined in § 37.3(a)(3) of this chapter, or occurs away from the swap execution facility's or designated contract market's trading system or platform and is executed pursuant to the swap execution facility's or designated contract market's rules and procedures; (3) Has a notional or principal amount at or above the appropriate minimum block size applicable to such swap; and (4) Is reported subject to the rules and procedures of the swap execution facility or designated contract market and the rules described in this part, including the appropriate time delay requirements set forth in § 43.5. 17 CFR 43.2.

[81] The Commission notes that while DCMs may provide confirmations for swap block trades executed away from but pursuant to the rules of the DCM, DCMs do not have a regulatory obligation analogous to the current regulatory obligation under § 37.6(b) for SEFs to provide confirmations.

[82] As noted above, upon the effective date of the rules contained herein, NAL No. 17–17 will expire per its terms. *See supra* note 15.

[83] 5 U.S.C. 601 *et seq.*

[84] 47 FR at 18618–21 (Apr. 30, 1982).

[85] SEF Core Principles Final Rule at 33548 (citing, among others, 47 FR 18618, 18621) (Apr. 30, 1982) (discussing DCMs).

[86] 17 CFR 37.703.

[87] 7 U.S.C. 1(a)(18).

[88] 66 FR 20740, 20743 (Apr. 25, 2001) (stating that ECPs by the nature of their definition in the CEA should not be considered small entities).

[89] *See* 44 U.S.C. 3502(3)(A).

[90] *See* 44 U.S.C. 3502(3).

PRA.[91] The Commission did not receive any comments regarding the PRA burden analysis contained in the Proposal.

1. OMB Collection 3038–0088—Swap Documentation

The Commission is adopting two amendments to § 23.501(a)(4)(i) to conform to § 37.6(b), as amended. Section 23.501(a)(4)(i) provides that a swap transaction executed on a SEF or DCM will be deemed to satisfy the swap confirmation requirements set forth for SDs and MSPs in § 23.501(a), provided that the rules of the SEF or DCM establish that confirmation of all terms of the transaction shall take place at the same time as execution. The Commission is amending § 23.501(a)(4)(i) to clarify that the safe harbor for SDs and MSPs in that provision also applies to swap transactions executed ''pursuant to the rules'' of a SEF or DCM, *i.e.,* block trades executed away from the SEF's or DCM's trading system or platform, but pursuant to the SEF's or DCM's rules. The Commission also is amending § 23.501(a)(4)(i) to conform to the amendments to § 37.6(b), which will require confirmation of all terms of a swap transaction as soon as technologically practicable following execution.

As explained in the Proposal, the Commission does not believe that these amendments will substantively or materially modify any existing information collection burdens. Accordingly, the Commission is retaining its existing estimates for the burden associated with the information collections under OMB Collection 3038–0088.[92]

2. OMB Collection 3038–0074—Core Principles and Other Requirements for Swap Execution Facilities

Under existing § 37.6(b), a SEF is required to provide each counterparty to a swap transaction, whether cleared or uncleared, that is entered into on or pursuant to the rules of the SEF, with a written confirmation that contains all of the terms of the transaction. With respect to an uncleared swap transaction, a SEF may comply with the requirement to include in the confirmation all of the terms of the transaction, by incorporating by reference relevant terms set forth in underlying, previously negotiated agreements between the counterparties, as long as the SEF has obtained these agreements prior to execution of the transaction.[93]

This final rulemaking adds new § 37.6(b)(1), which will permit SEFs to incorporate by reference in a confirmation relevant terms set forth in underlying, previously negotiated agreements without being required to obtain these agreements.

The Commission believes that the final rulemaking will reduce administrative burdens for SEFs, who will not be required to request, accept, and maintain a library of every relevant previously negotiated agreement between counterparties.

As a result, the Commission believes that the final rulemaking will reduce a SEF's annual recurring information collection burden for uncleared swap transactions. In the Proposal, the Commission estimated that § 37.6(b)(1) would reduce annual recurring information collection burdens by one-third from 563 hours per SEF to 375 hours per SEF.[94] The Commission received no comments related to the PRA analysis or this determination.

The aggregate annual estimates for the reporting burden associated with § 37.6(b), as amended, is as follows:

Estimated number of respondents: 21.

Estimated average burden hours per respondent: 375 hours.

Estimated total annual burden on Respondents: 7,875 hours.

Frequency of collection: On occasion.

There are no capital costs or operating and maintenance costs associated with this collection.

C. Cost-Benefit Considerations

1. Background

Section 15(a) of the CEA [95] requires the Commission to ''consider the costs and benefits'' of its actions before promulgating a regulation under the CEA or issuing certain orders. CEA section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the CEA section 15(a) factors.

The Commission is amending certain rules in parts 23 and 37 of its regulations relating to the confirmation by CFTC-regulated exchanges, in particular SEFs, of the terms of swap transactions.

The baseline against which the Commission considers the costs and benefits of these rule amendments is the statutory and regulatory requirements of the CEA and Commission regulations now in effect, in particular CEA section 5h and certain rules in parts 23 and 37 of the Commission's regulations. The Commission, however, notes that as a practical matter many SEFs and market participants have adopted some current practices based upon a no-action position provided by Commission staff that the rule amendments generally will codify. As such, to the extent that SEFs and market participants have relied on this no-action position, the actual costs and benefits of the rule amendments as realized in the market may not be as significant.

In some instances, it is not reasonably feasible to quantify the costs and benefits to SEFs and certain market participants with respect to certain factors, for example, market integrity. Notwithstanding these types of limitations, however, the Commission otherwise identifies and considers the costs and benefits of these rule amendments in qualitative terms. The Commission did not receive any comments from commenters which quantified or attempted to quantify the costs and benefits of the Proposal.

In the following consideration of costs and benefits, the Commission first identifies and discusses the benefits and costs attributable to the rule amendments. The Commission, where applicable, then considers the costs and benefits of the rule amendments in light of the five public interest considerations set out in section 15(a) of the CEA.

The Commission notes that this consideration of costs and benefits is based on its understanding that the swaps market functions internationally with: (1) transactions that involve U.S. entities occurring across different international jurisdictions; (2) some entities organized outside of the United States that are registered with the Commission; and (3) some entities that

[91] *See* 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[92] For the previously approved estimates, *see* ICR Reference No: 202204–3038–005, *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202210-3038-007.*

[93] SEF Core Principles Final Rule at 33491, n.195.

[94] The Commission previously estimated that the information collections related to § 37.6 would take SEFs approximately 1.5 hours per SEF participant and that on average, a SEF has about 375 participants. For purposes of estimating the number of burden hours that the final regulations would eliminate, however, the Commission is revising its previous estimate and will assume the relevant process would take SEFs approximately 1.0 hours per SEF participant. Accordingly, 375 participants × 1.0 hour per participant = 375 estimated burden hours. For information about the Commission's previous estimate, *see* ICR Reference No. 202104–3038–001, *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202104-3038-001.*

[95] 7 U.S.C. 19(a).

typically operate both within and outside the United States and that follow substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits below refers to the effects of the rule amendments on all relevant swaps activity, whether based on its actual occurrence in the United States or on its connection with activities in, or effect on, U.S. commerce.[96]

2. Amendments to § 37.6(b)

a. Benefits

Under existing § 37.6(b), a SEF is required to provide each counterparty to a swap transaction that is entered into on or pursuant to the rules of the SEF, with a written confirmation at the time of execution that contains all of the terms of the transaction. SEFs may satisfy the requirements under existing § 37.6(b) for uncleared swap transaction confirmations by incorporating by reference, in the confirmation, relevant terms set forth in underlying, previously negotiated agreements between the counterparties, as long as such agreements have been submitted to the SEF prior to execution.

Absent adoption of new § 37.6(b)(1), which will allow SEFs to incorporate relevant terms set forth in such underlying agreements without being required to obtain the agreements, SEFs would need to comply with the existing requirements under § 37.6(b) for uncleared swap confirmations, notwithstanding the significant burdens of doing so. The Commission understands that the financial, administrative, and logistical burdens to collect and maintain bilateral transaction agreements from individual counterparties would be high. SEFs have stated that they are unable to develop a cost-effective method to request, accept and maintain a library of every relevant previous agreement between counterparties.[97] SEFs have also noted that the potential number of previous agreements is considerable, given that SEF counterparties often enter into agreements with many other parties and may have multiple agreements for different asset classes.[98]

The Commission believes that the addition of § 37.6(b)(1) should benefit both SEFs and market participants by decreasing the financial, administrative, and logistical burdens to execute an uncleared swap on a SEF. Not only would a SEF not be required to expend time and resources to gather and maintain all of the underlying relationship documentation between all possible counterparties on the SEF, but market participants would also not be required to expend time and resources in gathering and submitting this documentation to the SEF, including any amendments or updates to that documentation.

The Commission notes that these benefits are currently available to SEFs and market participants through the existing no-action position provided by Commission staff in NAL No. 17–17. As such, to the extent that SEFs, and by extension market participants, have relied on the existing no-action position to avoid the above-described financial, operational and logistical burdens, they have been availing themselves of the benefits of these reduced burdens.

The Commission also recognizes that many SEFs have already expended resources to implement technological and operational changes needed to avail themselves of the no-action position under NAL No. 17–17. These rule amendments would preclude the need to expend additional resources to negate those changes.

Further, the rule amendments do not change the existing requirement for a SEF to issue a confirmation of all terms of an uncleared swap transaction that is executed on or pursuant to the rules of the SEF. If a SEF was not required to issue a confirmation that includes or incorporates by reference all of the terms of such a transaction, the counterparties to the swap might be subject to other Commission regulations that impose such obligations, and therefore, increased costs. For example, where one of the counterparties to an uncleared swap transaction is an SD or MSP, § 23.501 requires that the SD or MSP issue a confirmation for the transaction as soon as technologically practicable.[99]

SEFs should also benefit from the requirement to confirm transaction terms ''as soon as technologically'' practicable after execution, rather than at the same time as execution. As noted above, the Commission believes that this amendment to the timing standard in § 37.6(b) reflects existing SEF capabilities while continuing to promote the Commission's goals of providing swap counterparties with legal certainty in a prompt manner.

b. Costs

With respect to uncleared swaps, the addition of § 37.6(b)(1) could reduce the financial integrity of transactions on SEFs compared to the current rule. There could be a greater risk of misunderstanding between the counterparties to a swap transaction if SEFs do not provide all the terms of the transaction at the time of execution, instead incorporating certain terms by reference. Even when underlying agreements are incorporated by reference, confusion could arise from issues such as multiple versions of an agreement with the same labeling, or missing sections. However, the Commission does not expect that this risk will materially reduce the integrity of the swaps market. The Commission notes that the relevant underlying agreements usually establish relationship terms between counterparties that govern all trading between them in uncleared swaps, and do not generally concern the terms of specific transactions.

To the extent that SEFs are relying on the existing no-action position provided by Commission staff in NAL No. 17–17, they could continue to implement existing industry practice related to confirmations for uncleared swap transactions which should not impose costs on the SEFs. But to the extent that SEFs need to modify their rules or procedures in light of the rule amendments, such as by removing the SEF rules required as conditions under NAL No. 17–17, they may incur modest costs.

c. Consideration of Alternatives

The relevant no-action position set forth in NAL No. 17–17, upon which the rule amendments are based, is subject to withdrawal by Commission staff. In addressing alternatives to adopting the amendments to § 37.6(b), the Commission considered the costs and benefits associated with enforcing the requirements of existing § 37.6(b). The Commission believes that adopting the amendments to § 37.6(b), and the conforming amendments set forth in these final rules, would help to maintain the benefits previously articulated in the SEF Core Principles Final Rule, but also reduce related costs for SEFs with respect to confirmation requirements.[100]

[96] *See, e.g.,* 7 U.S.C. 2(i).

[97] *See* WMBAA, Request for Extended Relief from Certain Requirements under Parts 37 and 45 Related to Confirmations and Recordkeeping for Swaps Not Required or Intended to be Cleared, at 3 (Mar. 1, 2016).

[98] *Id.*

[99] *See* 17 CFR 23.501(a). As discussed above, subject to specified conditions, § 23.501(a)(4)(i) provides a safe harbor from this requirement when a SEF issues a confirmation for the transaction.

[100] The Commission recognized the important benefits provided by the § 37.6(b) confirmation requirements in the cost-benefit considerations to the SEF Core Principles Final Rule. With respect to those benefits, the Commission stated that the

d. Section 15(a) Factors

(1) Protection of Market Participants and the Public

The rule amendments should continue to promote the legal certainty of swap transactions executed on SEFs. The amendments to § 37.6 for uncleared swaps, and the conforming amendments set forth in these final rules, will clarify compliance requirements, consistent with the position taken by Commission staff in NAL No. 17–17, while helping to maintain the protection of market participants and the public.

(2) Efficiency, Competitiveness, and Financial Integrity of Markets

The amendments to § 37.6 for uncleared swaps, and the conforming amendments set forth in these final rules, will ease compliance for SEFs and market participants on a longer-term basis, *i.e.,* by providing a regulatory solution beyond the corresponding no-action position provided by Commission staff in NAL No. 17–17. This may improve the efficiency of the swap markets with respect to issuing and transmitting swap confirmations to counterparties. In particular, SEFs would attain greater operational efficiency because they would not be required to develop an infrastructure for collecting and maintaining all relevant underlying, previously negotiated agreements between counterparties transacting on the SEF.

As noted above, with respect to uncleared swaps, the addition of § 37.6(b)(1) could reduce the financial integrity of transactions on SEFs compared to the current rule. There could be a greater risk of misunderstanding between the counterparties to a swap transaction if SEFs do not provide all the terms of the transaction at the time of execution, instead incorporating certain terms by reference. Even when underlying agreements are incorporated by reference, confusion could arise from issues such as multiple versions of an agreement with the same labeling, or missing sections. However, the Commission does not expect that this risk will materially reduce the integrity of the swaps market. As noted above, the Commission notes that the relevant underlying agreements usually establish relationship terms between counterparties that govern all trading between them in uncleared swaps, and do not generally concern the terms of specific transactions. Moreover, the rule amendments could encourage financial integrity of the swap markets by, among other things, providing clarity that the terms of an uncleared swap confirmation issued by a SEF supersedes any conflicting terms in underlying agreements between the counterparties.

(3) Price Discovery

The Commission is not aware of significant effects on the price discovery process from the amendments to § 37.6, and the conforming amendments set forth in these final rules, regarding confirmations.

(4) Sound Risk Management Practices

The amendments to the confirmation requirements in § 37.6(b), and the conforming amendments set forth in these final rules, will maintain the promotion of sound risk management practices with respect to the requirement for SEFs to issue transaction confirmations, *i.e.,* by providing market participants with the certainty that transactions executed on or pursuant to the rules of a SEF will be legally enforceable with respect to all counterparties to the transaction.[101]

(5) Other Public Interest Considerations

The Commission is identifying a public interest benefit in codifying the no-action position in NAL No. 17–17, where the efficacy of that position has been demonstrated. In such a situation, the Commission believes it serves the public interest to engage in notice-and-comment rulemaking, where it seeks and considers the views of the public in amending its regulations, rather than leaving SEFs to continue to rely on a staff-provided no-action position that does not bind the Commission, provides less long-term certainty, and offers a more limited opportunity for public input.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anti-competitive means of achieving the objectives of the CEA, in issuing any order or adopting any Commission rule or regulation.[102] The Commission does not anticipate that the amendments to parts 23 and 37 of its regulations would promote or result in anti-competitive consequences or behavior. The Commission did not receive any comments on any anti-competitive consequences or behavior.

List of Subjects

17 CFR Part 23

Confirmations, Swaps.

17 CFR Part 37

Swaps, Swap confirmations, Uncleared swap confirmations, Swap execution facilities.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR parts 23 and 37 to read as follows:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21. Section 23.160 also issued under 7 U.S.C. 2(i); Sec. 721(b), Pub. L. 111–203, 124 Stat. 1641 (2010).

■ 2. In § 23.501, revise paragraph (a)(4)(i) to read as follows:

§ 23.501 Swap confirmation.

(a) * * *

(4) * * *

(i) Any swap transaction executed on or pursuant to the rules of a swap execution facility or designated contract market shall be deemed to satisfy the requirements of this section, provided that the rules of the swap execution facility or designated contract market establish that confirmation of all terms of the transaction shall take place as soon as technologically practicable after execution.

* * * * *

PART 37—SWAP EXECUTION FACILITIES

■ 3. The authority citation for part 37 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a–2, 7b–3, and 12a, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376.

■ 4. Revise § 37.6 to read as follows:

§ 37.6 Enforceability.

(a) A transaction executed on or pursuant to the rules of a swap execution facility shall not be void, voidable, subject to rescission, otherwise invalidated, or rendered unenforceable as a result of:

(1) A violation by the swap execution facility of the provisions of section 5h of the Act or this part;

requirements would, among other things, (i) provide legal certainty to market participants; (ii) promote accuracy for counterparties regarding exposure levels with other counterparties; and (iii) reduce costs and risks involved with resolving error trade disputes between counterparties. *See* SEF Core Principles Final Rule at 33570.

[101] *See supra* note 100.

[102] 7 U.S.C. 19(b).

(2) Any Commission proceeding to alter or supplement a rule, term, or condition under section 8a(7) of the Act or to declare an emergency under section 8a(9) of the Act; or

(3) Any other proceeding the effect of which is to:

(i) Alter or supplement a specific term or condition or trading rule or procedure; or

(ii) Require a swap execution facility to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

(b) A swap execution facility shall provide each counterparty to a transaction that is executed on or pursuant to the rules of the swap execution facility with a written record of all of the terms of the transaction which shall legally supersede any conflicting terms of a previous agreement and serve as a confirmation of the transaction. The confirmation of all terms of the transaction shall take place as soon as technologically practicable after execution; provided that specific customer identifiers for accounts included in bunched orders involving swaps need not be included in confirmations provided by a swap execution facility if the applicable requirements of § 1.35(b)(5) of this chapter are met.

(1) For a confirmation of an uncleared swap transaction, the swap execution facility may satisfy the requirements of this paragraph (b) by incorporating by reference terms from underlying, previously negotiated agreements governing such transaction between the counterparties, without obtaining such incorporated agreements except as otherwise necessary to fully perform its operational, risk management, governance, or regulatory functions, or any requirements under this part.

(2) [Reserved]

Issued in Washington, DC, on April 25, 2024, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

Appendices to Swap Confirmation Requirements for Swap Execution Facilities—Voting Summary and Chairman's and Commissioners' Statements

Appendix 1—Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, Goldsmith Romero, Mersinger, and Pham voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman Rostin Behnam

I am very pleased that the Commission voted to finalize necessary amendments to the Commission's regulations addressing longstanding issues with the uncleared swap confirmation requirements under Rule 37.6(b). During the initial implementation of part 37, SEFs informed the CFTC that the confirmation requirement for uncleared swaps was operationally and technologically difficult and impractical to implement. In light of these challenges, the Division of Market Oversight provided targeted no-action positions for SEFs with respect to certain provisions of Commission regulations throughout the last decade.[1]

As there was no workable solution that could effectuate the original language of the relevant rule, the Commission is has voted to amend Rule 37.6(b) to codify the longstanding staff no-action position. The amendment enables SEFs to incorporate terms by reference in an uncleared swap confirmation without being required to obtain the underlying, previously negotiated agreements between the counterparties. An amendment to Rule 23.501 will clarify the consistent treatment of trades executed away from a SEF or designated contract market (DCM) and permit confirmation of all terms of a swap transaction as soon as technologically practicable following execution, as opposed to requiring confirmation ''at the same time as execution.'' [2]

This final rule is an example of my continuing focus on providing market participants with clarity and certainty by, where possible, codifying existing staff no-action positions.

I would like to thank Roger Smith in our Division of Market Oversight for his work on this important final rule.

[1] *See* CFTC Letter No. 13–58, Time Limited No-Action Relief to Temporarily Registered Swap Execution Facilities from Commission Regulation 37.6(b) for non-Cleared Swaps in All Asset Classes (Sept. 30, 2013), *https://www.cftc.gov/csl/13-58/download;* CFTC Letter No. 14–108, Staff No-Action Position Regarding SEF Confirmations and Recordkeeping Requirements under Certain Provisions Included in Regulations 37.6(b) and 45.2 (Aug. 18, 2014), *https://www.cftc.gov/csl/14-108/download;* CFTC Letter No. 15–25, Extension of No-Action Relief for SEF Confirmation and Recordkeeping Requirements under Commission Regulations 37.6(b), 37.1000, 37.1001, and 45.2, and Additional Relief for Confirmation Data Reporting Requirements under Commission Regulation 45.3(a) (Apr. 22, 2015), *https://www.cftc.gov/csl/15-25/download;* CFTC Letter No. 16–25, Extension of No-Action Relief for Swap Execution Facility Confirmation and Recordkeeping Requirements under Commodity Futures Trading Commission Regulations 37.6(b), 37.1000, 37.1001, 45.2, and 45.3(a) (Mar. 14, 2016), *https://www.cftc.gov/csl/16-25/download;* and CFTC Letter no. 17–17, Extension of No-Action Relief for Swap Execution Facility Confirmation and Recordkeeping Requirements under Commodity Futures Trading Commission Regulations 37.6(b), 37.1000, 37.1001, 45.2, and 45.3(a) (Mar. 24, 2017), *https://www.cftc.gov/csl/17-17/download.*

[2] Commission Rule 23.501(a)(4)(i), 17 CFR 23.501(a)(4)(i).

Appendix 3—Statement of Commissioner Kristin N. Johnson

An essential component of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) is its framework for the regulation of swaps, including central clearing and trade execution requirements, registration and comprehensive regulation of swap dealers, and recordkeeping and reporting requirements.

I vote to approve today's final rule on Swap Confirmation Requirements for Swap Execution Facilities (Final Rule), which facilitates predictability and consistency in swaps markets by codifying long-standing no-action relief into regulation, while maintaining a robust regulatory regime for swaps and swap execution facilities (SEFs).

The Dodd-Frank Act amended the Commodity Exchange Act (CEA) by adding Section 5h, which provides that a person may not operate ''a facility for the trading or processing of swaps unless the facility is registered as a [SEF] or as a designated contract market.'' [1] A SEF allows multiple participants to execute or trade swaps. As such, SEFs facilitate swap transactions in our markets by facilitating the execution of swaps between market participants. Additionally, SEFs play a critical role in price discovery and transparency and policing and reporting swap transactions in an effort to monitor systemic risk.

In 2013, the Commission adopted new rules and principles for SEFs. Under CFTC Regulation 37.6(b), a SEF must provide each counterparty to cleared and uncleared swaps with ''a written record of all of the terms of the transaction which shall legally supersede any previous agreement and serve as a confirmation of the transaction.'' [2] This confirmation is required to ''take place at the same time as execution,'' subject to certain exceptions related to bunched orders involving swaps.[3]

In the adopting release, the Commission noted that a SEF may comply with the swap confirmation requirement for uncleared swaps by incorporating terms set forth in master agreements previously negotiated by counterparties, if such agreements had been submitted to the SEF prior to execution and the counterparties ensure that nothing in the confirmation terms contradict the terms incorporated from the master agreement.[4] SEFs and market participants voiced concerns that it was operationally and technologically difficult and impracticable to obtain and store the underlying, bespoke, highly-negotiated swap agreements of SEF members for purposes of satisfying the swap confirmation requirement.

Pursuant to a no-action letter issued in March 2017, which was the last extension of a no-action letter originally issued in August 2014,[5] SEFs were permitted to incorporate by

[1] 7 U.S.C. 7b–3(a).

[2] 17 CFR 37.6(b).

[3] *Id.*

[4] *See* Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33,476, 33,491 n.195 (June 4, 2013).

[5] CFTC No-Action Letter 17–17 (Extension of No-Action Relief for Swap Execution Facility Confirmation and Recordkeeping Requirements

reference the terms of previously-negotiated agreements and were relieved of the obligation to: (1) obtain documents incorporated by reference in a swap confirmation and (2) report confirmation data contained in such agreements. SEFs were required to comply with certain additional conditions, including that their rulebooks require participants to provide copies of the underlying agreements to the SEF upon request.

On August 25, 2023, the Commission released a Notice of Proposed Rulemaking to codify this no-action relief (Proposed Rule) for uncleared swaps. The Commission did not incorporate the conditions in No-Action Letter 17–17 into new CFTC Regulation 37.6(b)(1). The Commission takes the view that, as noted below, the existing requirements for SEFs under the CEA, particularly Core Principle 5, and the Commission's Part 37 regulations sufficiently account for and obviate the need for these conditions.[6]

As I noted at that time, the Commission ''issued guidance and exemptive relief based on concerns that SEFs had been unable to develop a practicable and cost-effective method to request, accept, and maintain a library of the underlying previously-negotiated freestanding agreements between counterparties.'' [7]

The Final Rule approved today fully adopts the Proposed Rule. In addition to permitting SEFs to incorporate by reference terms of previously negotiated agreements between counterparties, without having to obtain a copy of such agreements, the Final Rule will amend CFTC Regulation 37.6(b) to permit confirmation of all terms of a swap transaction to take place ''as soon as technologically practicable'' after the execution of the swap transaction. Additionally, the Final Rule amends CFTC Regulation 37.6(b) to make clear that the confirmation a SEF provides under CFTC Regulation 37.6(b) legally supersedes *only conflicting terms* in a previous agreement.

Importantly, as noted above, both SEFs and the Commission will retain the ability to obtain essential information, including copies of the underlying agreements for uncleared swaps. Under SEF Core Principle 5, a SEF must ''[e]stablish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in section 5h of the [CEA].'' [8] The SEF must also ''[p]rovide [this] information to the Commission on request.'' [9] A SEF must also have ''the authority to examine books and records kept by [its] members and by persons under investigation.'' [10] As the Final Rule notes, given these requirements, a SEF should have ''the ability and authority to request copies of the underlying agreements that are incorporated by reference into a confirmation for an uncleared swap transaction and to provide such agreements to the Commission upon request.'' [11]

I support this Final Rule, which provides a practical approach to implementing our regulatory requirements, while maintaining robust oversight of SEFs and our markets.

Thank you to the staff of the Division of Market Oversight and Roger Smith as well as the Office of the General Counsel, the Market Participants Division, and the Office of the Chief Economist, for their hard work on this Final Rule.

Appendix 4—Statement of Commissioner Summer K. Mersinger

Workable rules are essential to maintain the confidence of the American public in the integrity of our derivatives markets. So, when we become aware that our rules are not as workable as we thought, or impose substantial operational burdens with little corresponding regulatory benefit, we should address these shortcomings promptly. Unfortunately, though, the Commission sometimes chooses to ''kick the can down the road'' by relying on staff no-action letters instead—often for many years—without tackling the root cause of the problem in the rule itself.

I have not been shy about expressing my feelings related to no-action letters during my tenure as a Commissioner. Yes, there are appropriate reasons for staff to issue no-action letters, and I do see their utility in providing flexibility when needed. However, I believe there has at times been an over-reliance on this practice at the agency, and we must move forward in a manner that respects the role of the Commissioners in agency policy-making.

My point is perfectly illustrated by Commission Rule 37.6(b) regarding confirmations for swaps executed on or pursuant to the rules of a swap execution facility (''SEF''). The rule requires that a SEF provide each counterparty to a transaction with a written record of all the terms of the transaction.[1] But things get complicated with respect to uncleared swaps, since the terms of such swaps also may include previously-negotiated agreements between the counterparties (such as an ISDA Master Agreement, and related Schedule and Credit Support Annex).

Accordingly, when the Commission adopted Rule 37.6(b) in 2013, it stated that a SEF's written confirmation of an uncleared swap can incorporate the terms of such agreements by reference, but with a catch—namely, that such agreements must be submitted to the SEF prior to execution.[2] This approach imposed on each SEF the virtually impossible (and, frankly, needless) task of building and maintaining a library of every previous bilateral agreement from counterparties to uncleared swap transactions on its platform.

Recognizing the enormous operational problems posed by the Commission's approach to SEF swap confirmations for uncleared swaps, as well as the limited value of that approach, Commission staff issued four successive no-action letters beginning in 2014.[3] Although it has taken a full decade, I am pleased that the Commission is finally adopting a permanent and practicable SEF confirmation solution. These rule amendments, among other things, will codify the existing staff no-action position that permits SEFs, in an uncleared swap confirmation, to incorporate by reference the terms of previously-negotiated counterparty agreements without obtaining the underlying agreements themselves.

But there remains more work to be done in this regard. I will continue to push the agency to act through notice-and-comment rulemaking, rather than relying on perpetual staff no-action relief, with respect to other rules that are not workable for those who must comply with them—especially where, as here, their asserted benefits are largely illusory.

Appendix 5—Statement of Commissioner Caroline D. Pham

I support the Final Rule on Swap Confirmation Requirements for Swap Execution Facilities (SEF Confirmation Final Rule) because it resolves the temporal impossibility of requiring SEF confirmations at the time of execution for block trades, which are in fact executed away from the SEF and then submitted to the SEF afterwards. I would like to thank Roger Smith, Nora Flood, and Vince McGonagle in the Division of Market Oversight for their work on the SEF Confirmation Final Rule.

Conflicting or impossible regulatory requirements can make compliance with our rules nonsensical.[1] That is clear from the years of CFTC staff no-action relief that led to the rule amendments codified today in the SEF Confirmation Final Rule.[2] I am pleased

under Commodity Futures Trading Commission Regulations 37.6(b), 37.1000, 37.1001, 45.2, and 45.3(a)) (Mar. 24, 2017), *https://www.cftc.gov/csl/17-17/download;* CFTC No-Action Letter 14–108 (Staff No-Action Position Regarding SEF Confirmations and Recordkeeping Requirements under Certain Provisions Included in Regulations 37.6(b) and 45.2) (Aug. 18, 2014), *https://www.cftc.gov/csl/14-108/download.*

[6] Final Rule, Swap Confirmation Requirements for Swap Execution Facilities, at 14.

[7] Kristin N. Johnson, Commissioner, CFTC, Statement in Support of the Notice of Proposed Rulemaking on Swap Confirmation Requirements for Swap Execution Facilities (July 26, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/johnsonstatement072623c.*

[8] 17 CFR 37.500.

[9] *Id.*

[10] 17 CFR 37.203(b).

[11] Final Rule, Swap Confirmation Requirements for Swap Execution Facilities, at 14–15.

[1] Commission Rule 37.6(b), 17 CFR 37.6(b).

[2] *See* Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476, 33491 n.195 (June 4, 2013).

[3] *See* (i) CFTC Letter No. 14–108 (Division of Market Oversight (''DMO'') August 18, 2014); (ii) CFTC Letter No. 15–25 (DMO April 22, 2015); (iii) CFTC Letter No. 16–25 (DMO March 14, 2016); and (iv) CFTC Letter No. 17–17 (DMO March 24, 2017). These no-action letters are available at *https://www.cftc.gov/LawRegulation/CFTCStaffLetters/letters.htm?field_csl_letter_types_target_id%5B%5D=636.*

[1] *See* Statement of Commissioner Caroline D. Pham In Support of Swap Confirmation Requirements for Swap Execution Facilities Proposal (July 26, 2023), *https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement072623c.*

[2] *See, e.g.,* CFTC Staff Letter No. 17–17, Re: Extension of No-Action Relief for Swap Execution Facility Confirmation and Recordkeeping Requirements under Commodity Futures Trading

Continued

that the Commission has decided to fix an unworkable aspect of our existing rules, and encourage the Commission to continue to do so promptly when market participants identify these problems in the future. Continuous improvement of our regulatory frameworks, as appropriate, serves the public interest of well-functioning markets that are efficient and effective in providing risk management and price discovery.

[FR Doc. 2024–09368 Filed 4–30–24; 8:45 am]

BILLING CODE 6351–01–P

SELECTIVE SERVICE SYSTEM

32 CFR Part 1665

RIN 3240–AA05

Privacy Act Procedures

AGENCY: United States Selective Service System.

ACTION: Final rule.

SUMMARY: The Selective Service System (SSS) is finalizing revisions to its Privacy Act regulations to ensure processes and procedures for requesting access and amendments to records by electronic means and appeals from denials of request for access to or amendments of records is clearly spelled out within the SSS regulations.

DATES: This rule is effective May 31, 2024.

FOR FURTHER INFORMATION CONTACT: Daniel A. Lauretano, Sr., General Counsel, 703–605–4012, *dlauretano@sss.gov.*

SUPPLEMENTARY INFORMATION: SSS published a proposed rule on February 5, 2024 (89 FR 7655). No public comments were received and SSS is finalizing this rule without change.

A. Summary of New Regulatory Provisions and Their Impact

The revision to 32 CFR part 1665 adds clarity for how to make online inquiries, and how inquiries will be processed, allows for electronic requests, and makes several stylistic and grammatical changes.

B. Background and Legal Basis for This Rule

The Housekeeping Statute, 5 U.S.C. 301, authorizes agency heads to promulgate regulations governing ''the custody, use, and preservation of its records, papers, and property.'' The Privacy Act is a Federal statute that establishes a Code of Fair Information Practice that governs the collection, maintenance, use, and dissemination of personally identifiable information about individuals that is maintained in systems of records by Federal agencies. A system of records is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifier assigned to the individual. The Privacy Act requires that agencies give the public notice of their systems of records by publication in the **Federal Register**. The Privacy Act prohibits the disclosure of information from a system of records absent the written consent of the subject individual unless the disclosure is pursuant to one of 12 statutory exceptions. The Act also provides individuals with a means by which to seek access to and amendment of their records and sets forth various agency record-keeping requirements. Additionally, with people granted the right to review what was documented with their name, they are also able to find out if the ''records have been disclosed'' and are also given the right to make corrections. The Privacy Act also provides an avenue for appeal from denials of request for access to or amendment of records. This final rule amends part 1665 to ensure processes and procedures for appeals from denials of request for access to or amendments of records is clearly spelled out within the SSS regulations.

C. Expected Impact of the Final Rule

This final rule will not impose any new costs. These regulations will clarify and streamline appeals from denials of request for access to or amendment of records. This revision will produce efficiency and uniformity to the public's benefit.

D. Executive Order (E.O.) 12866, ''Regulatory Planning and Review,'' E.O. 13563, ''Improving Regulation and Regulatory Review,'' and Congressional Review Act (5 U.S.C. 801–08)

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Following the requirements of these E.O.s, the Office of Management and Budget (OMB) has determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866.

E. Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

SSS certifies that this final rule is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601, because it would not have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require SSS to prepare a regulatory flexibility analysis.

F. Section 202 of Public Law 104–4, ''Unfunded Mandates Reform Act'' (2 U.S.C. 1532)

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require the expenditure of $100 million or more (in 1995 dollars, adjusted annually for inflation) in any one year. This final rule will not mandate any requirements for State, local, or Tribal governments, nor will it affect private sector costs.

G. Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that 32 CFR part 1665 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act.

H. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

E.O. 13132, ''Federalism''

E.O. 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. This final rule will not have a substantial effect on State and local governments.

J. Compliance With Pay-As-You-Go Act of 2023 (Fiscal Responsibility Act of 2023, Pub. L. 118–5, Div. B, Title III).

In accordance with Compliance with Pay-As-You-Go Act of 2023 (Fiscal Responsibility Act of 2023, Pub. L. 118–5, div. B, title III) and OMB Memorandum (M–23–21) dated September 1, 2023, SSS has determined that this final rule is not subject to the Act because it will not increase direct spending beyond specified thresholds.

Commission Regulations 37.6(b), 37.1000, 37.1001, 45.2, and 45.3(a) (Mar. 24, 2017).

K. E.O. 11623, Delegation of Authority & Coordination Requirements

In E.O. 11623, the President delegated to the Director of Selective Service the authority to prescribe the necessary rules and regulations to carry out the provisions of the Military Selective Service Act. In carrying out the provisions of E.O. 11623, as amended by E.O. 13286, the Director shall request the views of the Secretary of Defense, the Attorney General, the Secretary of Labor, the Secretary of Health, Education, and Welfare, the Secretary of Homeland Security (when the Coast Guard is serving under the Department of Homeland Security), the Director of the Office of Emergency Preparedness, and the Chairman of the National Selective Service Appeal Board with regard to such proposed rule or regulation, and shall allow not less than 10 days for the submission of such views before publication of the proposed rule or regulation. On January 24, 2024, the SSS completed its coordination requirements, and the Director certifies that he has requested the views of the officials required to be consulted pursuant to subsection (a) of E.O. 11623, considered those views, and, as appropriate, incorporated those views in these regulations, and that none of them has timely requested that the matter be referred to the President for decision.

List of Subjects in 32 CFR Part 1665

Personally identifiable information, Privacy, Procedural rules.

For the reasons stated in the preamble, SSS amends 32 CFR part 1665 as set forth below:

PART 1665—PRIVACY ACT PROCEDURES

■ 1. The authority citation for part 1665 is revised to read as follows:

Authority: 50 U.S.C. 3801 *et seq.;* and 5 U.S.C. 552a.

■ 2. Amend § 1665.1 by:
■ a. Revising paragraph (a);
■ b. Removing paragraph (b);
■ c. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively;
■ d. In newly redesignated paragraph (b), revising the first sentence; and
■ e. In newly redesignated paragraph (c), removing the word ''the'' before the words ''10 days'' in the first sentence.

The revisions reads as follows:

§ 1665.11665.1 Rules for determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by the Selective Service System (SSS) contains a record pertaining to them should address their inquiries in writing or by electronic means to the Selective Service System, ATTN: Records Manager, Public and Intergovernmental Affairs Directorate, Arlington, VA 22209–2425. Online inquiries in English and Spanish may be made at: Contact Us | Selective Service System: Selective Service System (sss.gov) or by email using *PrivacyAct@sss.gov.* The written or electronic inquiry should contain the following information: name and address of the requester, email address of subject (for electronic requests only), identity of the systems of records, and nature of the request. It should also include identifying information specified in the applicable SSS System of Record Notices to assist in identifying the request, such as location of the record, if known, full name, birth date, time periods in which the records are believed to have been complied, etc. SSS Systems of Record Notices subject to the Privacy Act is in the **Federal Register** and copies of the notices will be available upon request to the records manager. A compilation of such notices will also be made and published by the Office of Federal Register, in accord with 5 U.S.C. 552a(f). Requesters seeking copies of their registration records with the SSS may first seek to obtain their registration number and related information by visiting *https://www.sss.gov/verify/* and making the request. To make this request, the individual must provide their last name, social security number and date of birth when completing the required fields to access their registration information online. For other documentation requests such as for a registration Status of Information Letter (SIL), the individual must make the request electronically or in writing and send via the United States Postal Service (USPS).

(b) For requesters who make a hand-written request for USPS delivery or electronic request for information to SSS, will ordinarily be informed of whether the named system of records contains a record pertaining to the requester within 10 days of receipt of such a request (excluding Saturdays, Sundays, and legal Federal holidays).

* * *

* * * * *

§ 1665.21665.2 [Amended]

■ 3. Amend § 1665.2 by:
■ a. In paragraph (a):
■ i. Adding the words ''or electronic'' after the words ''Requirement for written'' in the paragraph heading; and
■ ii. Adding the words ''or electronically (as specified in § 1665.1(a)) after the words ''request in writing'' in the first sentence.

§ 1665.41665.4 [Amended]

■ 4. Amend § 1665.4 by:
■ a. In paragraph (a):
■ i. Adding the words ''or electronic'' after the words ''Requirement for written'' in the paragraph heading; and
■ ii. Adding the words ''or electronically (as specified in § 1665.1(a))'' after the words ''request in writing'' in the first sentence.

■ 5. Amend § 1665.5 by:
■ a. Revising the section heading;
■ b. Removing the words ''request for review'' and adding in their place the word ''appeal'' wherever it appears;
■ c. Revising paragraphs (a) and (d); and
■ d. Adding paragraphs (e) and (f).

The revisions and additions read as follows:

1665.5 Appeals.

(a) If the requester is dissatisfied with the SSS response, the requester can appeal an adverse determination denying the request to the appellate authority listed in the notification of denial letter. The appeal must be made in writing or electronically (as specified in § 1665.1(a)), and it must be postmarked (or sent by email) within 60 calendar days of the date of the letter denying the initial request for records or amendment of information. The appeal should include a copy of the SSS determination (including the assigned request number, if known). For the quickest possible handling, the appeal whether in writing or by email should specify that it is a ''Privacy Act Appeal.'' If the requester is dissatisfied with the SSS response, the requester can appeal an adverse determination denying an initial request to access or amend a record in accordance with the provisions of §§ 1665.2 and 1665.4. The requester should submit the appeal in writing or electronically (as specified in § 1665.1(a)) and, to the extent possible, include the information specified in paragraph (b) of this section. Individuals desiring assistance in the preparation of their appeal should contact the records manager at the address provided herein.

* * * * *

(d) The appellant will be notified of the decision on his or her appeal in writing or by email within 20 days (excluding Saturdays, Sundays, and legal Federal holidays) from the date of receipt by SSS of the individual's request for review unless the *appeal authority* extends the 20 days period for good cause. The extension and the reasons therefore will be sent by SSS to the requester within the initial 20-day

period. Such extensions should not be routine and should not normally exceed an additional 30 days. If the decision affirms the adverse determination in whole or in part, the notification will include a brief statement of the reason(s) for the affirmation, including any exemptions applied, and will inform the appellant of the Privacy Act provisions for judicial review of the appellate authority's decision, a description of the steps the individual may take to obtain judicial review of such a decision, a statement that the individual may file a concise statement with SSS setting forth the individual's reasons for his disagreement with the decision, and the procedures for filing such a statement of disagreement. The Director of Selective Service has the authority to determine the *conciseness* of the statement, *considering* the scope of the disagreement and the complexity of the issues. Upon the filing of a proper, concise statement by the individual, any subsequent disclosure of the information in dispute will be clearly noted so that the fact that the record is disputed is apparent, which shall include a copy of the concise statement furnished and a concise statement by SSS setting forth its reasons for not making the requested changes, if SSS chooses to file such a statement. A notation of a dispute is required to be made only if an individual informs SSS of their disagreement with its determination in accordance with paragraphs (a) through (c) of this section. A copy of the individual's statement, and if it chooses, SSS's statement will be sent to any prior transferee of the disputed information who is listed on the accounting required by 5 U.S.C. 552a(c). If the reviewing official determines that the record should be amended in accord with the individual's request, SSS will promptly correct the record, advise the individual, and inform previous recipients if an accounting of the disclosure was made pursuant to 5 U.S.C. 552a(c). The notification of correction pertains to information actually disclosed. If the adverse determination is reversed or modified, in whole or in part, the appellant will be notified in writing of this decision and the request will be reprocessed in accordance with that appeal decision.

(e) In order to seek a judicial review of a denial of a request for access to records, a requester must first file an appeal under this section.

(f) An appeal ordinarily will not be acted on if the request becomes a matter of litigation.

■ 6. Amend § 1665.6 by revising paragraph (c)(3) to read as follows:

§ 1665.6 Schedule of fees.

* * * * *

(c) * * *

(3) Remittance shall be in the form of cash, a personal check or bank draft drawn on a bank in the United States, or postal money order. Remittances shall be made payable to the order of the Selective Service System and mailed or delivered to the records manager, Selective Service System, 1501 Wilson Blvd., Suite 700, Arlington, VA 22209.

* * * * *

■ 7. Amend § 1665.7 by revising the section heading and paragraphs (a) and (b) and removing paragraph (c) to read as follows:

§ 1665.7 Information available to the public or to those seeking confirmation of SSS registration status to convey benefits related to registration.

(a) SSS maintains a record which contains the name, Selective Service number, and registration status of those that have registered with SSS.

(b) Any compensated employee of SSS may disclose to an entity seeking to convey a benefit related to SSS registration status by law whether the individual has or has not registered with SSS.

■ 8. Revise § 1665.8 to read as follows:

§ 1665.8 Systems of records exempted from certain provisions of this act.

The SSS will not provide requesters information exempt from disclosure pursuant to 5 U.S.C. 552a(k), (*e.g.,* the SSS will not reveal to the suspected violator the informant's name or other identifying information relating to the informant).

These final regulations were reviewed and approved by Joel C. Spangenberg, Acting Director of Selective Service.

Daniel A. Lauretano, Sr.,

Selective Service System General Counsel & Federal Register Liaison Officer.

[FR Doc. 2024–09361 Filed 4–30–24; 8:45 am]

BILLING CODE 8015–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2024–0354]

Special Local Regulations; Marine Events Within the Captain of the Port Charleston

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations for the Low Country Splash event on May 18, 2024, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Captain of the Port Charleston identifies the regulated area for this event in Charleston and Mt. Pleasant, SC. During the enforcement periods, no person or vessel may enter, transit through, anchor in, or remain within the regulated area unless authorized by the Coast Guard Patrol Commander or a designated representative.

DATES: The regulations in 33 CFR 100.704 will be enforced from 7 a.m. through 11 a.m., on May 18, 2024, for the regulated are listed in Item No. 4 of Table 1 to § 100.704.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Marine Science Technician First Class Thomas J. Welker, Sector Charleston Waterways Management Division, U.S. Coast Guard; telephone 843–740–3184, email at *Thomas.J.Welker@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 100.704 for the annual Low Country Splash event regulated area identified in Table 1 to § 100.704, Item No. 4, from 7 a.m. through 11 a.m. on May 18, 2024. This action is being taken to provide for the safety of life on navigable waterways during this swim event. Our regulation for Marine Events within the Captain of the Port Charleston, § 100.704, Table 1 to § 100.704, Item No. 4, specifies the location of the regulated area for the Low Country Splash which encompasses portions of the Wando River and Cooper River. Under the provisions of § 100.704(c), all persons and vessels are prohibited from entering the regulated area, except those persons and vessels participating in the event, unless they receive permission to do so from the Coast Guard Patrol Commander, or designated representative.

Under the provisions of § 100.704(c), spectator vessels may safely transit outside the regulated area, but may not anchor, block, loiter in, impede the transit of festival participants or official patrol vessels or enter the regulated area without approval from the Coast Guard Patrol Commander or a designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation. In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide notice of

the regulated area via Local Notice to Mariners, Marine Safety Information Bulletins, Broadcast Notice to Mariners, and on-scene designated representatives.

Dated: April 23, 2024.

F.J. DelRosso,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2024–09051 Filed 4–30–24; 8:45 am]

BILLING CODE 9110–04–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1225

[FDMS No. NARA–24–0008; NARA–2024–026]

RIN 3095–AC12

Federal Records Management: GAO Concurrence

AGENCY: National Archives and Records Administration (NARA).

ACTION: Direct rule.

SUMMARY: The National Archives and Records Administration (NARA) is amending our records management regulations to limit the role of the Government Accountability Office (GAO) in approving certain deviations in agency records schedules. Under the updated regulation, Federal agencies will only require GAO approval for records schedules that propose retention periods for accountable officer records that are shorter than the retention periods provided in the General Records Schedule (GRS). 1.1, item 010 for Accountable Officer records. GAO approval will no longer be required for other deviations from the GRS. GAO approval will also not be required for records schedules that dispose of program records less than three years old. GAO has concurred with this change.

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

ADDRESSES: You may submit comments on this rule, identified by RIN 3095–AC12, by any of the following methods:

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

Email: Regulation_comments@nara.gov. Include RIN 3095–AC12 in the subject line of the message.

Mail (for paper, disk, or CD–ROM submissions): Send comments to Regulation Comments Desk (External Policy Program, Strategy & Performance Division (MP)); Suite 4100; National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.

Hand delivery or courier: Deliver comments to the front desk at 8601 Adelphi Road, College Park, MD, addressed to: Regulations Comments Desk, External Policy Program; Suite 4100.

FOR FURTHER INFORMATION CONTACT: Edward Germino, Strategy and Performance Division, by email at *regulation_comments@nara.gov,* or by telephone at 301–837–3758. Contact *rmstandards@nara.gov* with any questions on records management standards and policy.

SUPPLEMENTARY INFORMATION:

Background

The Federal Records Act at 44 U.S.C. 3309 requires Government Accountability Office approval in situations where an agency seeks to dispose of records pertaining to claims and demands by or against the Government of the United States or to accounts in which the Government of the United States is concerned. NARA regulations have expanded the statutory requirement to require approval in two situations. First, agencies require GAO approval to dispose of agency program records that are less than three years old. Second, GAO approval is needed before an agency disposes of records in any way that deviates from what is provided in former General Records Schedule (GRS) 2–10. GRS 2–10 has been superseded by GRS 1.1, *Financial Management and Reporting Records.*

Practically, the current regulatory requirement to obtain GAO approval before the disposal of certain records means that agencies must seek GAO approval of numerous records schedules unrelated to GAO's mission. The required approval by GAO has created an additional burden on agencies requesting approval of these proposed records schedules and delays NARA's evaluation and approval processes.

NARA and GAO agree that the review required by this regulation is no longer necessary or appropriate. GAO review of records disposals under this regulation was originally established to support GAO authority under 44 U.S.C. 3309, which provides that records related to claims and demands by or against the U.S. Government cannot be disposed of by the agency head unless they have been settled and adjusted by GAO. However, the General Accounting Office Act of 1996 and the Legislative Branch Appropriations Act of 1996 transferred the authority to settle accounts to the Executive Branch. However, GAO retained the authority to relieve accountable officers from their liability under 31 U.S.C. 3527. Therefore, NARA is amending its records management regulation to only require GAO approval of records schedules that would provide retention periods for records of accountable officers that are shorter than what is authorized in the GRS.

Regulatory Analysis

Executive Order 12866, Regulatory Planning and Review, and Executive Order 13563 Improving Regulation and Regulation Review

OMB has reviewed this rulemaking and determined it is not ''significant'' under section 3(f) of Executive Order 12866. It is not significant because it applies only to Federal agencies, updates the regulations due to a statutory requirement (to incorporate technological developments and to account for changing technology and agency practices), and is not establishing a new program. Although the proposed revisions change existing requirements and add new ones for agencies, the requirements are necessary to keep the existing regulations up-to-date, comply with the statute, and ensure agencies are preserving records for the United States.

Regulatory Flexibility Act (5 U.S.C. 601, et seq.)

This review requires an agency to prepare an initial regulatory flexibility analysis and publish it alongside the proposed rule. This requirement does not apply if the agency certifies that the rulemaking will not, if promulgated, have a significant economic impact on a substantial number of small entities (5 U.S.C. 603). NARA certifies, after review and analysis, that this rulemaking will not have a significant adverse economic impact on small entities.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.)

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*) requires that agencies consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. This rulemaking does not impose additional information collection requirements on the public that are subject to the Paperwork Reduction Act.

Executive Order 13132, Federalism

Executive Order (E.O.) 13132 requires agencies to ensure that State and local officials have the opportunity for

meaningful and timely input when those agencies are developing regulatory policies that may have a substantial, direct effect on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. If the effects of the rule on State and local governments are sufficiently substantial, the agency must prepare a Federal assessment to assist senior policymakers. This rulemaking will not have any effects on State and local governments within the meaning of the E.O. Therefore, no federalism assessment is required.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4; 2 U.S.C. 1532)

The Unfunded Mandates Reform Act requires that agencies determine whether any Federal mandate in the rulemaking may cause State, local, and Tribal governments, in the aggregate, or cause the private sector to expend $100 million in any one year. NARA certifies that this rulemaking does not contain a Federal mandate that may result in such an expenditure.

List of Subjects in 36 CFR Part 1225

Archives and records, Records management, Records schedules, Scheduling records.

For the reasons discussed in the preamble, NARA amends 36 CFR part 1225 as follows:

PART 1225—SCHEDULING RECORDS

■ 1. The authority citation for part 1225 continues to read as follows:

Authority: 44 U.S.C. 2111, 2904, 2905, 3102, and Chapter 33.

■ 2. Amend § 1225.20 to read as follows:

§ 1225.20 When do agencies have to get GAO approval for schedules?

(a) If an agency requests a deviation from the GRS related to accountable officer records that would authorize a retention period shorter than the retention period provided in the GRS, the agency must obtain approval from the Comptroller General.

(b) This approval must be obtained before NARA will approve the proposed agency records schedule.

Colleen J. Shogan,

Archivist of the United States.

[FR Doc. 2024–09396 Filed 4–30–24; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[EPA–HQ–OLEM–2023–0372; FRL 11026–02–OLEM]

Department of Energy Hanford Mixed Radioactive Waste Land Disposal Restrictions Variance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is granting a treatment variance, requested by the U.S. Department of Energy (DOE) in an August 1, 2023, petition, from the Land Disposal Restrictions (LDR) treatment standards for approximately 2,000 gallons of mixed hazardous low-activity radioactive waste from DOE's Test Bed Initiative (TBI) for the Hanford Site in Washington State. The petition requested approval for DOE to treat the TBI waste to the LDR technology standard of stabilization (STABL) with verification of meeting LDR concentration-based and Toxicity Characteristic Leaching Procedure-based standards as applicable for the relevant waste codes.

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

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2023–0372. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bethany Russell, Waste Characterization Branch, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0823; email address: *russell.bethany@epa.gov.*

I. General Information

A. Does this action apply to me?

This action applies only to DOE's Hanford facility located in Richland, Washington.

B. What action is the Agency taking?

The EPA is finalizing the variance from the LDR treatment standards for approximately 2,000 gallons of mixed hazardous low-activity radioactive waste from DOE's TBI requested by DOE in an August 1, 2023, petition, for the Hanford Site in Washington State. The EPA is finalizing the variance without alteration and codifying the proposed modification to Table 1 to paragraph (o) of 40 CFR 268.44 for the TBI demonstration petition for the reasons stated in the preamble to the November 28, 2023, proposal and in the Agency's responses to the comments received on the proposal.

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

Sections 3004(d) through (g) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6294(d)–(g), prohibit the land disposal of hazardous wastes unless such wastes meet the LDR treatment standards (or treatment standards) established by EPA (or the Agency). Section 3004(m) of RCRA, 42 U.S.C. 6924(m), requires EPA to set levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized. EPA has established treatment standards for all hazardous wastes.

However, when facilities generate hazardous wastes which cannot be treated to the specified levels, or when it is technically inappropriate for such wastes to undergo the prescribed treatment, they can apply for a variance from a treatment standard.[1] The requirements for a treatment variance are found at 40 CFR 268.44. An applicant for a treatment variance may demonstrate that it is inappropriate to require a waste to be treated to the level or by the method specified as the treatment standard, even though such treatment is technically possible. This is the criterion pertinent to this action.[2]

[1] *See* 51 FR 40605–40606 (November 7, 1986); *see also* 62 FR 64504 (December 5, 1997).

[2] According to 40 CFR 268.44(a)(2), a petitioner may obtain a variance from an applicable treatment standard if it is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the

The petitioner must also demonstrate that compliance with any given treatment variance is sufficient to minimize threats to human health and the environment posed by land disposal of the waste.

II. Background

A. The Petition

On August 2, 2023, the EPA received a petition from the DOE requesting a variance from a treatment standard of the LDR of 40 CFR 268.40 for disposal of approximately 2,000 gallons of hazardous wastes generated from DOE's TBI.

On November 28, 2023, the EPA solicited public comments on a draft approval of the petition (88 FR 83065). The public comment period ended December 28, 2023. The EPA received thirteen (13) comments on the proposed rulemaking. The full text of the comments is in the Docket (EPA–HQ–OLEM–2023–0372). The EPA appreciates all the comments and has provided a brief summary, below, of common themes found in the comments and the EPA's responses. The EPA has provided comprehensive responses to all the comments in a document titled ''Responses to Comments on November 28, 2023, Proposed RCRA Land Disposal Restrictions Treatment Variance for Hanford Test Bed Initiative Wastes,'' which is in the Docket. The agency carefully considered all the points raised and has concluded that the comments do not provide reason for the EPA to deny the petition or to modify the approval as it was proposed.

B. Brief Summary of Common Themes in Comments Received and the EPA's Responses

Most commenters agreed that the EPA should approve a treatment variance for the TBI waste. Several commenters opined that the EPA should approve a broader variance applicable to a larger quantity of waste. Some commenters took issue with proposed approval for DOE to stabilize and dispose of the waste at only the two off-site facilities requested by DOE. Several commenters specifically took issue with the proposed approval for DOE to transport pretreated TBI waste in liquid form for treatment at the two facilities—located in Texas and Utah—expressing concern about the risks of transporting liquid waste over long distances and requesting that the EPA require that the treatment be conducted at or near the Hanford site.

One commenter questioned the desirability and efficacy of grouting for Hanford tank waste.

The comments, EPA's fuller summaries, and the EPA's full responses are included in the docket for this rule. The EPA very briefly summarizes some overarching points from its responses below.

This rule approves the petition that DOE submitted because the EPA has determined that the variance meets the two applicable criteria in 40 CFR 268.44(a): vitrification of the 2000 gallons of TBI waste would be technically inappropriate in view of the conditions specified in the variance, and the treatment authorized by the variance will minimize threats to human health and the environment posed by land disposal of the waste. Although several commenters argued that other approaches to treating and disposing of the waste would be preferable, the EPA's approval is not based on the overall desirability of the requested approach as compared to other possible approaches that DOE did not request. Rather, the EPA's approval is based on and limited to its assessment of the petition that DOE submitted.

In this regard, it is important to recognize the EPA's limited role in the TBI. The EPA supports the TBI as a vehicle to evaluate the regulatory pathways for stabilization of some portion of Hanford tank waste and supports making progress on the Hanford tank waste mission. Moreover, the EPA believes the TBI aligns with the overall recommendations in a number of federally funded research and development center reports commissioned by Congress, National Academies of Sciences reports, and reports by the General Accountability Office. However, the EPA did not design the TBI. Within the Federal Government, DOE is primarily responsible for determining treatment and disposal approaches for Hanford waste within the appropriate regulatory frameworks. The variance does not compel the TBI; it simply provides for TBI-specific LDR standards that will apply to the subject waste.

Finally, the EPA emphasizes that the variance is limited to the specific 2000 gallons of TBI waste that DOE requested receive an LDR variance, and that the EPA evaluated. The EPA expresses no view as to the appropriateness of any variances DOE may request in the future for any other Hanford waste.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Mixed waste and variances.

Barry N. Breen,

Principal Deputy Assistant Administrator, Office of Land and Emergency Management.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

■ 1. The authority citation for part 268 continues to read as follows:

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

■ 2. In § 268.44, the table in paragraph (o) is amended by adding in alphabetical order an entry for ''United States Department of Energy (Energy), Richland, WA,'' and adding four footnotes ''17'', ''18'', ''19'', and ''20'' in numerical order to read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *

(o) * * *

treatment standard, even though such treatment is technically possible. To show that this is the case, as applicable here, the petitioner must demonstrate that treatment to the specified level or by the specified method is technically inappropriate (for example, resulting in combustion of large amounts of mildly contaminated environmental media).

TABLE—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40

Facility name [1] and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/L)	Notes	Concentration (mg/kg)	Notes
*	*	*	*	*	*	*	
United States Department of Energy (Energy), Richland, WA [17].	F001–F005, D001–D011, D018, D019, D022, D028–D030, D033–D036, D038–D041, and D043 [18].	NA	For waste codes F001–F005, the constituents are limited to those associated with spent solvent activities at the Facility documented through process knowledge. For constituents, as applicable, associated with D waste codes under the ''Waste Code'' column, see 40 CFR 268.40.	NA	NA	STABL [19 20] ..	NA.
*	*	*	*	*	*	*	

[1] A facility may certify compliance with these treatment standards according to provisions in 40 CFR 268.7.

* * * * * * *

[17] The STABL treatment standard applies to the separated and pretreated tank waste under the 2,000-gallon TBI Demonstration.

[18] The waste codes included in this column are those identified on the current version of the Dangerous Waste Permit Application Part A form for the Hanford Double Shell Tank System, Rev. 04 (December 14, 2009), except for F039 which has not been accepted into the Double Shell Tanks.

[19] Sampling after treatment will be conducted at the treatment facility for the purpose of assessing the extent of treatment performance against the NWW numerical standards at 40 CFR 268.40 and, as applicable, at 40 CFR 268.48. Waste treated using STABL may not be land disposed until LDR constituents are below the non-wastewater numerical standards at 40 CFR 268.40 and 268.48.

[20] Treatment using the STABL treatment method shall be performed, and the treated waste shall be disposed of, at Energy*Solutions* in Clive, Utah, and/or Waste Control Specialists in Andrews County, Texas.

* * * * *

[FR Doc. 2024–08937 Filed 4–30–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[Docket No. FWS–R7–MB–2020–0134; FXMB12610700000–201–FF07M01000]

RIN 1018–BF08

Migratory Bird Subsistence Harvest in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Announcement.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) announces that we are extending the Kodiak Island Roaded Area experimental season for subsistence migratory bird hunting and egg gathering by registration permit for 1 year (through the spring–summer subsistence harvest season [hereafter, ''season''] in 2024). As set forth in a 2021 final rule, this experimental season began in the 2021 season and was set to terminate at the end of the 2023 season. However, we are extending the experimental season to provide subsistence harvest opportunity for an additional year while an evaluation of harvest data from the first 3 years of the experimental season is completed and a long-term plan is developed. Extending the experimental season requires no revision of the regulations pertaining to subsistence harvest of migratory birds in Alaska; we are issuing this document solely for the purpose of public information.

DATES: We make this announcement May 1, 2024. The rule that published April 19, 2021, at 86 FR 20311 setting forth the regulations pertaining to the experimental hunt was effective April 19, 2021.

ADDRESSES: You may find supplementary materials for the 2021 rulemaking action as well as the comments received at the Federal eRulemaking Portal: *https://www.regulations.gov* in Docket No. FWS–R7–MB–2020–0134.

FOR FURTHER INFORMATION CONTACT: Wendy Loya, U.S. Fish and Wildlife Service, 1011 E Tudor Road, Mail Stop 201, Anchorage, AK 99503; (907) 227–2942. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

Under the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*), the Secretary of the Interior regulates the harvest of certain species of migratory birds, including establishing regulations for fall–winter harvest and for take by the indigenous inhabitants of the State of Alaska for their essential needs. The subsistence take of migratory birds in Alaska occurs during the spring and summer, when the harvest of migratory birds is not allowed elsewhere in the United States. Regulations governing the subsistence take of migratory birds in Alaska are in title 50 of the Code of Federal Regulations (CFR) in part 92. The regulations in 50 CFR 92.31 specify when and where the harvesting of birds for subsistence purposes may occur in 12 different regions of Alaska.

The migratory bird subsistence harvest regulations are developed cooperatively by the Alaska Migratory Bird Co-Management Council (hereafter, ''the Council''), which consists of the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. The Council's primary purpose is to develop recommendations pertaining to the subsistence harvest of migratory birds.

Regulations for the Kodiak Archipelago Region

On February 26, 2021, we published a proposed rule (86 FR 11707), and on April 19, 2021, we published the subsequent final rule (86 FR 20311), to

revise the Alaska subsistence harvest regulations. The 2021 rulemaking action incorporated regulatory amendments that were recommended by the Council in 2019 and approved by the Service in 2020 (85 FR 73233, November 17, 2020) and included revisions to 50 CFR 92.31(e), pertaining to the Kodiak Archipelago Region. The rule provided for a 3-year experimental season for subsistence migratory bird hunting and egg gathering by registration permit only within the Kodiak Island Roaded Area (hereafter, ''the Roaded Area''). The regulations allow residents of the Kodiak Archipelago Region the opportunity to participate in subsistence harvest activities without the need for a boat. Prior to the 2021 final rule, the Roaded Area and marine waters adjacent to the Roaded Area (within 500 feet from the water's edge), were closed to harvest. Under these regulations, which are still in effect, the Roaded Area is closed to hunting and egg gathering for Arctic terns, Aleutian terns, mew gulls, and emperor geese.

The Council expected that the 3-year experimental season would begin in 2020 and continue through 2022, and the preambles to the 2020 proposed and final rules associated those years (2020–2022) with the 3-year experimental season. However, delays in the 2020 rulemaking process prevented the 3-year experimental season from beginning in 2020 as initially planned. Therefore, in the April 19, 2021, final rule (86 FR 20311), we stated that our intent to allow a 3-year experimental season for migratory bird hunting and egg gathering by registration permit along the Roaded Area remained the same, but that this activity would now occur during the 2021–2023 seasons with the experimental season terminating at the end of 2023. We further stated that reopening the Roaded Area after the 3-year experimental period would require a subsequent proposal from the Council for continuation of the season under either operational or experimental status.

Accordingly, in 2021, the Roaded Area was opened to spring–summer subsistence hunting of migratory birds and egg gathering. Participants of this experimental program first must obtain a registration permit and later must report their harvest.

Council Recommendation and Service Decision

In spring of 2023, the Council recommended to the Service that the 3-year experimental season for subsistence migratory bird hunting and egg gathering by registration permit only for the Roaded Area be extended an additional year. Because evaluation of the first 3 years of harvest data will extend into 2024, the Council determined that the experimental period should be extended through the 2024 season.

The 2023 subsistence harvest season closed after August 31, 2023. The Council is now assessing the effect of the experimental season and will develop a recommendation regarding the operational status for the Roaded Area in 2025 and beyond. The 1-year extension will allow the current harvest opportunity to continue until an evaluation of the first 3 years of data (2021–2023) is completed and a proposal to guide future harvest opportunity in the Roaded Area can be developed.

The Service concurs with the Council recommendation. Therefore, we announce that we are extending the experimental season through the end of the 2024 season (August 31, 2024). No revisions to the regulations pertaining to the Kodiak Archipelago Region are necessary because the regulations at 50 CFR 92.31(e) do not specify an end point for the registration permit program.

Authority: This document is published under the authority of the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*).

Jerome Ford,

Assistant Director, Migratory Bird Program.

[FR Doc. 2024–09430 Filed 4–30–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100217095–2081–04; RTID 0648–XD915]

Reef Fish Fishery of the Gulf of Mexico; 2024 Recreational Accountability Measure and Closure for Gulf of Mexico Red Grouper

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) for the red grouper recreational sector in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) for the 2024 fishing year through this temporary rule. NMFS has projected that the 2024 recreational annual catch target (ACT) for Gulf red grouper will have been reached by July 1, 2024. Therefore, NMFS closes the recreational sector for Gulf red grouper on July 1, 2024, and it will remain closed through the end of the fishing year on December 31, 2024. This closure is necessary to protect the Gulf red grouper resource.

DATES: This temporary rule is effective from 12:01 a.m., local time, on July 1, 2024, until 12:01 a.m., local time, on January 1, 2025.

FOR FURTHER INFORMATION CONTACT: Dan Luers, NMFS Southeast Regional Office, telephone: 727–551–5719, email: *daniel.luers@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the Gulf reef fish fishery, which includes red grouper, under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The Gulf of Mexico Fishery Management Council prepared the FMP, which was approved by the Secretary of Commerce, and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). All red grouper weights discussed in this temporary rule are in gutted weight.

In 2022, NMFS published a final rule implementing a framework action under the FMP (87 FR 40742, July 8, 2022), which set the current red grouper recreational annual catch limit (ACL) of 2.02 million lb (0.92 million kg) and the ACT of 1.84 million lb (0.83 million kg) (50 CFR part 622.41(e)(2)(iv)). Under regulations at 50 CFR 622.41(e)(2)(i), if red grouper recreational landings reach or are projected to reach the recreational ACL, NMFS will close the recreational sector for the remainder of the fishing year. However, as specified in 50 CFR 622.41(e)(2)(ii), in the year following a recreational ACL overage, NMFS is required to reduce the length of the following year's recreational fishing season by the amount necessary to ensure that the recreational ACT is not exceeded in that following year. Preliminary landings estimates indicate that the Gulf red grouper recreational ACL was exceeded in 2023 by 498,743 lb (226,226 kg).

NMFS projects that the 2024 recreational ACT for Gulf red grouper of 1.84 million lb (0.83 million kg) will be reached as of July 1, 2024. This closure date is based on projected harvest rates using the average of recreational landings from 2021 through 2023, and the evaluation of four scenarios that generated predicted closure dates ranging from July 13, 2024, to August 2, 2024. NMFS is acting conservatively in

setting the 2024 recreational season by choosing an earlier closure date than the projecting scenarios because recreational harvest exceeded the red grouper recreational ACL by approximately 72 percent in 2021, by 35 percent in 2022, and by 25 percent in 2023. Accordingly, this temporary rule closes the recreational sector for Gulf red grouper effective at 12:01 a.m., local time, on July 1, 2024, through the end of the fishing year on December 31, 2024.

During the recreational closure, the bag and possession limits for red grouper in or from the Gulf EEZ are zero. The prohibition on possession of Gulf red grouper also applies in Gulf state waters for any vessel issued a valid Federal charter vessel/headboat permit for Gulf reef fish.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.41(e)(2)(i) and (ii), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations associated with the closure of the red grouper recreational sector at 50 CFR 622.41(e)(2)(i) and (ii) have already been subject to notice and public comment, and all that remains is to notify the public of the closure. Prior notice and opportunity for public comment are contrary to the public interest because there is a need to immediately implement this action to protect the red grouper stock and provide sufficient notice to recreational sector participants. Prior notice and opportunity for public comment would require time and could result in a harvest in excess of the established ACT and ACL. In addition, many charter vessel/headboat operations book trips for clients in advance and require as much notice as NMFS is able to provide to adjust their business plans to account for the recreational fishing season.

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

Dated: April 26, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–09384 Filed 4–30–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 240425–0119]

RIN 0648–BM53

Fisheries Off West Coast States; West Coast Salmon Fisheries; Federal Salmon Regulations for Overfished Species Rebuilding Plans

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

ACTION: Final rule.

SUMMARY: NMFS is revising regulations that implement the Pacific Fishery Management Council's (Council) Pacific Coast Salmon Fishery Management Plan (FMP). This final action removes the rebuilding plan for Snohomish River coho salmon from regulation, as this stock has been rebuilt and is no longer required to be managed under a rebuilding plan.

DATES: Effective May 31, 2024.

FOR FURTHER INFORMATION CONTACT: Shannon Penna, Fishery Management Specialist, 562–980–4239, *Shannon.Penna@noaa.gov.*

SUPPLEMENTARY INFORMATION: Regulations at 50 CFR part 660, subpart H implement the management of West Coast salmon fisheries under the FMP in the exclusive economic zone (3 to 200 nautical miles (5.6 to 370.4 kilometers)) off the coasts of the States of Washington, Oregon, and California.

The Snohomish River coho salmon stock contributes to U.S. ocean salmon fisheries north of Cape Falcon, ocean salmon fisheries off British Columbia, and marine and freshwater Puget Sound salmon fisheries. In 2018, NMFS determined that Snohomish River coho salmon was overfished under the Magnuson-Stevens Fishery and Conservation Management Act (MSA) (Letter from Barry A. Thom, NMFS West Coast Regional Administrator, to Chuck Tracy, Pacific Fishery Management Council Executive Director, dated June 18, 2018). The MSA requires Councils to develop and implement a rebuilding plan within 2 years of being notified by NMFS that a stock is overfished. In this case, the stock was determined to be overfished when the 3-year geometric spawning escapement dropped below 50,000 spawners. The Council transmitted its recommended rebuilding plan to NMFS on October 17, 2019, which was similar to the existing management framework, to rebuild Snohomish River coho salmon. Estimates of Snohomish River coho exploitation rates were not available for 2020 and 2021; however, fisheries in earlier years resulted in exploitation rates below the maximum fishing mortality threshold (0.6); therefore, Snohomish River coho were not considered subject to overfishing.

The Council determined that the recommended rebuilding plan met the MSA requirement to rebuild the stock as quickly as possible, taking into account the status and biology of any overfished stock and the needs of fishing communities (50 CFR 600.310(j)(3)(i)). NMFS approved and implemented the Council's recommended rebuilding plan for Snohomish River coho salmon through a final rule (86 FR 9301, February 21, 2021).

In 2023, NMFS determined that Snohomish River coho salmon met the criteria in the FMP for being rebuilt and notified the Council (Letter from Jennifer Quan, NMFS West Coast Regional Administrator, to Merrick Burden, Pacific Fishery Management Council Executive Director, dated October 13, 2023). A stock is rebuilt when the 3-year geometric mean spawning escapement exceeds the level associated with the maximum sustainable yield (S_{MSY}). When Snohomish River coho salmon was determined to be overfished, the 3-year geometric mean was 29,677 (2014 to 2016). The most recent 3-year geometric mean of the spawning escapement reported for this stock (2019 to 2021) is 55,154, which exceeds the spawning escapement requirement to achieve S_{MSY} for this stock, 50,000 spawners. Because the stock is rebuilt, it is no longer required to be managed under a rebuilding plan. Therefore, the Snohomish River coho salmon rebuilding plan should be removed from regulation to avoid confusion regarding the stock's status. Additionally, removing the Snohomish River coho salmon rebuilding plan from regulation will avoid confusion should NMFS make a future determination that the Snohomish River coho salmon stock is overfished again, in which case the MSA requires the Council to prepare and implement a rebuilding plan within 2 years of that determination (50 CFR 600.310(j)(2)(ii)). Leaving the current rebuilding plan in regulation could cause confusion as it might be misperceived as being the default rebuilding plan for Snohomish River coho salmon or required for current management, which was not the intention of the Council nor of NMFS. Therefore, to avoid confusion, it is

necessary to remove the existing Snohomish River coho salmon rebuilding plan from regulation. The proposed rule was issued on February 28, 2024, and the comment period closed on March 14, 2024.

Public Comment

No comments were received during the public comment period of February 28 to March 14, 2024. No changes were made from the proposed rule.

Classification

NMFS is issuing this rule pursuant to section 305(d) of the MSA. This reason for using this regulatory authority is: pursuant to MSA section 305(d), this action is necessary to carry out this regulatory amendment, because it implements technical and minor administrative changes to the regulations governing the salmon fishery. The NMFS Assistant Administrator has determined that this final rule is consistent with the Salmon FMP and other applicable law.

This final rule has been determined to be not significant for purposes of 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 or on the economic impacts of the rule generally. As a result, a regulatory flexibility analysis was not required and none was prepared. This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Recording and reporting requirements.

Dated: April 26, 2024.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

§ 660.413 [Amended]

■ 2. Amend § 660.413 by removing paragraph (e).

[FR Doc. 2024–09380 Filed 4–30–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 240304–0068; RTID 0648–XD853]

Fisheries of the Exclusive Economic Zone Off Alaska; Trawl Sablefish in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of closure.

SUMMARY: NMFS is opening directed fishing for sablefish by vessels using trawl gear in the Bering Sea subarea and the Aleutian Islands subarea of the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2024 sablefish total allowable catch (TAC) allocated to vessels using trawl gear in the Bering Sea subarea and the Aleutian Islands subarea of the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), May 1, 2024, through 2400 hours, A.l.t., December 31, 2024. Comments must be received at the following address (see **ADDRESSES**) no later than 4:30 p.m., A.l.t., May 15, 2024.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2023–0124, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0124 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''NA'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Pursuant to the final 2024 and 2025 harvest specifications for groundfish in the BSAI (89 FR 17287, March 11, 2024) NMFS closed directed fishing for sablefish using trawl gear in the Bering Sea subarea and the Aleutian Islands subarea of the BSAI under § 679.20(d)(1)(iii).

As of April 24, 2024, NMFS has determined that approximately 3,380 metric tons (mt) in the Bering Sea subarea and 1,780 mt in the Aleutian Islands subarea of sablefish initial TAC allocated to trawl gear remains unharvested. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2024 sablefish TAC allocated to trawl in the Bering Sea subarea and the Aleutian Islands subarea of the BSAI, NMFS is terminating the previous closure and is opening directed fishing for sablefish by vessels using trawl gear in the Bering Sea subarea and the Aleutian Islands subarea of the BSAI. This will enhance the socioeconomic well-being of harvesters in this area. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) the current catch of sablefish allocated to trawl gear in the Bering Sea subarea and the Aleutian Islands subarea of the BSAI; and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the opening of directed fishing for sablefish by vessels using trawl gear in the Bering Sea subarea and the Aleutian Islands subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 24, 2024.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for sablefish by vessels using trawl gear in Bering Sea subarea and the Aleutian Islands subarea of the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until May 15, 2024.

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

Dated: April 25, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–09350 Filed 4–30–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 85
Wednesday, May 1, 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 39

[Docket No. FAA–2024–1286; Project Identifier MCAI–2024–00017–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require 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 proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by June 17, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–1286; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2024–1286.
- 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.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–1286; Project Identifier MCAI–2024–00017–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

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

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2024–0003, dated January 5, 2024 (EASA AD 2024–0003) (also referred to as the MCAI), to correct an unsafe condition for Airbus SAS Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, C4–605R variant F, C4–620, F4–605R, F4–622R, and A300F4–608ST airplanes. Model A300 C4–620 and A300F4–608ST airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. The MCAI states that new or more restrictive airworthiness limitations have been developed.

EASA AD 2024–0003 specifies that it requires a task (limitation) already in Airbus A300–600 ALS Part 4 Revision 03 that is required by EASA AD 2017–0202 (which corresponds to FAA AD 2018–18–21, Amendment 39–19400 (83

FR 47054, September 18, 2018) (AD 2018–18–21)), and that incorporation of EASA AD 2024–0003 invalidates (terminates) prior instructions for that task. For Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, 300 F4–605R, F4–622R, and A300 C4–605R Variant F airplanes only, this proposed AD therefore would terminate the limitations required by paragraph (g) of AD 2018–18–21 for the tasks identified in the service information referenced in EASA AD 2017–0202 only.

The FAA is proposing this AD to address the risks associated with the effects of aging on airplane systems. The unsafe condition, if not addressed, could result in an increased potential for failure of certain life-limited parts, and reduced structural integrity or controllability of the airplane. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–1286.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2024–0003, which specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2024–0003 described previously, as incorporated by reference. Any differences with EASA AD 2024–0003 are identified as exceptions in the regulatory text of this proposed AD.

This proposed AD would require 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 proposed 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 (k)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2024–0003 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2024–0003 through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2024–0003 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 2024–0003. Service information required by EASA AD 2024–0003 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2024–1286 after the FAA final rule 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 AMOC paragraph under ''Additional AD Provisions.'' This new format includes a ''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.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 120 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

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. Therefore, the agency estimates the average 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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2024–1286; Project Identifier MCAI–2024–00017–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by June 17, 2024.

(b) Affected ADs

This AD affects AD 2018–18–21, Amendment 39–19400 (83 FR 47054, September 18, 2018) (AD2018–18–21).

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category.

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

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

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

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

(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 the risks associated with the effects of aging on airplane systems. The unsafe condition, if not addressed, could result in an increased potential for failure of certain life-limited parts, and reduced structural integrity or controllability 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 2024–0003, dated January 5, 2024 (EASA AD 2024–0003).

(h) Exceptions to EASA AD EASA AD 2024–0003

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2024–0003.

(2) Paragraph (3) of EASA AD 2024–0003 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 the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2024–0003 is at the applicable ''limitations'' and ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2024–0003, 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 (4) of EASA AD 2024–0003.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2024–0003.

(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 2024–0003.

(j) Terminating Action for Certain Tasks Required by AD 2018–18–21

For Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, 300 F4–605R, F4–622R, and A300 C4–605R Variant F airplanes only: Accomplishing the actions required by this AD terminates the corresponding requirements of AD 2018–18–21 for the tasks identified in the service information referenced in EASA AD 2017–0202 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. 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.

(l) Additional Information

For more information about this AD, contact Dan Rodina, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 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 2024–0003, dated January 5, 2024.

(ii) [Reserved]

(3) For EASA AD 2024–0003, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on April 23, 2024.

Victor Wicklund,

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

[FR Doc. 2024–09013 Filed 4–30–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–1146; Airspace Docket No. 24–ACE–5]

RIN 2120–AA66

Revocation of Class E Airspace; Festus, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke the Class E airspace at Festus, MO. The FAA is proposing this action as the result of the instrument procedures being cancelled and the airport closing.

DATES: Comments must be received on or before June 17, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–1146 and Airspace Docket No. 24–ACE–5 using any of the following methods:

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

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would revoke the Class E airspace extending upward from 700 feet above the surface at Festus Memorial Airport, Festus, MO, due to instrument procedures being cancelled and the airport closing.

Comments Invited

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

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

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

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by removing the Class E surface area at Festus Memorial Airport, Festus, MO.

This action is the result of the instrument procedures being cancelled and the airport closing.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE MO E5 Festus, MO [Removed]

* * * * *

Issued in Fort Worth, Texas, on April 25, 2024.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2024–09240 Filed 4–30–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–1123; Airspace Docket No. 24–ASW–10]

RIN 2120–AA66

Amendment of Class E Airspace; Llano and Mason, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Llano, TX, and Mason, TX. The FAA is proposing this action as the result of an airspace review conducted due to the decommissioning of the Llano very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates of the Llano Municipal Airport, Llano, TX, would also be updated to coincide with the FAA's aeronautical database. This action will bring the airspace into compliance with FAA orders and support instrument flight rule (IFR) procedures and operations.

DATES: Comments must be received on or before June 17, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–1123 and Airspace Docket No. 24–ASW–10 using any of the following methods:

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

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Llano Municipal Airport, Llano, TX, and Mason County Airport, Mason, TX, to support IFR operations at these airports.

Comments Invited

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

time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

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

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

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Modifying the Class E airspace extending upward from 700 feet above the surface to within a 7.2-mile (increased from a 6.5-mile) radius of Llano Municipal Airport, Llano, TX; adding an extension within 2 miles each side of the 179° bearing from the airport extending from the 7.2-mile radius to 12.3 miles south of the airport; modifying the extension within 4 miles each side of the 359° bearing from the airport extending from the 7.2-mile (previously 6.5-mile) radius of the airport to 8.7 (previously 13.5) miles north of the airport; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database;

And modifying the Class E airspace extending upward from 700 feet above the surface to within a 7.7-mile (increased from a 6.4-mile) radius of the Mason County Airport, Mason, TX; modifying the extension within 2 miles each side of the 001° bearing from the airport extending from the 7.7-mile (previously 6.4-mile) radius to 11.8 miles north of the airport; and adding an extension within 2 miles each side of the 181° bearing from the airport extending from the 7.7-mile radius to 10.8 miles south of the airport.

This action is the result of an airspace review conducted due to the decommissioning of the Llano VOR as part of the VOR MON Program and supports IFR operations at these airports.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASW TX E5 Llano, TX [Amended]

Llano Municipal Airport, TX
(Lat 30°47′03″ N, long 98°39′36″ W)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Llano Municipal Airport; and within 2 miles each side of the 179° bearing from the airport extending from the 7.2-mile radius to 12.3 miles south of the airport; and within 4 miles each side of the 359° bearing from the airport extending from the 7.2-mile radius to 8.7 miles north of the airport.

* * * * *

ASW TX E5 Mason, TX [Amended]

Mason County Airport, TX
(Lat 30°43′56″ N, long 99°11′02″ W)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of Mason County Airport; and within 2 miles each side of the 001° bearing from the airport extending from the 7.7-mile radius to 11.8 miles north of the airport; and within 2 miles each side of the 181° bearing from the airport extending from the 7.7-mile radius to 10.8 miles south of the airport.

* * * * *

Issued in Fort Worth, Texas, on April 25, 2024.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2024–09239 Filed 4–30–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–1121; Airspace Docket No. 24–ACE–4]

RIN 2120–AA66

Amendment of Class E Airspace; Hastings, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Hastings, NE. The FAA is proposing this action as the result of an airspace review conducted due to the decommissioning of the Hastings very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operational Network (MON) Program. This action will bring the airspace into compliance with FAA orders and support instrument flight rule (IFR) procedures and operations.

DATES: Comments must be received on or before June 17, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–1121 and Airspace Docket No. 24–ACE–4 using any of the following methods:

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

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E surface area and Class E airspace extending upward from 700 feet above the surface at Hastings Municipal Airport, Hastings, NE, to support IFR operations at this airport.

Comments Invited

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

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

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

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraphs 6002 and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Modifying the Class E surface area to within a 4.2-mile (decreased from a 4.7-mile) radius of the Hastings Municipal Airport, Hastings, NE; removing the Hastings VOR/DME and associated extension from the airspace legal description; removing the extension northwest of the airport as it is no longer required; and replacing the outdated terms ''Notice to Airmen'' and ''Airport/Facility Directory'' with ''Notice to Air Missions'' and ''Chart Supplement;''

And modifying the Class E airspace extending upward from 700 feet above the surface to within a 6.7-mile (decreased from a 7.2-mile) radius of Hastings Municipal Airport; and within 2 miles each side of the 150° bearing from the airport extending from the 6.7-mile (previously 7.2-mile) radius to 10.5 miles (previously 10.4 miles) southeast of the airport.

This action is the result of an airspace review conducted due to the decommissioning of the Hastings VOR as part of the VOR MON Program and supports IFR operations at this airport.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ACE NE E2 Hastings, NE [Amended]

Hastings Municipal Airport, NE
(Lat 40°36′19″ N, long 98°25′40″ W)

Within a 4.2-mile radius of Hastings Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE NE E5 Hastings, NE [Amended]

Hastings Municipal Airport, NE
(Lat 40°36′19″ N, long 98°25′40″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Hastings Municipal Airport; and within 2 miles each side of the 150° bearing from the airport extending from the 6.7-mile radius to 10.5 miles southeast of the airport.

* * * * *

Issued in Fort Worth, Texas, on April 25, 2024.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2024–09238 Filed 4–30–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–1147; Airspace Docket No. 24–AGL–13]

RIN 2120–AA66

Revocation of Class E Airspace; Gibson City, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke the Class E airspace at Gibson City, IL. The FAA is proposing this action as the result of the instrument procedures being cancelled and the airspace no longer being required.

DATES: Comments must be received on or before June 17, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–1147 and Airspace Docket No. 24–AGL–13 using any of the following methods:

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

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would revoke the Class E airspace extending upward from 700 feet above the surface at Gibson City Municipal Airport, Gibson City, IL, due to instrument procedures being cancelled and the airspace no longer being required.

Comments Invited

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

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

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

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by removing the Class E surface area at Gibson City Municipal Airport, Gibson City, IL.

This action is the result of the instrument procedures being cancelled and the airspace no longer being required.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL IL E5 Gibson City, IL [Removed]

* * * * *

Issued in Fort Worth, Texas, on April 25, 2024.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2024–09242 Filed 4–30–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–1122; Airspace Docket No. 24–AGL–12]

RIN 2120–AA66

Amendment of Class E Airspace; Paxton, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Paxton, IL. The FAA is proposing this action as the result of an airspace review conducted due to the decommissioning of the Roberts very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operational Network (MON) Program. This action will bring the airspace into compliance with FAA orders and support instrument flight rule (IFR) procedures and operations.

DATES: Comments must be received on or before June 17, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–1122 and Airspace Docket No. 24–AGL–12 using any of the following methods:

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

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace extending upward from 700 feet above the surface at Paxton Airport, Paxton, IL, to support IFR operations at this airport.

Comments Invited

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

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

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

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by modifying the Class E airspace extending upward from 700 feet above the surface at Paxton Airport, Paxton, IL, by removing the Roberts VORTAC and associated extension from the airspace legal description; and removing the

exclusionary language as it is no longer required.

This action is the result of an airspace review conducted as part of the decommissioning of the Roberts VOR as part of the VOR MON Program and to support IFR operations at this airport.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL IL E5 Paxton, IL [Amended]

Paxton Airport, IL
(Lat 40°26′56″ N, long 88°07′40″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Paxton Airport.

* * * * *

Issued in Fort Worth, Texas, on April 25, 2024.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2024–09265 Filed 4–30–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–1120; Airspace Docket No. 24–ACE–3]

RIN 2120–AA66

Amendment of Class E Airspace; Chanute, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Chanute, KS. The FAA is proposing this action as the result of an airspace review conducted due to the decommissioning of the Chanute very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database. This action will bring the airspace into compliance with FAA orders and support instrument flight rule (IFR) procedures and operations.

DATES: Comments must be received on or before June 17, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–1120 and Airspace Docket No. 24–ACE–3 using any of the following methods:

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

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E surface area and Class E airspace extending upward from 700 feet above the surface at Chanute Martin Johnson Airport, Chanute, KS, to support IFR operations at this airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically

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

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

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

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraphs 6002 and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by:

Modifying the Class E surface area to within a 3.9-mile (decreased from a 4-mile) radius of the Chanute Martin Johnson Airport, Chanute, KS; updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and replacing the outdated terms ''Notice to Airmen'' and ''Airport/Facility Directory'' with ''Notice to Air Missions'' and ''Chart Supplement;''

And modifying the Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile (decreased from a 6.5-mile) radius of Chanute Martin Johnson Airport; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review conducted due to the decommissioning of the Chanute VOR as part of the VOR MON Program and to support IFR operations at this airport.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ACE KS E2 Chanute, KS [Amended]

Chanute Martin Johnson Airport, KS
(Lat 37°40′04″ N, long 95°29′12″ W)

Within a 3.9-mile radius of Chanute Martin Johnson Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE KS E5 Chanute, KS [Amended]

Chanute Martin Johnson Airport, KS
(Lat 37°40′04″ N, long 95°29′12″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Chanute Martin Johnson Airport.

* * * * *

Issued in Fort Worth, Texas, on April 25, 2024.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2024–09235 Filed 4–30–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–1119; Airspace Docket No. 24–ACE–2]

RIN 2120–AA66

Amendment of Class E Airspace; Beloit, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Beloit, KS. The FAA is proposing this action as the result of an airspace review conducted due to the decommissioning of the Mankato very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database. This action will bring the airspace into compliance with FAA orders and support instrument flight rule (IFR) procedures and operations.

DATES: Comments must be received on or before June 17, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–1119 and Airspace Docket No. 24–ACE–2 using any of the following methods:

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

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Moritz Memorial Airport, Beloit, KS, to support IFR operations at this airport.

Comments Invited

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

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

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

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by modifying the Class E airspace extending upward from 700 feet above the surface to within a 7-mile (increased from a 6.5-mile) radius of Moritz Memorial Airport, Beloit, KS;

correct the state associated with the airport from IA to KS; and updated the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review conducted due to the decommissioning of the Mankato VOR as part of the VOR MON Program and to support IFR operations at this airport.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE KS E5 Beloit, KS [Amended]

Moritz Memorial Airport, KS
(Lat 39°28′18″ N, long 98°07′44″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Moritz Memorial Airport.

* * * * *

Issued in Fort Worth, Texas, on April 25, 2024.

Steven T. Phillips,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2024–09236 Filed 4–30–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice: 12377]

RIN 1400–AF84

International Traffic in Arms Regulations: Exemption for Defense Trade and Cooperation Among Australia, the United Kingdom, and the United States

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State (the Department) proposes to amend the International Traffic in Arms Regulations (ITAR) to support the goals of the AUKUS partnership, the enhanced trilateral security partnership among Australia, the United Kingdom, and the United States. This exemption is designed to foster defense trade and cooperation between and among the United States and two of its closest allies. It is reflective of our nations' collective commitment to implement shared security standards on protecting defense technology and sensitive military know-how. To achieve this, the Department proposes to amend the ITAR to include an exemption to the requirement to obtain a license or other approval from the Department's Directorate of Defense Trade Controls (DDTC) prior to any export, reexport, retransfer, or temporary import of defense articles; the performance of defense services; or engagement in brokering activities between or among authorized users within Australia, the United Kingdom, and the United States. The Department also proposes to add a list of defense articles and defense services excluded from eligibility for transfer under the proposed new exemption; add to the scope of the exemption for intra-company, intra-organization, and intra-governmental transfers to allow for the transfer of classified defense articles to certain dual nationals who are authorized users or regular employees of an authorized user within the United Kingdom and Australia; and revise the section on expediting license review applications by referencing new processes for Australia, the United Kingdom, and Canada.

DATES: Send comments on or before May 31, 2024.

ADDRESSES: Interested parties may submit comments by one of the following methods:

- *Email: DDTCPublicComments@state.gov,* with the subject line ''Australia, the United Kingdom, and the United States ITAR Exemption''
- *Internet:* At *www.regulations.gov,* search for this notice using Docket DOS–2024–0013.

Those submitting comments should not include any personally identifying information they do not desire to be made public or information for which a claim of confidentiality is asserted. Comments and/or transmittal emails will be made available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls website at *www.pmddtc.state.gov.* Parties who wish to comment anonymously may submit comments via *www.regulations.gov,* leaving identifying fields blank.

FOR FURTHER INFORMATION CONTACT: Ms. Engda Wubneh, Foreign Affairs Officer, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (771) 205–9566; email *DDTCCustomerService@state.gov,* ATTN: Regulatory Change, ITAR Section 126.7 Australia, the United Kingdom, and the United States Exemption.

SUPPLEMENTARY INFORMATION: On September 15, 2021, the leaders of Australia, the United Kingdom, and the United States announced an intention to deepen ''diplomatic, security, and defense cooperation to meet the challenges of the twenty-first century'' through the creation of AUKUS, an enhanced trilateral security partnership. Reflective of the goals of AUKUS, on December 22, 2023, President Biden signed the National Defense Authorization Act (''NDAA'') for Fiscal Year 2024, Public Law 118–31, which, among other matters, established new

authorities and requirements relating to defense trade between or among Australia, the United Kingdom, and the United States. These new authorities and requirements are contained in section 1343 of the NDAA for Fiscal Year 2024, which created a new section 38(l) in the Arms Export Control Act (AECA) (22 U.S.C. 2778(l)). Certain of these requirements include a determination and certification as to whether Australia and the United Kingdom have implemented systems of export controls that are comparable to those of the United States in several specified areas. If one or both partner nation's systems are determined and certified to meet the listed standards related to export controls in the AECA, and if the partner nation has implemented a comparable exemption from its export controls for the United States, the Department would immediately implement an ITAR exemption, subject to certain statutory limitations, for the partner nation(s) to which the positive certification applies. A separate provision, section 1344 of the NDAA for Fiscal Year 2024, calls for regulatory action to establish an expedited decision-making process for license applications to export certain commercial, advanced-technology defense articles and defense services to Australia, the United Kingdom, and Canada. These proposed amendments stand to enhance security cooperation and collaboration with two of our closest allies.

The Department is proposing an ITAR amendment in the interest of preparing for a future exemption and obtaining public feedback to shape a final rule following any positive certification. The proposed new exemption, designed to implement the provisions of new section 38(l) of the AECA, would be located in ITAR § 126.7 and would provide that no license or other approval is required for the export, reexport, retransfer, or temporary import of defense articles; the performance of defense services; or engagement in brokering activities between or among designated authorized users within Australia, the United Kingdom, and the United States provided certain requirements and limitations are met. These include a list of excluded defense articles and defense services not eligible for the exemption, which can be found in a proposed new Supplement No. 2 to Part 126. The scope of excluded defense articles and defense services remain subject to revision and the Department welcomes comment on proposed Supplement No. 2 to Part 126. Further details regarding the requirements and limitations of the proposed exemption are as follows:

- In § 126.7(b)(1), the exemption may only be used for transfers to or within the physical territory of Australia, the United Kingdom, or the United States, per AECA section 38(l)(1)(C)(2).
- In § 126.7(b)(2), the pool of eligible members, known as authorized users, is created to facilitate secure defense trade and cooperation. Australia and the United Kingdom's members will undergo an authorized user enrollment process, in coordination with DDTC, and those members will be listed through the DDTC website. Members located in the United States must be registered with DDTC and not debarred under ITAR § 127.7. The UK and Australia authorized users may request that DDTC provide confirmation of the status of U.S. authorized users. As these lists are subject to change, DDTC will confirm the eligibility of parties under this exemption prior to the transfer (*e.g.,* export, temporary import, reexport, etc.) of defense articles or defense services.
- In § 126.7(b)(3), the defense articles and defense services listed in Supplement No. 2 to Part 126 are not eligible for this proposed exemption. These items are excluded from eligibility under the proposed exemption because (1) they are exempted from eligibility by statute, including AECA section 38(j)(1)(C)(ii), or (2) are specifically exempted by either the UK, Australia, or the United States, per AECA section 38(l)(4)(A). For those items excluded from eligibility to be transferred under this proposed exemption by the United States, the U.S. government assessed that the defense articles and defense services in the list require a license or other approval from DDTC due to their importance to the national security and foreign policy interests of the United States. These items are, however, subject to the expedited licensing procedures listed in § 126.15 and may be reviewed and revised during the lifetime of the exemption. The Department notes that Supplement No. 2 to Part 126 lists the USML entries in column 1 that represent the location of the excluded defense articles and defense services within the USML. A USML category's listing in column 1 does not indicate the entire USML category is excluded; only the portions of those entries that are further described in column 2 are excluded. When reviewing the list of exclusions, careful review of all relevant entries is required. For example, when determining whether manufacturing know-how and source code described in USML Category IV(i) is excluded, entries such as exclusions for technical data designated as Missile Technology (MT) or directly related to anti-tamper articles may apply, and manufacturing know-how and source code are each addressed in separate exclusion entries:
  - *IV(a), (b), and (g):* Manufacturing know-how and source code directly related to articles in these paragraphs are both excluded.
  - *IV(c):* Manufacturing know-how directly related to articles in this paragraph is not excluded, but directly related source code is excluded.
  - *IV(d) and (h):* Manufacturing know-how directly related to articles in these paragraphs is excluded, but directly related source code is not excluded.
- In § 126.7(b)(4), transferors that use this proposed exemption must abide by this requirement for recordkeeping purposes, and such records must be made available to DDTC upon request.
- In § 126.7(b)(5), the limitations provided exclude exemption use for transfers that would require certification to Congress pursuant to sections 36(c) and 36(d) of the AECA.
- In § 126.7(b)(6) and (7), the Department is reiterating other ITAR provisions to underscore that the proposed exemption is subject to other requirements within the subchapter, and the named sections are not an exhaustive list.
- In § 126.7(b)(8), the Department is establishing that classified defense articles and defense services are eligible for transfer under this exemption provided the authorized users in the United States, Australia, and the United Kingdom meet their respective industrial security requirements. For authorized users in the United States, this is the National Industrial Security Program Operating Manual (NISPOM) (32 CFR part 117) and, for Restricted Data, the Atomic Energy Act of 1954, as amended. For Australian authorized users, this is the Defence Security Principles Framework (DSPF) Principle 16 and Control 16.1, Defence Industry Security Program, and for United Kingdom authorized users this is the Government Functional Standards (GovS) 007: Security.
- The Department is also proposing to add a provision to the exemption in ITAR § 126.18 to allow certain dual nationals of Australia and the United Kingdom to receive classified defense articles without a separate license from DDTC. These persons must be authorized users of the exemption in § 126.7 or regular employees of such authorized users in § 126.7, hold a security clearance approved by Australia, the United Kingdom, or the United States that is equivalent to the classification level of SECRET or above

in the United States, and be located within the physical territory of Australia, the United Kingdom, or the United States or be a member of the armed forces of Australia, the United Kingdom, or the United States acting in their official capacity. The proposed addition of § 126.18(e) is to facilitate the use of the exemption at § 126.7 and allow dual nationals of another country, and Australia or the United Kingdom, to transfer classified defense articles provided the listed criteria, as described in § 126.18(e), are met.

• Lastly, the Department is proposing to revise § 126.15 per the provisions of section 1344 of the NDAA for Fiscal Year 2024. This revised text would note the review of license applications for exports of certain commercial, advanced-technology defense articles and defense services to or between the physical territories of Australia, the United Kingdom, or Canada, and are with government or corporate entities from such countries, shall be processed within certain timeframes. The subject export must not be eligible for transfer under an ITAR exemption. License requests related to a government-to-government agreement between Australia, the United Kingdom, or Canada and the United States must be approved, returned, or denied within 30 days of submission. For all other license applications subject to this section, any review shall be completed no later than 45 calendar days after the date of the application. The Department notes that the existing language in § 126.15 paragraphs (a) and (b) are separate ITAR provisions implementing requirements that originated in the NDAA for Fiscal Year 2005.

The Department issues this proposed rulemaking noting that the AECA requires that an exemption must be immediately implemented when the Department certifies that Australia and/or the United Kingdom meet the requirements of section 38(l)(1)(A). The exemption contemplated by this proposed rule is designed to execute this requirement. This proposed rule is being published in order to solicit public comment on the clarity and utility of such an exemption, and related proposed changes, including the list of excluded defense articles and defense services found at the proposed Supplement No. 2 to Part 126.

Finally, the Department notes the changes to § 126.15 of this proposed rule may be implemented by a separate final rule, based on timing and statutory constraints.

Regulatory Analysis and Notices

Administrative Procedure Act

This rulemaking is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act (APA) pursuant to 5 U.S.C. 553(a)(1) as a military or foreign affairs function of the United States Government. Despite this exemption, the Department has elected to publish this proposed rule for public comment.

Regulatory Flexibility Act

Since this rule is exempt from the notice-and-comment provisions of 5 U.S.C. 553 as a military or foreign affairs function, the rule does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Orders 12372 and 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866, 14094 and 13563

Executive Order 12866, as amended by Executive Order 14094, and Executive Order 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Because the scope of this rule does not impose additional regulatory requirements or obligations, the Department believes costs associated with this rule will be minimal. Regarding the proposed exemption, Australia and the United Kingdom, as set forth in the Section 655 reports required annually by the Foreign Assistance Act of 1961, as amended, are ordinarily among the most commonly-licensed destinations for transfers subject to the ITAR. The Department expects that fewer license applications will be submitted as a result of this rule for authorized users that meet the criteria of the exemption, for eligible transfers of defense articles and defense services to and between Australia, the United Kingdom, and the United States. Consequently, this exemption will relieve licensing burdens for some exporters. Regarding the expedited licensing review process when an ITAR exemption is not available for use, the Department expects minimal costs associated with this provision for the public, with the benefit of license applications involving Australia, the United Kingdom, or Canada being subject to faster adjudication. The Department is seeking public comment on its assessment of the costs and benefits of this proposed rule. This rule has been designated as a significant regulatory action by the Office and Information and Regulatory Affairs under Executive Order 12866.

Executive Order 12988

The Department of State has reviewed this rulemaking in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This rulemaking does not impose or revise any information collections subject to 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

For the reasons set forth above, title 22, chapter I, subchapter M, part 126 is proposed to be amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

■ 1. The authority citation for part 126 is revised to read as follows:

Authority: 22 U.S.C. 287c, 2651a, 2752, 2753, 2776, 2778, 2779, 2779a, 2780, 2791, 2797; Sec. 1225, Pub. L. 108–375, 118 Stat. 2091; Sec. 7045, Pub. L. 112–74, 125 Stat. 1232; Sec. 1250A, Pub. L 116–92, 133 Stat. 1665; Sec. 205, Pub. L. 116–94, 133 Stat. 3052; Secs. 1343 and 1344, Pub. L. 118–31, 137 Stat. 510; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

■ 2. Add § 126.7 to read as follows:

§ 126.7 Exemption for defense trade and cooperation among Australia, the United Kingdom, and the United States.

(a) No license or other approval is required for the export, reexport, retransfer, or temporary import of defense articles, the performance of defense services, or engagement in brokering activities as described in part 129 of this subchapter, between or among authorized users of this exemption, subject to the requirements and limitations in paragraph (b) of this section.

(b) The exemption described in paragraph (a) of this section is subject to the following requirements and limitations:

(1) The transfer must be to or within the physical territory of Australia, the United Kingdom, or the United States;

(2) The transferor and recipient must be:

(i) U.S. persons registered with the Directorate of Defense Trade Controls (DDTC) and not debarred under § 127.7 of this subchapter; or

(ii) Authorized users identified through the DDTC website;

(3) The defense article or defense service is not identified in Supplement No. 2 to part 126 of this subchapter as ineligible for transfer under this exemption;

(4) The transferor shall maintain records of each transfer available to the Directorate of Defense Trade Controls upon request, including a description of the defense article or defense service; the name and address of the recipient and the end-user, and other available contact information (*e.g.,* telephone number and electronic mail address); the name of the natural person responsible for the transaction; the stated end use of the defense article or defense service; the date of the transaction; and the method of transfer;

(5) The value of the transfer does not exceed the amounts described in § 123.15 of this subchapter and does not involve the manufacturing abroad of significant military equipment as described in § 124.11 of this subchapter;

(6) The transfer is subject to meeting the requirements of this subchapter, to include §§ 120.15(d) and 120.16 of this subchapter, parts 122 and 123 of this subchapter (except insofar as exemption from licensing requirements is herein authorized) and § 126.1 of this subchapter, and the requirement to obtain non-transfer and use assurances for all significant military equipment;

(7) Transferors must comply with the requirements of ITAR § 123.9(b) of this subchapter; and

(8) For U.S. authorized users, transfers of classified defense articles and defense services must meet the requirements in 32 CFR part 117, National Industrial Security Program Operating Manual (NISPOM) and, for Restricted Data, the Atomic Energy Act of 1954, as amended. Australian authorized users must meet the requirements in the Defence Security Principles Framework (DSPF) Principle 16 and Control 16.1, Defence Industry Security Program, and United Kingdom authorized users must meet the requirements in the Government Functional Standards GovS 007: Security.

* * * * *

■ 3. In § 126.15, revise the section heading and add paragraphs (c) and (d) to read as follows:

§ 126.15 Expedited processing of license applications for the export of defense articles and defense services to Australia, the United Kingdom, or Canada.

* * * * *

(c) Any application submitted for authorization of the export of defense articles or defense services to Australia, the United Kingdom, or Canada, describing an export that cannot be undertaken under an exemption provided in this subchapter, will be expeditiously processed by the Department of State. The prospective export must occur wholly within, or between the physical territories of Australia, the United Kingdom, Canada, or the United States, and between governments or corporate entities from such countries.

(d) Any license application in paragraph (c) of this section to export defense articles and defense services related to a government-to-government agreement between Australia, the United Kingdom, or Canada and the United States must be approved, returned, or denied within 30 days of submission. For all other license applications, any review shall be completed no later than 45 calendar days after the date of the application. The provisions of this paragraph do not apply to any applications which require congressional certification.

■ 4. In § 126.18, add paragraph (e) to read as follows:

§ 126.18 Exemptions regarding intra-company, intra-organization, and intra-governmental transfers to employees who are dual nationals or third-country nationals.

* * * * *

(e) Notwithstanding any other provisions of this subchapter, no license is required for the transfer of classified defense articles to citizens of Australia or the United Kingdom who:

(1) Are dual nationals of another country;

(2) Are authorized users, or regular employees of an authorized user of the exemption in § 126.7;

(3) Hold a security clearance approved by Australia, the United Kingdom, or the United States that is equivalent to the classification level of SECRET or above in the United States; and

(4) Are either:

(i) Within the physical territory of Australia, the United Kingdom, or the United States; or

(ii) A member of the armed forces of Australia, the United Kingdom, or the United States acting in their official capacity.

■ 5. Add Supplement No. 2 to Part 126 to read as follows:

Supplement No. 2 to Part 126—Excluded Technology List

Supplement No. 2 lists the defense articles and defense services excluded from the scope of the exemption provided at § 126.7 of this subchapter. USML entries in column 1 represent the location of the excluded defense articles and defense services within the USML and does not indicate the entire USML entry in column 1 is excluded; only the portions of those entries that are further described in column 2 are excluded.

USML entry	Exclusion
I through XV, and XX	Missile Technology Control Regime (MTCR) articles, as annotated on the USML by an ''MT'' designation; and directly related technical data and defense services.
I through XX	Readily identifiable anti-tamper articles, not already installed in the commodity they are intended to protect; and directly related technical data and defense services.
II(k), III(e), IV(i), VI(g), and XIX(g)	Source code, directly related to articles described in USML Categories II(a)(4), II(d), II(j)(12) or (16), III(d)(1) or (2), IV(a), (b), (c), or (g), VI(a) or (c), or XIX(e), beyond that required for build-to-print, design-to-specification, or basic operation, maintenance, or training, unless export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for a pre-determined end-use.
II(k), III(e), IV(i), X(e), and XIX(g)	Manufacturing know-how (see § 120.43(e)) directly related to: —articles described in USML Categories II(d), III(d)(1) or (2), IV(a), (b), (d), (g), or (h), X(a)(1) or (2), or XIX; or —parts, components, accessories, or attachments that are only used in those articles.
XI(d) and XII(f)	Classified manufacturing know-how directly related to: —articles described in USML Categories XI(a)(3) or (4), or XII(d); or —parts, components, accessories, or attachments that are only used in those articles.
II(j)(9) through (11), and (k)	Articles described in USML Category II(j)(9) through (11) that are not an element of an armament, weapon, or military platform; and directly related technical data and defense services.
III(a)(9) and (e); IV(a)(5) and (6), (b)(2), (c), (g), (h), and (i); VI(f)(6) and (g); VIII(h)(6) and (i); XI(c) and (d); XII(a), (d), (e), and (f); and XX(c) and (d).	Cluster munitions and articles specially designed for cluster munitions; and directly related technical data and defense services.
IV(a)(3), (9), (10), and (11), (b)(2), (h)(5), and (i).	Articles described in USML Category IV(a)(3), (9), (10), or (11), (b)(2), or (h)(5); and directly related technical data and defense services.
V(a)(13)(iii) and (iv), (a)(23)(iii), (d)(3), (i), and (j).	Articles described in USML Category V(a)(13)(iii) or (iv), (a)(23)(iii), or (d)(3); articles, other than propellants, described in USML Category V(i); and directly related technical data and defense services.
VI(e), (f)(5), and (g); and XX(b)(1), (c), and (d).	Articles described in USML Category VI(e) or (f)(5), or XX(b)(1); articles specially designed for articles described in USML Category XX(b)(1); and directly related technical data and defense services.
VIII(a)(2), (h)(1), and (i)	The F–22 aircraft and articles specially designed for the F-22, other than those also used in aircraft other than the F–22; and directly related technical data and defense services.
X(a)(7)(ii), (d)(2) and (3), and (e)	Articles described in USML Category X(a)(7)(ii); articles specially designed therefor; and directly related technical data and defense services.
XI(a) through (d); and XIII(b) and (l)	Classified countermeasures and counter-countermeasures described in USML Category XI(a) and specially designed parts, components, accessories, and attachments therefor, other than underwater acoustic decoy countermeasures. Classified articles described in USML Category XI(b) or XIII(b). Articles specially designed for commodities or software described in USML Category XIII(b). Classified articles described in USML Category XI(c) directly related to cryptographic systems. Articles directly related to naval acoustic spectrum control and awareness described in USML Category XI(a)(1)(i) and (ii) and (c) and directly related technical data and defense services.
XII(d)(3) and (f)	Classified articles described in USML Category XII(d)(3) and directly related technical data and defense services; and source code and classified technical data and defense services directly related to night vision commodities described in USML Category XII(c)(1) or (2), or (e), beyond basic operations, maintenance, and training information.
XIII(d)(2) and (l)	Articles described in USML Category XIII(d)(2); and directly related technical data and defense services.
XIV(a), (b), (c)(5), (f)(1), (i), and (m)	Articles described in USML Category XIV(a), (b), (c)(5), (f)(1), or (i); and directly related technical data and defense services.
XV(a), (e), and (f)	Classified articles described in USML Category XV(a) or (e); and directly related classified technical data and defense services.
XVI	Articles described in USML Category XVI; and directly related technical data and defense services.
XVIII	Classified articles described in USML Category XVIII specially designed for counter-space operations; and directly related classified technical data and defense services.
XIX(e), (f)(1) and (2), and (g)	Classified articles described in USML Category XIX(e), (f)(1), or (f)(2), not already integrated into a complete engine; and directly related technical data and defense services.
XX(b)(2), (c), and (d)	Articles described in USML Category XX(b)(2); articles specially designed therefor; and directly related technical data and defense services.
XX(d)	Manufacturing know-how (see § 120.43(e)) directly related to: —crewed vessels, or classified uncrewed vessels, described in USML Category XX(a); or —articles described in USML Category XX(b) or (c) that are: ○ used only in crewed vessels, ○ directly related to classified payloads, or ○ directly related to classified Uncrewed Underwater Vehicle (UUV) signature reduction techniques.
XXI	Commodities, software, technical data, and defense services, unless specifically designated as eligible for the AUKUS exemption in State's written Category XXI determination.

Bonnie D. Jenkins,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2024–08829 Filed 4–30–24; 8:45 am]

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Notices

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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

Food Safety and Inspection Service

[Docket No. FSIS–2022–0013]

Salmonella Not Ready-To-Eat Breaded Stuffed Chicken Products

AGENCY: Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).

ACTION: Final determination and response to comments.

SUMMARY: FSIS is announcing its final determination that not ready-to-eat (NRTE) breaded stuffed chicken products that contain *Salmonella* at levels of 1 Colony Forming Unit per gram (hereinafter, ''1 CFU/g'') or higher are adulterated within the meaning of the Poultry Products Inspection Act (PPIA). FSIS is also announcing that it intends to carry out verification procedures, including sampling and testing of the raw incoming chicken components used to produce NRTE breaded stuffed chicken products prior to stuffing and breading.

DATES: This final determination will be effective on May 1, 2025.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development, FSIS, USDA; Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

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I. Background

On April 28, 2023, FSIS published a proposed determination (88 FR 26249) in which the Agency tentatively declared that NRTE breaded stuffed chicken products contaminated with *Salmonella* at levels at or above 1 CFU/g present a significant public health concern. This proposed determination emphasized risks that are particular to these products, given their unique characteristics. Specifically, data from outbreak investigations, as well as consumer behavior research studies, show that common consumer preparation practices associated with these products may not destroy *Salmonella* that may be present in the product. Information from consumer behavior research discussed in the proposed determination (88 FR 26257) also shows that common consumer handling of NRTE breaded stuffed chicken products may contribute to cross-contamination. Further, the proposed determination noted that *Salmonella* has been associated with severe and debilitating human illness and available data suggest that the *Salmonella* infectious dose can be relatively low (88 FR 26261–26264). In addition, outbreak data cited in the proposed determination indicates that NRTE breaded stuffed chicken products have been consistently and disproportionately associated with *Salmonella* illness outbreaks over the years (88 FR 26252–26259). Based on the information discussed in the proposed determination, FSIS tentatively concluded that previous efforts to mitigate the public health concerns associated with these products, which primarily focused on product labeling and outreach to inform consumers that these products are raw and how to prepare them safely, have failed to adequately ensure that consumer preparation of NRTE breaded stuffed chicken products will result in a product that does not contain *Salmonella* at levels sufficient to cause a high risk of human illness when consumed. As such, FSIS tentatively determined that the appropriate response to protect public health is to ensure that NRTE breaded stuffed chicken products contaminated with *Salmonella* at levels more likely to cause human illness are excluded from commerce (88 FR 26264).

FSIS specifically proposed to declare that NRTE breaded stuffed chicken products contaminated with *Salmonella* at levels of 1 CFU/g or above as adulterated under the PPIA. As discussed in the proposal, FSIS tentatively concluded that when present in NRTE breaded stuffed chicken products, *Salmonella* at 1 CFU/g or higher meets the definition of an ''added substance'' that ''may render'' them injurious to health pursuant to 21 U.S.C. 453(g)(1) (88 FR 26260–26261). The proposal further explained that FSIS also believes that NRTE breaded stuffed chicken products that contain *Salmonella* at 1 CFU/g or higher meets the more stringent ''ordinarily injurious'' standard under 21 U.S.C. 453(g)(1) (88 FR 26261). Moreover, the proposed determination tentatively concluded that such products are adulterated under 21 U.S.C. 453(g)(3) because their elevated risk of illness makes them ''. . . unsound, unhealthful, unwholesome, or otherwise unfit for human food'' (88 FR 26261).

After reviewing comments on the proposed determination, FSIS is finalizing the determination as proposed, with one exception. Based on public comments, FSIS has decided to modify the verification sampling location originally proposed to provide greater flexibility and reduce costs to industry. Specifically, instead of collecting samples after the establishment has completed all processes needed to prepare the chicken component to be stuffed and breaded to produce a final NRTE breaded stuffed chicken product, as was proposed, FSIS will collect verification samples on the raw incoming chicken components. FSIS is also clarifying that

establishments may incorporate raw chicken components sampled by FSIS into finished NRTE breaded stuffed chicken products so long as such products remain under the establishments' control pending test results. FSIS is also clarifying, as requested by commenters, that it does not intend to begin FSIS sampling and verification testing discussed in this determination until May 1, 2025. In addition, FSIS has considered the economic effects of this determination and has updated the final Cost Benefit Analysis (CBA) in response to public comments.

II. Summary of Comments and Reponses

FSIS received 3,386 comments on the proposed determination from individuals, a laboratory services business, an association representing the entire food industry, research institutes associated with the meat and frozen foods industries, a society of meat industry professionals, an animal welfare advocacy organization, trade associations representing the poultry products industry, members of the meat and poultry industry, and consumer advocacy organizations.

A summary of issues raised by commenters and the Agency's responses follows.

A. FSIS' Legal Authority and Adulteration Under the PPIA

Comment: A trade association representing the poultry industry asserted that FSIS does not have Congressional authorization to take the actions discussed in the proposed determination. Poultry products trade associations, members of the poultry products industry, a society of meat industry professionals, and an institute representing the interests of the meat industry asserted that FSIS' determination that *Salmonella* is an added substance in NRTE breaded stuffed chicken pursuant to 21 U.S.C. 453(g)(1) is inconsistent with legal precedent, which holds that a substance is only ''added'' if it is artificially introduced by a person.[1] A poultry products trade association and an institute representing the meat industry asserted that FSIS does not have a legal basis to declare that any level of *Salmonella* ordinarily renders NRTE breaded stuffed chicken injurious to health under 21 U.S.C. 453(g)(1), given the courts have previously determined that consumers prepare raw chicken in a manner that destroys *Salmonella.*[2]

On the other hand, consumer advocacy organizations agreed with the Agency's tentative conclusion that *Salmonella* is an added substance in NRTE breaded stuffed chicken and is thus subject to the ''may render injurious'' standard. The commenters also agreed with FSIS' tentative conclusion that NRTE breaded stuffed chicken products that contain *Salmonella* at 1 CFU/g or higher meet the more stringent ''ordinarily injurious'' standard, because ordinary consumer handling and preparation preserves levels in the end product that result in illness.

Response: The PPIA provides FSIS with the authority to regulate poultry to ensure that adulterated products do not enter commerce.[3] Furthermore, Congress, at 21 U.S.C. 453(g)(1), declared two standards for determining whether a product is adulterated. First, if a substance is an ''added substance'' the product is adulterated if the substance may render the product injurious to health. Second, if the substance is not added, the product is adulterated if the quantity of such substance in or on the product ordinarily renders it injurious to health.

As discussed in the proposed determination (88 FR 26250–26251), this is not the first time that FSIS has exercised its authority to designate a foodborne pathogen as an adulterant in a raw product. In September 1994, FSIS stated that it considered raw ground beef contaminated with *Escherichia coli* O157:H7 (*E. coli* O157:H7) to be adulterated within the meaning of an identical adulteration provision in the Federal Meat Inspection Act (FMIA; 21 U.S.C. 601(m)), and that the Agency was prepared to use the enforcement provisions of that statute to exclude adulterated product from commerce. At the same time, FSIS indicated that it would begin to sample raw ground beef at federally regulated establishments and in commerce.[4] Shortly after the 1994 decision, a group of supermarket and meat industry organizations filed suit in the U.S. District Court for the Western District of Texas to reverse FSIS' determination, arguing the Agency exceeded its statutory authority by declaring *E. coli* O157:H7 to be an adulterant under the FMIA. The court ruled in favor of FSIS.[5] The Agency then updated its policy in 1999, declaring *E. coli* O157:H7 to also be an adulterant of intact beef cuts that are to be further processed into nonintact raw products before being distributed for consumption. In 2011, FSIS declared that six additional Shiga Toxin-Producing *Escherichia coli* (STEC) serogroups (O26, O45, O103, O111, O121, and O145) are adulterants of raw non-intact beef products and raw intact beef components intended to be used in these products.[6]

FSIS is now taking similar action, declaring *Salmonella* to be an adulterant in NRTE breaded stuffed chicken when present at levels at or above 1 CFU/g. FSIS based this decision on the best available science and data using similar criteria as in its 1994, 1999, and 2011 STEC policymaking. This determination, like the STEC determinations, is within the scope of the Agency's statutory authority.

The adulteration definition in 21 U.S.C. 453(g)(1) includes two standards for determining whether a product is adulterated. Under 21 U.S.C. 453(g)(1), if a substance is an ''added substance'' the product is adulterated if the substance ''may render'' the product injurious to health. If the substance is not added, the product is adulterated ''if the quantity of such substance in or on'' the product ''ordinarily'' renders it injurious to health.

FSIS has determined that when present in NRTE breaded stuffed chicken products, *Salmonella* at 1 CFU per gram or higher meets the definition of an ''added substance'' that ''may render'' these products injurious to health. As discussed in the proposed determination (88 FR 26260–26261) and herein, (processing can add *Salmonella* to previously uncontaminated NRTE breaded stuffed chicken components and may increase the occurrence of *Salmonella* throughout the finished product overall. As such, some portion of *Salmonella* present in the NRTE

[1] *United States* v. *Anderson Seafoods, Inc.,* 622 F.2d 157 (5th Cir. 1980). *United States* v. *Coca Cola*, 241 U.S. 265 (1915).

[2] *Texas Food Industry Association* v. *Espy*, 870 F. Supp. 143, 149 (W.D. Tex. 1994). *American Public Health Association* v. *Butz*, 511 F.2d 331, 334 (D.C. Cir. 1974). *Supreme Beef Processors, Inc.* v. *USDA*, 275 F.3d 432, 438–39 (5th Cir. 2001). See also, *e.g., Starr Surplus Lines Ins. Co.* v. *Mountaire Farms Inc.*, 920 F.3d 111, 117 (1st Cir. 2019). (''[T]he mere fact of the FSIS-orchestrated recall does not give rise to the plausible inference that the type of *Salmonella* found . . . could not be eliminated by proper cooking.''); *Craten* v. *Foster Poultry Farms Inc.*, 305 F. Supp.3d 1051, 1058 (D. Ariz. 2018) (observing that existing case law ''suggests *Salmonella* is not an adulterant'' and rejecting several state law tort claims because *Salmonella* ''is killed through proper cooking, which is how raw chicken products are intended to be used'').

[3] 21 U.S.C. 451 and 452.

[4] Michael R. Taylor, FSIS Administrator. September 29, 1994. ''Change and Opportunity to Improve the Safety of the Food Supply.'' Speech to American Meat Institute Annual Convention, San Francisco, CA.

[5] See *Texas Food Industry Association* v. *Espy*, 870 F. Supp. 143 (1994).

[6] 76 FR 58157, Sept. 20, 2011.

breaded stuffed chicken products has been introduced by humans.

While no court has addressed whether *Salmonella* in processed poultry products is an ''added substance'' under the PPIA, FSIS' determination that *Salmonella* at 1 CFU/g is an added substance in NRTE breaded stuffed chicken is consistent with the holding in *United States* v. *Anderson Seafoods* (622 F.2d 157 (1980)). The issue directly before the court in *U.S.* v. *Anderson Seafoods* was the meaning of the term ''added substance'' as used in an adulteration provision of the Federal Food, Drug, and Cosmetic Act (FFDCA), which, in relevant parts, is identical to the ''added substance'' provision in the PPIA.[7] [8] *U.S.* v. *Anderson Seafoods* involved hazardous levels of mercury in swordfish. Specifically, the issue before the court was whether all mercury in the fish should be considered an ''added substance'' under the adulteration provisions of the FFDCA and thus subject to the ''may render injurious standard'' when some mercury in swordfish occurs naturally and some is the result of man-made pollution. After considering the legislative history and relevant case law, the court found that the term ''added,'' as used in the FFDCA, means ''artificially introduced, or attributable in some degree to the acts of man.'' [9] The court also held that the ''may render it injurious to health'' standard applies to the food, not to the added substance and, therefore, ''where some portion of a toxin present in a food has been introduced by [humans], the entirety of that substance present in the food will be treated as an added substance.'' [10]

As discussed in the proposed determination (88 FR 26260–26261) and herein, processing can add *Salmonella* to previously uncontaminated NRTE breaded stuffed chicken components and may increase the occurrence of *Salmonella* throughout the finished product overall. As such, some portion of *Salmonella* present in the NRTE breaded stuffed chicken products has been introduced by man and, in accordance with the holding in *Anderson Seafoods,* all *Salmonella* in this product should be treated as an ''added substance'' and may be regulated under the PPIA's ''may render injurious'' standard.

In addition, FSIS' believes that *Salmonella* at 1 CFU/g in NRTE breaded stuffed chicken meets the more stringent ''ordinarily injurious to health'' standard for substances that are not added, satisfying the definition of ''adulterated'' under 21 U.S.C. 453(g)(1). This determination also does not conflict with legal precedent. The Agency recognizes that, historically, most foodborne pathogens, including *Salmonella,* have not been considered adulterants of raw and other NRTE meat and poultry based on the assumption that ordinary cooking is generally sufficient to destroy the pathogens.

However, NRTE breaded stuffed chicken products are NRTE multi-ingredient, further processed products that often contain multiple raw poultry source materials and are heat treated in a manner that typically imparts an RTE appearance. As noted in the proposed determination (88 FR 26249), consumer research, together with information gathered during outbreak investigations, clearly show that, because of these unique product characteristics, which make these products particularly risky, consumers often do not prepare these products properly, even when the products display adequate cooking instructions and statements on the label. FSIS is not aware of any court that has analyzed the status of *Salmonella* as an adulterant in NRTE breaded stuffed chicken products, giving due weight to the products' unique characteristics, consumer behaviors, public health risks associated with these products, or the most recent science and data concerning *Salmonella* in NRTE breaded stuffed chicken products.

Comment: A group of consumer advocacy organizations agreed with FSIS' position and reasoning in the proposed determination that *Salmonella* is an added substance pursuant to 21 U.S.C. 453(g)(1) in NRTE breaded stuffed chicken products. However, poultry products trade associations, members of the poultry products industry, a society of meat industry professionals, and an institute representing the interests of the meat industry disagreed with FSIS' determination, arguing that *Salmonella* exists naturally in chicken, and provided studies that they assert show that *Salmonella* exists naturally in muscle tissue.[11] [12] [13] [14] These commenters also stated that FSIS did not adequately support its view that cross-contamination during further processing is responsible for the presence of *Salmonella* in chicken components used to create NRTE breaded stuffed chicken products.

Response: In the proposed determination, FSIS specifically evaluated whether *Salmonella* should be considered an added substance in NRTE breaded stuffed chicken (88 FR 26260–26261). Although FSIS agrees with the commenters that *Salmonella* naturally exists in certain parts of poultry before processing, such as the skin, livers, feather follicles, and bones, the Agency noted that *Salmonella* is not ordinarily found in the muscle tissue of healthy birds. NRTE breaded stuffed chicken products contain raw, comminuted chicken breast meat, trim, or whole chicken breast meat (*i.e.,* further processed chicken parts or comminuted chicken). FSIS sampling data has shown that further processed chicken parts (legs, breasts, and wings) and comminuted chicken have a higher occurrence of *Salmonella* positive results compared to carcasses.[15] [16]

As FSIS noted in the proposed determination (88 FR 26260), these sampling data indicate that, during processing, *Salmonella* that is regularly present in certain parts of the bird is added to the interior of edible poultry muscle tissue, where *Salmonella* is not ordinarily found. The proposed

[7] The definition in the FFDCA provides that ''A food shall be deemed to be adulterated (a)(1) if it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health'' (21 U.S.C. s 342(a)(1)).

[8] While the PPIA defines the circumstances in which a poultry product may be adulterated, FSIS has referred to the FFDCA as a substantially similar statute to further elucidate the meaning that terms are given in a similar provision. See, *e.g.,* FSIS final response to petition #12–02, Petition to Require Labeling of All Ritually Slaughtered Meat and Poultry (Jan 1, 2012) p. 2. Available at: *https://www.fsis.usda.gov/federal-register/petitions/petition-require-labeling-all-ritually-slaughtered-meat-and-poultry.*

[9] *United States* v. *Anderson Seafoods, Inc*622 F.2d 157, 160 (citing *United States* v. *Coca Cola,* 241 U.S. 265 (1915)).

[10] *United States* v. *Anderson Seafoods, Inc*622 F.2d 157, 161.

[11] Rimet, C.S., Maurer, J.J., Pickler, L., Stabler, L., Johnson, K.K., Berghaus, R.D., . . . & França, M. (2019). *Salmonella* harborage sites in infected poultry that may contribute to contamination of ground meat. Frontiers in Sustainable Food Systems, 3, 2.

[12] Angela Cook et al., Campylobacter, *Salmonella,* Listeria monocytogenes, Verotoxigenic Escherichia coli, and Escherichia coli Prevalence, Enumeration, and Subtypes on Retail Chicken Breasts with and without Skin, 75(1) J. Food Protection 34–40 (Jan. 2012).

[13] Husnu Sahan Guran et al., *Salmonella* prevalence associated with chicken parts with and without skin from retail establishments in Atlanta metropolitan area, Georgia, 73(B) Food Control 462–67 (Mar. 2017).

[14] A. Pointon et al., A Baseline Survey of the Microbiological Quality of Chicken Portions and Carcasses at Retail in Two Australian States (2005 to 2006), 71(6) J. Food Protection 1123–34 (Jun. 2008).

[15] Sampling Results for FSIS-Regulated Products. Available at: *https://www.fsis.usda.gov/science-data/sampling-program/sampling-results-fsis-regulated-products.*

[16] USDA FSIS Annual Sampling Summary Report 2022. Available at: *https://www.fsis.usda.gov/sites/default/files/media_file/documents/FY2022-Sampling-Summary-Report.pdf.*

determination cited several instances of how such cross-contamination could occur (88 FR 62260). For one, when poultry is cut, *Salmonella* in the skin and feather follicles can be exposed and spread during processing to previously uncontaminated product. [17] [18] [19] Additionally, many NRTE breaded stuffed chicken products are made with comminuted chicken. Because of the nature of comminution, *Salmonella* contamination in chicken skin and bone can spread throughout an entire batch or lot through cross-contamination. FSIS sampling data show that ground and other raw comminuted chicken products that were produced using either bone-in or skin-on source materials were more likely to be contaminated with *Salmonella* than those fabricated from deboned, skinless source materials.[20] In addition, *Salmonella*-negative raw poultry parts and comminuted poultry may become cross-contaminated by contact with *Salmonella*-contaminated equipment or when they are commingled with *Salmonella*-positive products, such as when they are collected in combo bins for further processing.[21] [22] *Salmonella*-contaminated equipment used to incorporate the stuffed ingredients into the chicken component of NRTE breaded stuffed chicken products may also contribute to *Salmonella* contamination in these products. For these reasons, FSIS considers *Salmonella* an added substance in NRTE breaded and stuffed chicken products. It is important to note that the determination that *Salmonella* is an added substance in NRTE breaded and stuffed chicken products is based on the circumstances under which these particular products are fabricated and processed and that FSIS has not made a determination about whether *Salmonella* is an added substance in any other raw poultry products. FSIS will address the status of *Salmonella* in other raw poultry products in a subsequent rulemaking proceeding after considering the comments received in that proceeding.

Industry commenters provided a study in which researchers tested poultry muscle tissue for the presence of *Salmonella*.[23] However, the study was not sensitive enough to draw the conclusion that *Salmonella* at 1 CFU/g or higher is ordinarily present in such tissue. In the study, 1-day old chicks were deliberately inoculated with highly pathogenic *Salmonella* before development of healthy gut microflora. Thus, the initial load of *Salmonella* in the tested birds was not necessarily representative of the pathogen levels ordinarily present in farm-raised poultry.[24] Moreover, the study had a very small sample size and, in the end, only one out of five muscle tissue samples collected from 42-day old birds were positive for the *Salmonella* serotypes tested.[25] Thus, this study does not serve as demonstrable evidence that *Salmonella* is ordinarily present in the muscle tissue of farm-raised poultry. In fact, the study concluded that the high prevalence of *Salmonella* in the skin of infected poultry significantly contributes to contamination of ground chicken and turkey and suggested that the exclusion of skin as a component of ground poultry may be the best option for reducing *Salmonella* contamination in ground poultry products. This finding, therefore, supports FSIS' position that, amongst other things, *Salmonella* contaminated chicken skin substantively contributes to the spread of the pathogen in NRTE breaded stuffed chicken products, including to components that do not ordinarily contain *Salmonella.*

Industry also cites three other papers they say show that *Salmonella* prevalence is the same in skin-on and skin-off chicken.[26] [27] [28] The commenters assert these studies prove that *Salmonella* naturally occurs in poultry muscle tissue. However, these papers show variable results for *Salmonella* detection in skin-off versus skin-on chicken.[22–24] Two studies, Cook 2012 and Pointon 2008, showed similar rates of *Salmonella* between the skin-on and skin-off parts using a rinse sampling method. In contrast, the third study, Guran 2017, showed *Salmonella* presence in skin-on chicken parts was significantly higher than in the skin-off parts with 44.7% vs 12.3% positive for chicken breast and 40.9% vs 22.8% positive for chicken thighs when samples were mixed by stomaching.[23] The variable results from the studies discussed could be due to methodology differences. Researchers have noted that rinse sampling methods may not recover *Salmonella* that are firmly attached to the skin or trapped within skin folds and feather follicles, while vigorous mixing using a stomacher may release attached *Salmonella* therefore increasing detection.[29] [30] A study by Wu 2014 supports this, showing rinsed skin samples recovered significantly less *Salmonella* than skin that was stomached (2.3 vs. 20.7%).[31]

At an industry level, poultry skin is a known source of *Salmonella* contamination due to bacteria being trapped in the skin folds and feather follicles.[32] These areas may not be accessible until they are disturbed

[17] Kim J–W and Slavik MF. 1996. Cetylpyridinium Chloride (CPC) treatment on poultry skin to reduce attached *Salmonella.* J. Food Prot. 59: 322–326.

[18] Wu D, Alali WQ, Harrison MA, and Hofacre CL. 2014. Prevalence of *Salmonella* in neck skin and bone of chickens. J Food Prot. 77(7): 1193–1197.

[19] FSIS Guidance for Controlling *Salmonella* in Raw Poultry (June 2021) pp. 59–60. Available at: *https://www.fsis.usda.gov/guidelines/2021-0005.*

[20] FSIS Guidance for Controlling *Salmonella* in Raw Poultry (June 2021) pp. 65–66, Table 4 FSIS exploratory sampling test results, raw comminuted chicken by source material composition (6/1/13–6/30/15, 2,688 samples. Available at: *https://www.fsis.usda.gov/guidelines/2021-0005.*

[21] FSIS Guidance for Controlling Salmonella in Raw Poultry (June 2021) pp. 59. Available at: *https://www.fsis.usda.gov/guidelines/2021-0005.*

[22] Codex Guideline for the Control of Campylobacter and *Salmonella* in Chicken Meat at *https://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252FStandards%252FCXG%2B78-2011%252FCXG_078e.pdf.*

[23] Rimet, C.S., Maurer, J.J., Pickler, L., Stabler, L., Johnson, K.K., Berghaus, R.D., . . . & França, M. (2019). *Salmonella* harborage sites in infected poultry that may contribute to contamination of ground meat. Frontiers in Sustainable Food Systems, 3, 2.

[24] FSIS notes that—for farm raised birds—there are many options to eliminate or reduce the *Salmonella* contamination, including pre-harvest food safety control measures. Elimination efforts can include rearing and management practices, pre and probiotic use, antimicrobial therapy, and/or vaccination of birds. See, *e.g.,* Foley, S.L., Nayak, R., Hanning, I.B., Johnson, T.J., Han, J., & Ricke, S.C. (2011). Population dynamics of *Salmonella* enterica serotypes in commercial egg and poultry production. *Applied and environmental microbiology, 77*(13), 4273–4279.

[25] Forty-two days is the approximate age when broilers are slaughtered. FSIS also notes that in the four weeks prior, only one sample in the study tested positive for either serotype and only after enrichment.

[26] Angela Cook et al., Campylobacter, *Salmonella,* Listeria monocytogenes, Verotoxigenic Escherichia coli, and Escherichia coli Prevalence, Enumeration, and Subtypes on Retail Chicken Breasts with and without Skin, 75(1) J. Food Protection 34–40 (Jan. 2012).

[27] Husnu Sahan Guran et al., *Salmonella* prevalence associated with chicken parts with and without skin from retail establishments in Atlanta metropolitan area, Georgia, 73(B) Food Control 462–67 (Mar. 2017).

[28] A. Pointon et al., A Baseline Survey of the Microbiological Quality of Chicken Portions and Carcasses at Retail in Two Australian States (2005 to 2006), 71(6) J. Food Protection 1123–34 (Jun. 2008).

[29] Wu D, Alali WQ, Harrison MA, and Hofacre CL. 2014. Prevalence of *Salmonella* in neck skin and bone of chickens. J Food Prot. 77(7): 1193–1197.

[30] Husnu Sahan Guran et al., *Salmonella* prevalence associated with chicken parts with and without skin from retail establishments in Atlanta metropolitan area, Georgia, 73(B) Food Control 462–67 (Mar. 2017).

[31] Wu D, Alali WQ, Harrison MA, and Hofacre CL. 2014. Prevalence of *Salmonella* in neck skin and bone of chickens. J Food Prot. 77(7): 1193–1197.

[32] FSIS Guidance for Controlling Salmonella in Raw Poultry (June 2021). Available at: *https://www.fsis.usda.gov/guidelines/2021-0005.*

during cutting or grinding. When this processing exposes and releases the pathogen, it can spread, resulting in higher contamination levels in the product. FSIS sampling data clearly indicates *Salmonella* poultry rates rise as poultry is further processed, from chicken carcasses at 4.14% to legs, breasts, wings at 7.62% to comminuted at 24.2%.[33] This is a pattern FSIS has observed yearly and based on more than 25,000 samples analyzed in FY2022 alone.[34]

Comment: A few commenters, including trade associations representing the poultry products and frozen foods industries, asserted that the evidence cited in the proposed determination does not indicate that NRTE breaded stuffed chicken products contaminated with *Salmonella* are ordinarily injurious to health. First, they argued that the outbreak data cited does not indicate that the products have harmed a substantial amount of people. They also argued that outbreak investigations do not indicate that consumers ordinarily prepare NRTE breaded stuffed chicken in a manner that renders them unsafe to eat.

Response: NRTE breaded stuffed chicken products pose a substantive risk to public health. The data available show that NRTE breaded stuffed chicken products are inherently risky, given their unique characteristics, and have a disparate impact on public health. Specifically, as noted above and in the proposed determination (88 FR 26252), an analysis of all chicken associated outbreaks identified in the Centers for Disease Control and Prevention's (CDC) National Outbreak Reporting System (NORS) [35] or in the scientific literature from 1998–2020 found that, during this time, NRTE breaded stuffed chicken products accounted for less than 0.15 percent of the total domestic chicken supply yet represented approximately five percent of all chicken-associated *Salmonella* outbreaks in the United States. Specifically, although NRTE breaded stuffed chicken products make up a very small percentage of the total domestic supply of chicken, they have been associated with 14 *Salmonella* outbreaks between 1998 and 2021, resulting in 195 reported illnesses and 41 reported hospitalizations (88 FR 26258–26259). The actual number of cases is likely higher than the number of reported cases.[36]

As discussed in the proposed determination (88 FR 26263), *Salmonella* can cause bloody diarrhea, fever, abdominal cramps, nausea, and vomiting. In some instances, *Salmonella* enters the blood and makes its way to other areas of the body including, but not limited to, the heart, lung, bone, joints, and the central nervous system.[37] This can result in severe illness requiring hospitalizations and even death, especially in vulnerable populations, such as very young, elderly, and immunocompromised individuals. Even when *Salmonella* is no longer detectable in the body, prior Salmonella illness has also been associated with an increased risk in colon cancer and can cause debilitating, long-lasting conditions including inflammatory bowel disease, irritable bowel syndrome and reactive arthritis.[38]

Comment: A few poultry products trade associations stated that the proposed determination did not explain or support why *Salmonella,* particularly at 1 CFU/g, would render a NRTE breaded stuffed chicken product adulterated under 21 U.S.C. 453(g)(3).

Response: Under 21 U.S.C. 601(m)(3) of the FMIA and 21 U.S.C. 453(g)(3) of the PPIA, a meat or poultry product is adulterated ''if it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food.'' Historically, FSIS has interpreted the phrase ''is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food'' as providing a separate basis for adulteration than consists of ''any filthy, putrid, or decomposed substance.'' Thus, meat or poultry products that FSIS has determined are ''otherwise unfit for human food'' within the meaning of 21 U.S.C. 601(m)(3) and 21 U.S.C. 453(g)(3) do not also need to consist ''in whole or in part of any filthy, putrid, or decomposed substance.'' For example, when raw meat or poultry products are associated with an illness outbreak but contain pathogens that are not considered adulterants in raw products, FSIS has found products linked to the illness outbreak to be adulterated under 21 U.S.C. 601(m)(3) or 21 U.S.C. 453(g)(3) because they are ''unsound, unhealthful, unwholesome or otherwise unfit for human food'' (77 FR 72689). FSIS has also determined that certain materials from cattle as well as the carcasses of non-ambulatory disabled cattle are adulterated because they present a sufficient risk of exposing humans to the bovine spongiform encephalopathy agent such as to render them ''unfit for human food'' under 21 U.S.C. 601(m)(3) (69 FR 1862).

As discussed in the proposal (88 FR 26261), FSIS evaluated the available information on *Salmonella* associated with human illnesses, the *Salmonella* infectious dose, the severity of human illnesses caused by *Salmonella,* and consumer preparation practices associated with NRTE breaded stuffed chicken product as documented in outbreak investigations associated with these products and consumer behavior research studies. Based on this evaluation, FSIS concluded that NRTE breaded stuffed chicken products contaminated with *Salmonella* at levels of 1 CFU/g present a sufficiently serious risk of causing *Salmonella* illness. Thus, as discussed in the proposed rule, FSIS has determined that such products are adulterated as defined in 21 U.S.C. 453(g)(3) because their elevated risk of illness makes them ''unhealthful, unwholesome, or otherwise unfit for human food'' (82 FR 26261).

B. Need for the Proposed Action

Comment: Many commenters, including an animal welfare organization, two consumer advocacy groups, and several individuals, stated FSIS' proposed action is necessary to assure NRTE breaded stuffed chicken products are safe to eat. However, a few poultry products trade associations and an institute representing the meat industry asserted that the proposed determination is not necessary to protect public health. These commenters specifically asserted the rate of salmonellosis associated with all chicken products has decreased over the past ten years. They also stated that public health efforts by the industry and FSIS have already made NRTE breaded stuffed chicken products safe to eat.

Response: As discussed throughout the proposed determination (88 FR

[33] USDA FSIS Annual Sampling Summary Report 2022. Available at: *https://www.fsis.usda.gov/sites/default/files/media_file/documents/FY2022-Sampling-Summary-Report.pdf*

[34] Moreover, national prevalence data from chicken parts baseline sampling indicate that skin-on parts were more likely to be positive for Salmonella than parts without skin. See *The Nationwide Microbiological Baseline Data Collection Program: Raw Chicken Parts Survey* (2012), available at: *https://www.fsis.usda.gov/sites/default/files/media_file/2020-07/Baseline_Data_Raw_Chicken_Parts.pdf.*

[35] CDC National Outbreak Reporting System available at: *https://www.cdc.gov/nors/index.html.*

[36] Scallan, et al. 2011; Mead, P.S., et al., Food related illnesses and deaths in the United States. Emerging Infect Dis, Oct1999. 5(5) p. 607–625.

[37] Batz, M.B., et al., Long-Term consequences of foodborne illness. Infect Dis Clin North Am, Sept 2013. 28(3) p. 599–661; Hohmann, E.L., Nontyphoidal Salmonellosis, Clin Infect Dis, Sept 2001. 32 p. 263–269; Heymann, D. Salmonellosis. Control of Communicable Disease Manual, 2021.

[38] Mughini-Gras, L. et al. Increased colon cancer risk after severe Salmonella infection. PLoS ONE, 2018. 13(1): p. 1–19. *https://doi.org/10.1371/journal.pone.0189721.*

26249), FSIS is specifically targeting *Salmonella* in NRTE breaded stuffed chicken products because their unique characteristics make them particularly risky, and they pose a disparate impact on consumers' health. There have been 14 recorded outbreaks associated with the consumption of NRTE breaded stuffed chicken products since 1998, with the latest outbreak occurring as recently as 2021. *Salmonella* outbreaks have been disproportionately associated with NRTE breaded stuffed chicken products. Specifically, an analysis of all chicken associated outbreaks identified in the CDC's NORS [39] and in the scientific literature from 1998–2020 found that, during this time, NRTE breaded stuffed chicken products accounted for less than 0.15 percent of the total domestic chicken supply yet represented approximately five percent of all chicken-associated outbreaks in the United States (88 FR 26252). Outbreaks associated with these products have continued to occur regularly despite updated labeling instructions, outreach, and other industry and Agency efforts to make the products safer and ensure consumers are aware of how to prepare them (88 FR 26259–26260). Moreover, data from outbreak investigations and consumer research discussed in the proposed determination show that many consumers continue to cook NRTE breaded stuffed chicken products in a manner that does not adequately destroy *Salmonella* in these products (88 FR 26252–26260).

C. Definition of NRTE Breaded Stuffed Chicken Products

Comment: Trade associations and institutes representing the meat and poultry foods industries asked FSIS to clarify what products are subject to this final determination and noted that it should not apply to frozen NRTE products that are not breaded or stuffed, or that appear raw. A trade association representing the poultry products industry specifically asserted that the determination should not include NRTE breaded stuffed chicken products intended for use by hotel, restaurant, or institutional consumers.

Response: As discussed in the proposed determination (88 FR 26252), FSIS specifically defines NRTE breaded stuffed chicken products as those NRTE products that are both breaded *and* stuffed, contain raw chicken components (*e.g.,* comminuted chicken breast meat, trim, or whole chicken breast meat), and where the finished product is heat-treated only to set the batter or breading on the exterior of the product, which may impart an RTE appearance. Only products that specifically meet this definition are subject to the 1 CFU/g or higher adulteration standard discussed in this final determination. As discussed in the proposed determination (88 FR 26266—26267) and herein, FSIS will also conduct verification sampling in federally regulated establishments that produce such products. Thus, this final determination does not apply to RTE products (*e.g.,* fully cooked RTE chicken cordon bleu). In addition, NRTE products that are stuffed and breaded, but are not ''par-fried,'' ''pre-browned,'' or otherwise heat treated to only set the batter or breading, are not subject to this final determination.[40] This final determination also does not apply to NRTE stuffed products that are not breaded, such as turducken or whole stuffed chickens—nor to NRTE breaded products that are not stuffed, such as chicken nuggets. Under this determination, NRTE breaded stuffed chicken that contain *Salmonella* at or above 1 CFU/g will be considered adulterated even if intended for hotel, restaurant, or institutional use because, regardless of intended use, NRTE breaded stuffed chicken products have characteristics that can make effective cooking of these products more challenging, *i.e.,* they may appear fully cooked, are typically cooked from a frozen state, and are thicker in diameter and have a different composition than other par-fried breaded products (82 FR 26252).

D. Food Emergency Response Network Survey

Comment: A few poultry product trade associations asserted that they did not have the time or information necessary to respond to the Food Emergency Response Network (FERN) Survey.[41] Specifically, these commenters argued that the Agency published the FERN Survey during the proposed determination's comment period, leaving inadequate time for analysis and comment. They also asserted that FSIS never explained why this survey was relevant or how it supported the proposed determination.

A few poultry product trade associations and an institute representing the meat industry also raised some specific issues with the FERN Survey. First, they noted that it did not utilize the laboratory or sampling methods discussed in the proposed determination. Second, these commenters stated that the samples were not weighted to reflect relative production volume, they were not geographically dispersed, and that no statistical analysis was performed on the base results. The commenters also stated that the study lacked statistical power, given minimal samples were collected over a short period of time.

Response: FSIS disagrees with the assertion that the Agency never explained why the FERN Survey was relevant or how it was used to inform the proposed determination. The proposed determination discussed the FERN Survey report in detail (88 FR 26265–26266). FSIS gave the public adequate time and information to respond to the FERN Survey report. After release of the FERN Survey report, FSIS extended the proposed determination's comment period to August 11, 2023, to give the public more time to review the materials and formulate comments. Furthermore, the survey's methodology and results—as well as FSIS' analysis—were discussed in detail in the proposed determination (88 FR 26265–26266), which published 105 days prior to the close of the comment period.[42] [43]

In regard to the specific issues with the FERN Survey raised by commenters, the FERN Survey report made clear that the data were derived from convenient sampling of eligible products available to the participating laboratories and that FSIS made no claims about the statistical significance of any differences observed [44] or about how this survey supports FSIS enumeration methodology. Indeed, FSIS explained that the survey was intended to collect information on the positive rate of *Salmonella* in NRTE breaded stuffed chicken purchased at retail and differences in testing strategies, which were intended to help inform the FSIS verification sampling plan resulting from this determination. The FERN Survey results indicate that the current FSIS testing methods are acceptable for these products because the FERN labs

[39] CDC National Outbreak Reporting System available at: *https://www.cdc.gov/nors/index.html.*

[40] For example, if a meat counter at a retail store were to stuff a chicken breast with cheese and roll it in breadcrumbs, but not heat treat the product to set the breading, the product would not be subject to this determination.

[41] FSIS, *Survey of Not Ready-to-Eat Breaded and Stuffed Chicken Products for Salmonella,* Docket ID No FSIS–2022–0013–0015 (June 2023).

[42] FSIS Constituent Update—June 23, 2023. Available at: *https://www.fsis.usda.gov/news-events/news-press-releases/constituent-update-june-23-2023.*

[43] FSIS, *Survey of Not Ready-to-Eat Breaded and Stuffed Chicken Products for Salmonella,* Docket ID No FSIS–2022–0013–0015 (June 2023).

[44] Survey of Not Ready-to-Eat Breaded and Stuffed Chicken Products for *Salmonella* (*usda.gov*).

tested samples using the validated methods. The survey was also conducted to help inform the FSIS sampling and verification testing resulting from this determination.

As explained in the proposed determination (88 FR 26265), the FERN Survey gathered data at retail to provide information about the *Salmonella*-positive rate of NRTE breaded stuffed chicken products. In the proposal, FSIS noted that when using FSIS methods and a larger test portion, the survey found that the 27 percent positive rate for *Salmonella* in NRTE breaded stuffed chicken products detected in retail samples is comparable to the 29 percent positive rate detected in FSIS sampling of comminuted chicken.[45] The Agency also noted that these rates are higher than the *Salmonella*-positive rates for other raw chicken products, which suggests that NRTE breaded stuffed chicken products and comminuted chicken have a higher risk than other raw chicken. However, as noted in the proposal, consumer preparation practices are more likely to mitigate the risk associated with comminuted or ground chicken because, unlike NRTE breaded stuffed chicken products, ground chicken clearly appears raw and is not typically cooked from a frozen state (88 FR 26265).

E. Outbreak Data

Comment: A poultry products trade association argued that FSIS placed too much emphasis on the duration of outbreaks associated with NRTE breaded stuffed chicken products to support its decision, noting that the length of an outbreak is not necessarily related to its severity. It also asserted that statements gathered during outbreak investigations are anecdotal and, thus, not adequate to support FSIS' conclusion that consumers do not safely prepare NRTE breaded stuffed chicken products. Moreover, the commenter noted that most of the outbreak investigations FSIS discussed were associated with outdated product labeling and used antiquated investigational methods.

Response: The outbreak data—together with the other evidence discussed in the proposed determination (88 FR 26249)—supports the conclusion that NRTE breaded stuffed chicken products are disproportionately associated with *Salmonella* illnesses compared to other raw poultry products and that, despite industry and Agency efforts, consumers continue to prepare such products in a manner that does render them safe to eat. The outbreak investigation findings discussed in the proposed determination (88 FR 26252–26259) were not based on anecdotal evidence or antiquated investigational methods. The findings were based on exposure and food-history information gathered and analyzed by local, state, and Federal health partners, including the CDC. These investigations used accepted investigational practices at the time of the outbreak.

Although FSIS mentioned the length of such outbreaks in the proposed determination, the Agency judges the severity of such outbreaks on their overall public health impact, not the length of the outbreaks. As noted in the proposed determination, despite making up a very small percentage of the total domestic supply of chicken (88 FR 26252), NRTE breaded stuffed chicken products were associated with 14 *Salmonella* outbreaks between 1998 and 2021, resulting in 195 reported illnesses and 41 hospitalizations (88 FR 26258–26259).

F. Salmonella Framework

Comment: A poultry establishment and a poultry products trade association noted that FSIS has not finished its *Salmonella* Framework, which contemplates reviewing FSIS' comprehensive approach to *Salmonella* and that, considering this ongoing effort, it is premature to set specific standards for NRTE breaded stuffed chicken at this time. The commenters stated that pursuing a separate policy for NRTE breaded stuffed chicken products risks creating inconsistencies or redundant policies.

Response: The Agency is confident it can address the persistent *Salmonella* outbreaks caused by NRTE breaded stuffed chicken products, as stated in this notice, and also propose to address illness associated from *Salmonella* in raw poultry generally in a future proposed rule. This will not lead to inconsistent or redundant policies. FSIS develops food safety requirements based on pathogens, consumption data, and other food safety factors, which can vary depending on the product.

For the reasons discussed in the proposed determination, FSIS believes that NRTE breaded stuffed chicken products pose different exposure risks to consumers than other types of raw poultry products and are more likely to result in *Salmonella* outbreaks than other products; therefore, FSIS has determined to hold NRTE breaded stuffed chicken products to a more stringent *Salmonella* adulteration standard than for other raw poultry products. FSIS is not delaying its efforts concerning this product. Consistent with this final determination, as the Agency develops the proposed *Salmonella* Framework,[46] it will consider measures that will be most effective in addressing the public health risks associated with *other* raw poultry products.

G. Wait for Additional Information

Comment: Poultry products trade associations, a poultry products establishment, and a society of meat industry professionals noted that FSIS needs to gather more information about *Salmonella* in NRTE breaded stuffed chicken products before finalizing this determination. Specifically, they stated that FSIS needs to gather more data on the frequency that products currently exceed the 1 CFU/g threshold, whether enforcing the 1 CFU/g standard would be feasible, and what impact the proposed determination would have on public health. The commenters further stated that FSIS needs more insight into which serotypes are most prevalent in these products, as well as better information regarding infectious dose and host susceptibility. The commenters said that FSIS should build a comprehensive microbiological baseline before moving forward and use that information to conduct a risk assessment.

Response: FSIS has sufficient information to finalize this determination. As discussed in the proposed determination (88 FR 26249), available data from outbreak investigations and consumer behavior research show that NRTE breaded stuffed chicken products contaminated with *Salmonella* pose a significant public health risk. As noted in the proposal, these data show that common consumer preparation practices associated with NRTE breaded stuffed chicken products may not destroy organisms that may be present in the product and may also contribute to cross contamination (88 FR 26264). The proposal also described available data that show *Salmonella* has been associated with severe and debilitating human illnesses and that the *Salmonella* infectious dose is relatively low (88 FR 26264). Thus, because *Salmonella* can survive ordinary handling and cooking practices for NRTE breaded stuffed chicken products,

[45] USDA Food Safety and Inspection Service Annual Sampling Report Fiscal Year 2021: *https://www.fsis.usda.gov/sites/default/files/media_file/2022-02/FY2021-Sampling-Summary-Report.pdf.*

[46] FSIS, Proposed Regulatory Framework to Reduce *Salmonella* Illnesses Attributable to Poultry, available *https://www.fsis.usda.gov/inspection/inspection-programs/inspection-poultry-products/reducing-salmonella-poultry/proposed.*

FSIS has determined that the appropriate response to protect public health is to ensure that products contaminated with *Salmonella* at levels more likely to cause human illness are excluded from commerce. As explained in the proposed determination, assuming a minimum of 0.5 log (68%) *Salmonella* reduction likely achieved with even partial cooking, considering a level of *Salmonella* at 1 CFU/g (assuming a typical 70–88 gram chicken component portion size) to adulterate product should significantly mitigate the risk of illness associated with NRTE breaded stuffed chicken products (88 FR 26263). Additionally, as discussed in the proposed determination, all *Salmonella* serotypes have the potential to cause illness, and the disparity in serotypes may be related to factors other than serotype-specific differences in human virulence. Thus, given the unique public health risk associated with NRTE breaded stuffed chicken products, FSIS has determined that any *Salmonella* at levels of 1 CFU/g or higher is an adulterant in these products. FSIS will continue to evaluate and, if necessary, refine its policies and standards related to the oversight of NRTE breaded stuffed chicken products as advances in science and technology related to pathogen levels, serotypes, and infectious dose become available.

FSIS typically performs baseline studies to estimate the national prevalence of bacteria of public health concern in situations where a large number of establishments produce a product and uniform verification sampling is performed. Here, a baseline study isn't warranted for NRTE bread stuffed chicken products because there are currently only six federally regulated establishments producing such products. Due to the public health risk posed by the product type, which is supported by recurring *Salmonella* illness outbreaks, the Agency decided to move forward with the proposed determination.

H. Infectious Dose

Comment: Poultry products trade associations, a member of the poultry products industry, and a meat industry research institute asserted there were several deficiencies in the infectious dose data FSIS relied on to support its proposed determination that NRTE breaded stuffed chicken with 1 CFU/g *Salmonella* are adulterated. Specifically, the commenters stated that FSIS relied on a single dose-response study to support the 1 CFU/g proposed determination.[47] Moreover, commenters asserted that this study (hereinafter, ''Teunis 2010'') contained insufficient and outdated data. The commenters, therefore, provided an updated study by the same author for FSIS' consideration (hereinafter, ''Teunis 2022'').[48] The commenters also suggested that *Salmonella* serotypes used in Teunis 2010 were not representative of the serotypes that caused NRTE breaded stuffed chicken product outbreaks or are found in raw chicken.

Response: The Agency considered Teunis 2022 along with the evidence already cited on infectious dose in the proposed determination. However, upon review, FSIS does not conclude that the updated dose-response model in Teunis 2022, in consideration with the other evidence previously cited, warrants a change in the proposed adulterant threshold of 1 CFU/g of *Salmonella* in NRTE breaded stuffed chicken products.

FSIS' 1 CFU/g determination was not based on a single study. FSIS cited seven *Salmonella* outbreak papers in the proposed determination where the infectious dose was found to be very low, *i.e.,* 10 or fewer *Salmonella* organisms. FSIS cited an additional nine papers noted in the proposed determination that found an infectious dose between 11 and 420 organisms resulted in human illness. Finally, FSIS cited an additional dose-response paper written by the World Health Organization (WHO) that supports *Salmonella* illness can result, on average, from small doses.[49]

FSIS also did not rely on outdated data. Teunis 2022 specifically states the outbreak data analyzed in the study ''. . . are the same that were used in a previous analysis,'' *i.e.,* Teunis 2010. In fact, most of the data from the human challenge feeding trials [50] used in Teunis 2022 were published in 1951, about 70 years before the publication of Teunis 2022. These data are scientifically debated. In these trials, healthy volunteers were fed *Salmonella,* but none of the strains used in Teunis 2022 had been isolated from a person with salmonellosis.[51] Some of the volunteers had been vaccinated for *Salmonella* typhoid and paratyphoid. Blaser and Newman summarize the issues as follows, ''the ability to generalize about what happens in nature from the experimental data concerning the infective dose of salmonellae is limited by several factors, including choice of strains, repeated testing of the same subjects, failure to assess minimal infective doses, and use of too few volunteers at the lower dosages.'' FSIS also disagrees with the commenters' assertion that a transposition of an outbreak dose from 344 CFU to 3.44 CFU in Teunis 2010 was ''significant'' and, thus, evidence that FSIS' dose-response analysis was based on an outdated model. Teunis 2022 specifically states that ''It was checked that correction of the dose changed the estimates of *Salmonella* Enteritidis infectivity and pathogenicity only by a minute amount, putting to rest concerns that quantitative risk assessments might have been caused to use an incorrect model.'' [52]

The commenters also suggested that *Salmonella* serotypes used in Teunis 2010 are not representative of the serotypes that caused NRTE breaded stuffed chicken product outbreaks or are found in raw chicken. However, as stated in the proposed determination, all known NRTE breaded stuffed chicken product outbreaks have been Typhimurium, Heidelberg, I 4,[5],12:i:-, and Enteritidis. Teunis 2010 and Teunis 2022 used 48 outbreaks to estimate the *Salmonella* dose-response for all serotypes. Eighty-three percent of those outbreaks represent serotypes that have been associated with NRTE breaded stuffed chicken product outbreaks.

Lastly, as mentioned, the proposed determination cited an additional dose-response model, which was developed by the WHO Food and Agriculture Organization of the United Nations for risk assessments for *Salmonella* in eggs and broiler chickens.[53] Also using outbreaks, the model estimated a 13 percent chance of becoming ill if ingesting 100 organisms. Even at the level of 1 organism ingested, there was still a non-zero chance of illness (0.25%).

[47] Teunis P.F. et al., Dose-response modeling of *Salmonella* using outbreak data, 144(2) Int. J. Food Microbial 243–9 (2010).

[48] Peter F.M. Teunis, Dose response for *Salmonella* Typhimurium and Enteritidis and other nontyphoid enteric salmonellae, 41 Epidemics (2022).

[49] World Health Organization, Risk assessment of *Salmonella* in eggs and broiler chickens, March 25, 2002. Available at: *https://www.who.int/publications/i/item/9291562293.*

[50] McCullough, N.B., Wesley Eisele, C., 1951a. Experimental human salmonellosis. I. Pathogenicity of strains of *Salmonella meleagridis* and *Salmonella anatum* obtained from spray-dried whole egg. J. Infect. Dis. 88, 278–289; McCullough, N.B.,

[51] Blaser, M.J. and L.S. Newman, *A Review of Human Salmonellosis .1. Infective Dose.* Reviews of Infectious Diseases, 1982. 4(6): p. 1096–1106.

[52] Peter F.M. Teunis, Dose response for *Salmonella* Typhimurium and Enteritidis and other nontyphoid enteric salmonellae, 41 Epidemics (2022).

[53] World Health Organization, Risk assessment of Salmonella in eggs and broiler chickens, March 25, 2002. Available at: *https://www.who.int/publications/i/item/9291562293.*

Comment: Industry members, poultry products trade associations, and a meat industry research institute said FSIS should establish a new adulteration threshold equal to or higher than 10 CFU/g for NRTE breaded stuffed chicken products. These commenters noted that the FERN Survey and FSIS data on NRTE breaded stuffed chicken products show that more than a quarter of all *Salmonella* positives were *Salmonella* Kentucky, which they claimed would not result in illness at 1 CFU/g.[54] A poultry products trade association also suggested FSIS based its adulteration threshold on the infectious dose for *Salmonella* Enteritidis, given it was the serotype most commonly associated with NRTE breaded stuffed chicken outbreaks documented in the proposed determination. Specifically, the trade association stated that FSIS should base its threshold on the median dose of *Salmonella* Enteritidis that is predicted to have a 50% probability of causing illness, which was reported as 3,360 CFU. The comment asserted that assuming that the average chicken component of an NRTE breaded stuffed chicken product is 70–88 grams as noted in the proposal, this provides a range of 38–48 CFU/g in NRTE breaded stuffed chicken products.

Response: FSIS is finalizing the 1 CFU/g threshold as described in the proposed determination because outbreaks associated with products have continued to occur regularly despite updated labeling instructions, outreach, and other industry and Agency efforts to make the products safer. FSIS is not establishing a higher adulteration threshold of 10 CFU/g or greater based on the dose at which 50% of individuals exposed to 3,360 CFU of *Salmonella* Enteritidis are predicted to become ill. Use of such a metric where half (50%) of individuals exposed could become ill is not acceptable for a public health regulatory program aimed at reducing the risk posed by NRTE breaded stuffed chicken products, which are habitually undercooked by consumers. *Salmonella* Enteritidis is not the only serotype of concern in NRTE breaded stuffed chicken product, nor it is representative of the infectious dose of all *Salmonella* serotypes. For example, Teunis 2022 states Infantis is predicted to have an $InfD_{50}$ of 0.7 CFU and $InfD_{01}$ 0.01 CFU. Infantis is also predicted to have an $IllD_{50}$ of 1 CFU and an $IllD_{01}$ of 0.07 CFU. All four measures of infection and illness would be below the proposed 1 CFU/g adulteration threshold. Using the $IllD_{01}$, Teunis 2022 supports the limit of 1 CFU/g for Enteritidis, Typhimurium, and Infantis.

FSIS is not only concerned about *Salmonella* Enteritidis and Infantis, but numerous serotypes that have been shown to be in NRTE breaded stuffed chicken product. As discussed below, FSIS determined numerous serotypes were of concern based on three data sources: (1) verification sampling of raw comminuted chicken (a major component of NRTE breaded stuffed chicken), (2) outbreak associated investigated sampling of NRTE breaded stuffed chicken products, and (3) the recent FERN survey of NRTE breaded stuffed chicken at retail.

First, using FSIS raw poultry sampling verification datasets for comminuted chicken from 2015 to CYQ3 2021,[55] FSIS serotyped 2,921 *Salmonella* positives and 58 unique serotypes. FSIS found the following five most frequent serotypes in the following rank order from most to least: Infantis, Enteritidis, Kentucky, Typhimurium, and Schwarzengrund. Since NRTE breaded stuffed chicken products can be made by grinding intact chicken, with trim and chicken skin, these comminuted verification data suggest these serotypes are found in NRTE breaded stuffed chicken products. The second data source was a 2015, FSIS investigative sampling of NRTE breaded stuffed chicken comminuted source components, finished products, and the processing environment from two NRTE establishments associated with an outbreak.[56] Among the 1,433 samples, 518 were positive for *Salmonella,* a 36% positive rate. FSIS found the following serotypes in the following rank order from most to least: Kentucky, Typhimurium, Infantis, Enteritidis, Heidelberg, Schwarzengrund, I 4,[5],12:i:-, Montevideo, Mbandaka, and Muenchen indicating virulent *Salmonella* serotypes can be directly found in NRTE breaded stuffed chicken products. Lastly, in the FERN Survey, NRTE breaded stuffed chicken products were purchased at retail from July 1, 2022, to September 30, 2022. In total, 58 of the 487 samples, 12%, were positive for *Salmonella.* Fifty-three were serotyped finding Infantis, Enteritidis, Kentucky, and Typhimurium, in that order of frequency.

As FSIS acknowledged in the proposed determination, not all *Salmonella* serotypes (*e.g., Salmonella* Kentucky), are equally likely to cause illness (88 FR 26262). However, all *Salmonella* serotypes, including *Salmonella* Kentucky, have the ability to invade, replicate, and survive in human host cells, resulting in potentially fatal disease,[57] and the disparity among serotypes may be related to factors other than serotype-specific differences in human virulence.[58] With *Salmonella,* higher virulence is associated with enhanced ability to survive and grow in the gut or to attach to and invade human cells, which is driven by changes to several mechanisms, including mobile genetic elements and resident genes as well as variations in gene sequence and expression. In an August 2018 report, the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) was unable to find evidence in the literature for any determinant that correlated with high virulence in human foodborne disease.[59] NACMCF noted that a few *Salmonella* serotypes are consistently associated with the greatest incidence of human disease. However, this disparity among serotypes may be related to survival in animal hosts or during food harvesting and processing rather than serotype-specific differences in human virulence.

Comment: A meat industry research institute and industry member asserted that current support for the 1 CFU/g standard is based, in part, on data that include products whose characteristics are not the same as raw chicken. According to the commenters, FSIS cited studies/data associated with cheese, chocolate, and dressings, which are all RTE products of high fat content, and have known *Salmonella* protective characteristics during digestion. They noted that high fat content protects *Salmonella* against gastric acidity resulting in a reduction of dose-response curve with a low infectious

[54] Laboratory Quality Assurance, Response, and Coordination Staff (LQARCS) Office of Public Health Science Food Safety and Inspection Service U.S. Department of Agriculture. Survey of Not Ready-to-Eat Breaded and Stuffed Chicken Products for *Salmonella.* June 2023.

[55] *https://www.fsis.usda.gov/news-events/publications/raw-poultry-sampling.*

[56] *https://www.fsis.usda.gov/news-events/publications/raw-poultry-sampling.*

[57] Shu-Kee Eng, Priyia Pusparajah, NurulSyakima Ab Mutalib, Hooi-Leng Ser, Kok-Gan Chan & Learn-Han Lee (2015) Salmonella: A review on pathogenesis, epidemiology and antibiotic resistance, Frontiers in Life Science, 8:3,

[58] FSIS decision to declare all *Salmonella* at certain levels as an adulterant was also based on a review of the current state of laboratory technology (88 FR 26262).

[59] NACMCF (2019). Response to Questions Posed by the Food Safety and Inspection Service Regarding *Salmonella* Control Strategies in Poultry. *Journal of Food Protection* 82(4): 645–668.

dose.[60] [61] [62] [63] They argued that raw chicken, unlike these other products, provides increased heat lethality, is expected to be heated, and is lower in fat and not emulsified.

Response: FSIS does not agree with the assertion that the dose-response models, including Teunis 2010, Teunis 2022, and the WHO Risk assessment of *Salmonella* in eggs and broiler chickens, are not applicable to chicken-specific outcomes. The commenters indicated that many of the outbreaks used in the dose-response models reported low doses for high-fat products (some reported in the range of 10^1). Looking at the outbreaks used in the *Salmonella* Enteritidis dose-response model,[64] there are many outbreaks that are presumably high-fat but are also high dose. For example, (food vehicle and dose (CFU)) Hollandaise 4.48×10^4, Macaroni salad 4.40×10^4, Scallop/cream 1.00×10^6, Yam/soup 1.94×10^6, Bavarois (Bavarian ice-cream) 1.01×10^5, Ice cream 3.84×10^6, Tiramisu 1.29×10^8, Cake 6.06×10^5, Mayonnaise 5.57×10^4. These outbreak doses range from about 10,000 to 100,000,000 organisms. Further, the commenter suggested that the chicken matrix is low-fat and the only ingredient of concern. NRTE breaded stuffed chicken products can be made from comminuted (ground) chicken where high-fat chicken skin may be combined and comminuted with skinless, boneless chicken. Additionally, NRTE breaded stuffed chicken products include high-fat ingredients, such as cheese, cream, butter, and ham, that could act to encourage pathogen survival.

FSIS agrees that very few of the outbreaks used in any of the dose-response models mentioned in the public comments or the proposed determination are specifically associated with an outbreak where the contaminated ingredient was determined to be chicken. However, there are several outbreaks used in the dose-response models that are based on animal products. These include beef, chicken, egg, prawn, scallop, and octopus. The commenters did not provide an explanation for how the lack of chicken outbreaks would impact the dose-response except to imply it would not be representative. However, dose-response models describe pathogens and are rarely, if ever, specific to the transmission pathway.

I. Virulence

Comment: A poultry industry commenter stated that FSIS needs to gather more information on *Salmonella* virulence.

Response: As discussed in the proposed determination (88 FR 26262), the basis for *Salmonella* virulence is not fully understood. Many virulence factors have been identified that contribute to *Salmonella* pathogenicity. The interactions of these factors and the resulting strain virulence and pathogenicity has not been completely elucidated, but single genes and pathogenicity islands have been identified as key virulence traits. However, there is currently no agreed-upon definition of virulence genes presence/absence profile that can reliably predict severity of disease.[65] FSIS, as discussed in the proposed determination (88 FR 26262), is working to better understand *Salmonella* characteristics, including virulence, and actively engages in and encourages research in this area. As science and laboratory technologies advance, FSIS will continue to use the most innovative and sensitive methods available to protect public health.

J. Consumer Behavior

Comment: Poultry products trade associations and a meat industry research institute argued that consumers prepare raw chicken in a manner that destroys *Salmonella* and, thus, *Salmonella* cannot be considered an adulterant in products that include raw poultry components. One poultry products trade association also specifically asserted that FSIS cannot take the action discussed in the proposed determination because it has not proved that consumers must cook NRTE breaded stuffed chicken products to a temperature higher than other raw poultry products in order to effectively kill *Salmonella.* A poultry products trade association also asserted that the 2020 consumer study [66] and the 2022 CDC Appliance Report [67] cited in the proposed determination do not prove that consumers mishandle or use the incorrect appliances to prepare NRTE breaded stuffed chicken products. The commenter also noted that FSIS' analysis of consumer behavior pertaining to food thermometer use relied on an outdated paper explicitly focused on *microwavable* products from 1998–2006.[68]

Response: FSIS disagrees. As FSIS noted in the proposed determination (88 FR 26252), there are special considerations to take into account with these particular products that are relevant to consumer cooking practices. For one, unlike most raw poultry products, NRTE breaded stuffed chicken products often appear fully cooked and, thus, some consumers may only reheat the product for aesthetic or palatability purposes rather than subject it to cooking sufficient to kill pathogenic bacteria. Second, consumers typically cook NRTE breaded stuffed chicken from a frozen state, which increases the risk that the products will not reach an internal temperature needed to destroy *Salmonella* organisms that may be in the product. Third, NRTE breaded stuffed chicken products have a thicker diameter and a different composition than most other raw chicken products that are not stuffed, including other par-fried breaded products, which can make effective cooking of NRTE breaded stuffed chicken more challenging. In addition, it may be difficult for a consumer to determine an accurate internal temperature of these products because they contain multiple ingredients, such as cheese and vegetables, that may cook at different rates. FSIS has recommended in the past that consumers check the temperature at multiple locations throughout the product using a food thermometer, but this is not always practical or accurate.

As discussed in the proposed determination (88 FR 26252–26259),

[60] Naschimento, et.al., (2012) Inactivation of *Salmonella* during cocoa roasting and chocolate conching. International Journal of Food Microbiology 159 (3):225. 718–727.

[61] Krapf, Tamara, and Corinne Gantenbein-Demarchi. ''Thermal inactivation of *Salmonella* spp. during conching.'' *LWT-Food Science and Technology* 43, no. 4 (2010): 720–723.

[62] Podolak, Richard, Elena Enache, Warren Stone, Darryl G. Black, and Philip H. Elliott. ''Sources and risk factors for contamination, survival, persistence, and heat resistance of *Salmonella* in low-moisture foods.'' *Journal of food protection* 73, no. 10 (2010): 1919–1936.

[63] D'aoust, J.Y. ''*Salmonella* and the chocolate industry. A review.'' *Journal of Food Protection* 40, no. 10 (1977).

[64] Peter F.M. Teunis, Dose response for *Salmonella* Typhimurium and Enteritidis and other nontyphoid enteric salmonellae, 41 Epidemics (2022).

[65] NACMCF (2022). Response to questions Posed by FSIS: Enhancing *Salmonella* Control in Poultry Products. Available at: *https://www.fsis.usda.gov/sites/default/files/media_file/documents/NACMCF_Salmonella-Poultry_Response_for_Committee_Review.pdf.*

[66] S.C. Cates, et al., *Food Safety Consumer Research Project: Meal Preparation Experiment on Raw Stuffed Chicken Breasts,* RTI Project No. 0215472, ES–1–2 (Sept. 23, 2020).

[67] Marshall, K.E., Canning, M., Ablan, M., Crawford T.N., Robyn, M. Appliances Used by Consumers to Prepare Frozen Stuffed Chicken Products-United States, May–July 2022. Morb Mortal Wkly Rep Dec 2,2022; 71(48);1511–1516. Available at: *http://dx.doi.org/10.15585/mmwr.mm7148a2.*

[68] Smith, K.E., Medus, C., Meyer, S.D., Boxrud, J.D., Leano, F., Hedburg, C., Elfering, K., Braymen, C., Bender, J.B., Danila, R.N. 2008. Outbreaks of Salmonellosis in Minnesota (1998 through 2006) Associated with Frozen, Microwaveable, Breaded Stuffed Chicken Products. Journal of Food Protection. 71(10): 2153–2160.

outbreak investigations indicate that, despite industry and Agency efforts, consumers' cooking practices continue to be insufficient to destroy *Salmonella* in NRTE breaded stuffed chicken products and, as such, they continue to have a disparate impact on public health. Despite industry updates to labeling and Agency outreach on the safe preparation of NRTE breaded stuffed chicken products, outbreak investigations consistently indicate that case patients erroneously believed these products were precooked, did not ordinarily use food thermometers to check the internal temperature of the product, and used a microwave or other unsuitable appliance to cook the products. Moreover, many case patients became ill even when they used an oven to prepare the product.

Further, FSIS disagrees with commenters' assertions that the consumer research cited in the proposed determination was flawed or did not indicate that a significant percentage of consumers customarily mishandle NRTE breaded stuffed chicken products despite reading the manufacturer's labeling and instructions. As commenters noted, the proposed determination cited a 2008 report published in the *Journal of Food Protection.* FSIS appropriately cited this report to describe four separate salmonellosis outbreaks associated with NRTE breaded stuffed chicken that occurred between 1998–2006, related investigative findings, and the subsequent actions taken in response.[69] The report indicated that most consumers sickened in a 1998 outbreak reported using a microwave to prepare the product, and no consumers reported using a food thermometer. In response, the company responsible for the outbreak updated the preparation instructions on its product labeling. Then, in 2005, the report indicated that another outbreak occurred. Again, the manufacturer responsible for the outbreak updated its labeling instructions. FSIS also issued a public health alert to remind consumers that frozen meat and poultry products must be fully cooked before they are consumed. According to the report, following these additional communications with consumers and labeling changes by the manufacturers, two additional outbreaks occurred in the 2005–2006 timeframe. Again, most of the case patients used a microwave oven to cook the products and none of the case patients took the internal temperature of the product after cooking it. FSIS, therefore, issued another public health alert, emphasizing that consumers must cook NRTE breaded stuffed chicken products to 165 °F. FSIS sent a letter to an establishment involved in one of the outbreaks recommending they enhance and validate the cooking instructions to ensure that they address the intended use by the consumer.[70] FSIS then posted the letter online as guidance to all industry and requested that all such establishments update their labeling to include a statement such as ''Uncooked: For Safety, Must be Cooked to an Internal Temperature of 165 degrees F as Measured by Use of a Thermometer.'' As discussed in the proposed determination, despite these efforts, consumers continued to prepare NRTE breaded stuffed chicken products in a manner that did not adequately destroy *Salmonella,* resulting in several more outbreaks and subsequent unsuccessful efforts to update labeling instructions and educate the public on how to properly cook such products (88 FR 26252–26259).

In addition to analyzing outbreak data, FSIS discussed the results of two consumer behavior studies that helped inform its determination that a significant percentage of consumers do not customarily cook NRTE breaded stuffed chicken products in a manner that adequately destroys *Salmonella.* In the 2020 Meal Preparation Experiment cited in the proposed determination (88 FR 26257),[71] FSIS contracted with RTI International and North Carolina State University to conduct five separate iterations of a meal preparation study to evaluate consumer food handling behaviors in a test kitchen. The third iteration of the study specifically examined participants' meal preparation related to NRTE breaded stuffed chicken products. Half of the participants were assigned to a control group, whereas the other half was assigned to a treatment group. Amongst other things, the study found that consumers may confuse frozen NRTE breaded stuffed chicken products with RTE products. Specifically, the study concluded that even though 99% of all participants read the manufacturer's instructions for NRTE breaded stuffed chicken products, nearly a quarter reported they were not sure if the products were raw or fully cooked, twenty-two percent reported they were unaware that the product was raw, and eleven percent of the participants incorrectly believed the product was fully cooked. The study also found that a significant number of participants did not use food thermometers to check that the NRTE breaded stuffed chicken product reached a safe internal temperature of 165 °F, with some using other methods to determine doneness such as time, visual cues, and touch. Thirty-eight percent of participants also self-reported not using their food thermometer at home to check that NRTE breaded stuffed chicken products were properly cooked. Moreover, the study observed that a significant number of participants did not adequately wash their hands during meat preparation. The study concluded that these issues were likely attributable to participants preparing a NRTE breaded stuffed chicken product rather than raw, unfrozen poultry that is not breaded and stuffed. This indicates that the appearance of NRTE breaded stuffed chicken products and the fact that they are typically cooked from a frozen state may contribute to *Salmonella* cross-contamination in the home.

The proposed determination also discussed the results of a 2022 survey that collected information from thousands of participants from May 31–July 6, 2022, to determine the demographic characteristics of persons who prepare NRTE breaded stuffed chicken products and the appliances they use to prepare them.[72] Even though NRTE breaded stuffed chicken product labels typically instruct consumers to cook the product in an oven and specifically warns against the use of a microwave, 54 percent of participants reported that they prepared these products using appliances other than, or in addition to, ovens.[73] Specifically, 30 percent reported preparing the products using air fryers, 29 percent reported using microwaves, approximately 14 percent reported using toaster ovens, and approximately 4 percent reported using another appliance. Economic and other factors might affect certain groups'

[69] Smith, K.E., Medus, C., Meyer, S.D., Boxrud, J.D., Leano, F., Hedburg, C., Elfering, K., Braymen, C., Bender, J.B., Danila, R.N. 2008. Outbreaks of Salmonellosis in Minnesota (1998 through 2006) Associated with Frozen, Microwaveable, Breaded Stuffed Chicken Products. Journal of Food Protection. 71(10): 2153–2160.

[70] Letter to industry about the safe handling labeling of uncooked, breaded, boneless poultry products (March 2006) at: *https://www.fsis.usda.gov/guidelines/2006-0007.*

[71] Final Report: Food Safety Consumer Research Project: Meal Preparation Experiment on Raw Stuffed Chicken Breasts (September 23, 2020) at: *https://www.fsis.usda.gov/sites/default/files/media_file/2021-04/fscrp-yr3-nrte-final-report.pdf.*

[72] Marshall, K.E., Canning, M., Ablan, M., Crawford T.N., Robyn, M. Appliances Used by Consumers to Prepare Frozen Stuffed Chicken Products-United States, May–July 2022. Morb Mortal Wkly Rep Dec 2,2022; 71(48);1511–1516. Available at: *https://www.cdc.gov/mmwr/volumes/71/wr/mm7148a2.htm.*

[73] Participants in the study were allowed to choose more than one cooking option.

access to recommended cooking appliances and, thereby, the customary manner in which these groups cook NRTE breaded stuffed chicken products.

FSIS also disagrees that, in order to finalize the proposed determination, it must show that consumers must cook NRTE breaded stuffed chicken products to a temperature higher than other raw poultry products in order to effectively kill *Salmonella.* As noted in the proposed determination, the status of NRTE breaded stuffed chicken products contaminated with *Salmonella* must depend on whether there is adequate assurance that consumer handling of the product will result in a product that does not contain *Salmonella* at levels sufficient to cause human illness when consumed (64 FR 2803). The evidence cited in the proposed determination, including the consumer research cited above, shows consumers routinely do not fully cook NRTE breaded stuffed chicken nor do they routinely use a food thermometer to test the internal temperature of the product and, thus, has concluded that the appropriate response to protect public health is to ensure that products contaminated with *Salmonella* at levels sufficient to cause human illness (1 CFU/g) are excluded from commerce.

K. Laboratory Methods

Comment: Poultry products trade associations, a meat products research institute, a member of the poultry products industry, a trade group representing the frozen foods industry, and a society of meat industry professionals raised some issues regarding the laboratory methods FSIS intends to implement. Generally, they stated that *Salmonella* enumeration testing technology is still under development, that current methods are limited, and that FSIS needs to ensure that its methods are validated prior to implementation of this determination. Specifically, they noted that available *Salmonella* enumeration methods are not currently validated for NRTE breaded stuffed chicken products or at a detection level of 1 CFU/g. A poultry products trade association and an industry member also asserted that there is a margin of variability inherent in the available laboratory methods and asked for clarity on how FSIS would account for this. An industry member also asked FSIS to use polymerase chain reaction (PCR)-based limit of detection testing, until quantification methods are improved and validated.

Response: FSIS laboratories performed a thorough verification of validated methods by independent organizations. FSIS' current qPCR method is validated for 1 CFU/g in NRTE breaded stuffed chicken.[74] The Most Probable Number (MPN) method is another enumeration technique that FSIS has adopted.[75] FSIS intends to routinely evaluate new methods of *Salmonella* quantification, as they become available, that provide both accuracy and fitness for a high-throughput laboratory environment.

Comment: To expedite test results, a poultry products trade association requested that the Agency consider conducting the quantitative assay concurrently with the assay being conducted to screen the sample for the general presence of *Salmonella,* not based on that assay. The commenters also asked for clarity on if quantitative and general detection results will be obtained from the same homogenized sample to avoid conflicting results that could arise if using different analytical sample portions due to factors such as the nonhomogeneous distribution of *Salmonella.*

Response: FSIS intends to use the same homogenized sample for the quantitative and detection screen protocols. Enumeration results will be reported on the same day. For samples that are potential positives, an additional 3 days may be necessary for a confirmed positive or negative result. These timeframes and methods may change as FSIS incorporates new laboratory technologies into its sampling and verification testing.

Comment: A poultry products trade group stated that *Salmonella* levels in finished product are typically less than 1 CFU/g but that the levels in samples may grow beyond the 1 CFU/g threshold during transport of the sample to Federal laboratories. The commenters asked the Agency to account for this phenomenon in its final determination, given even a slight difference in results may have a negative impact on industry.

Response: Current FSIS procedures ensure the temperature of the *Salmonella* samples to be 15 °C or less upon receipt at the field service laboratories.[76] The laboratories will discard samples that arrive at a temperature above 15 °C.[77] This upper temperature limit is intended to prevent the outgrowth of competitors that could affect pathogen recovery in the lab. These limits also ensure that growth during shipment does not occur. While 15 °C is the upper allowable limit, samples received at the laboratory typically do not approach that temperature. USDA studies have shown no significant difference in the levels of *Salmonella* in ground beef samples if kept at refrigerator temperatures for 24–48 hours (Narang et al, 2005).

Comment: A commercial laboratory suggested that FSIS consider using third-party laboratories that are part of the Accredited Laboratory Program (ALP) when including laboratories that will be assisting the Agency. Further, a member of the poultry products industry stated that FSIS should utilize industry analytical data from ALP on the levels of *Salmonella* to conduct their verification, to assist small and very small processors.

Response: Currently, FSIS labs analyze all samples that FSIS inspectors collect to verify that product is wholesome and not adulterated. Also, FSIS labs currently have the capacity to conduct verification sampling and testing of NRTE breaded stuffed chicken products. Thus, at this time, FSIS intends to collect all samples and use its own labs for verification testing conducted under this final determination.

L. Verification Sampling

Comment: Poultry products trade associations, industry members, and a meat industry research institute asked FSIS to consider sampling earlier in the NRTE breaded stuffed chicken product production process to give establishments more flexibility to divert failed product for other uses. Specifically, commenters asked FSIS to consider conducting sampling on the raw incoming chicken components used to produce NRTE breaded stuffed chicken, prior to those materials being comminuted and combined. They indicated that, if FSIS finalized the sampling location as discussed in the proposed determination, establishments would have less flexibility to divert product exceeding the 1 CFU/g adulteration threshold, given the chicken components, once processed and prepared for breading and stuffing, have a short shelf life and a unique formulation that can only be utilized to produce NRTE breaded stuffed chicken products. Thus, the commenters asserted that sampling at the location discussed in the proposed determination would lead to substantial food waste and lost product costs.

[74] BioMerieux GENE–UP QUANT *Salmonella,* AOAC Performance Tested Methods℠ Certification Number 082104 is the current validation.

[75] See *https://www.fsis.usda.gov/news-events/publications/microbiology-laboratory-guidebook.*

[76] USDA FSIS MLG 1.01 FSIS Laboratory System Introduction, Method Performance Expectations, and Sample Handling for Microbiology, available at *https://www.fsis.usda.gov/sites/default/files/media_file/2022-03/MLG_1.01.pdf.*

[77] FSIS Directive 10250.1, *Salmonella and Campylobacter Verification Program for Raw Meat and Poultry Products.*

Response: In the proposed determination (88 FR 26249), FSIS proposed to collect verification samples after the establishment has completed all processes needed to prepare the chicken component to be stuffed and breaded to produce final NRTE breaded stuffed chicken products. However, FSIS agrees with commenters that sampling earlier in the production process may provide some establishments with additional flexibility to divert sampled source products for other uses, thereby reducing food waste, lost product costs, and establishment operations changes due to the collection event. As such, FSIS will collect verification samples from incoming raw poultry source materials at the establishment producing the NRTE breaded stuffed chicken prior to breading and stuffing at an appropriate point in the establishment's process. In assessing the suitability of the sampling location at any individual establishment, FSIS will take into account the establishments' production process and the Agency's ability to collect the sample safely and effectively. Any *Salmonella* detected in NRTE breaded stuffed chicken source materials will be enumerated and source materials that exceed 1 CFU/g *of Salmonella* must be diverted for other uses.

Comment: A poultry products trade association asked for clarity on whether the *Salmonella* adulteration threshold for NRTE breaded stuffed chicken products applies only to the chicken components tested by FSIS or to the finished product itself. The commenter also asked for clarity on whether establishments may complete the production of NRTE breaded stuffed chicken products while awaiting sampling results, so long as such products remain under establishment control and are not released into commerce. Further, the commenter asked FSIS to provide that establishments may divert raw chicken source material confirmed positive for *Salmonella* at 1 CFU/g for uses other than the production of NRTE breaded stuffed chicken products.

Response: Under this determination, all finished NRTE breaded stuffed chicken products that are contaminated with *Salmonella* at 1 CFU/g or greater are adulterated within the meaning of 21 U.S.C. 453(g)(1) and 21 U.S.C. 453(g)(3). This adulteration standard applies to finished NRTE breaded stuffed chicken products, not the raw incoming chicken components tested by FSIS. Tested chicken components and those components represented by the sampled lot before incorporation into NRTE–BSC products would not be considered adulterated for certain other uses if confirmed positive for 1 CFU/g or greater of *Salmonella.* Thus, establishments may divert such raw material components to another appropriate application (*e.g.,* breaded nugget or fully cooked products). Chicken components subject to sampling and verification testing and confirmed positive for 1 CFU/g or greater of *Salmonella* would be ineligible for use in NRTE breaded stuffed chicken products under 9 CFR 417.2(c)(3).

In the proposed determination (88 FR 26266), FSIS stated that, pending test results, establishments should not incorporate sampled lots into finished NRTE breaded stuffed chicken products. However, in response to public comments, FSIS is clarifying that this statement was only meant to apply to sampled lots incorporated into NRTE breaded stuffed chicken products released into commerce. Establishments that produce NRTE breaded stuffed chicken may, at their discretion, incorporate sampled lots into finished NRTE breaded stuffed chicken products, so long as those finished products remain under establishment control awaiting acceptable test results.

Comment: A poultry products trade association and a meat industry research institute noted that, upon entering commerce, NRTE breaded stuffed chicken may be subject to additional testing by state or local health authorities, customers, consumer advocacy organizations, or even FSIS and other Federal partners. The commenters asked for clarity on how FSIS would interpret such downstream testing and what public health actions it would take if such testing showed that finished NRTE breaded stuffed chicken products in commerce contain *Salmonella* at 1 CFU/g or greater.

Response: Under this determination, all finished NRTE breaded stuffed chicken products that are contaminated with *Salmonella* at 1 CFU/g or greater are adulterated within the meaning of 21 U.S.C. 453(g)(1) and 21 U.S.C. 453(g)(3). If FSIS receives test results from a third party (*e.g.,* a state health department, advocacy organization, or consumer), the Agency will address those results in accordance with FSIS Directive 10,000.1, *Policy on Use of Results for Non-FSIS Laboratories.* Assuming the test results are deemed acceptable, FSIS may use the results to inform Agency action, such as detaining the product or initiating a recall.

Comment: To minimize product storage costs, a poultry products trade association asserted that FSIS should provide establishments with enumeration results as soon as they are available, without waiting for serotype or WGS information.

Response: FSIS will transmit test results to establishments as soon as possible and will not withhold such results while awaiting other information. FSIS intends to use the LIMS-Direct system and Biological Information Transfer Email System (BITES) messages to alert establishments and Office of Field Operations personnel prior to the confirmed positive and WGS or serotyping steps of the analysis.

Comment: Poultry products trade associations, a poultry products industry member, and a meat industry research institute requested clarity on how production lots would be defined for purposes of FSIS' verification and sampling program.

Response: Establishments are responsible for defining a production lot. Establishments should ensure that there is a scientifically supportable basis for their lotting practices to ensure microbiological independence. To create independence between production lots, establishments need to consider the way in which the hazard is likely to be introduced to the process, such as from the addition of chicken skin, and during handling and processing of chicken parts, and grinding of chicken trim that may be used in the production of NRTE breaded stuffed chicken products. When applicable and available, FSIS and establishment microbial sampling, as well as the lotting of received source materials must also be considered and support the establishments product lot definition. A production lot can be defined by the establishment in several ways. FSIS does not consider ''clean-up to clean-up'' alone as a supportable basis for distinguishing one portion of raw chicken production from another portion of production. Establishments may decide to use a robust, statistically based sampling program, one or more processing interventions that have been validated to limit or control *Salmonella,* or other scientifically supportable process to define the lot.[78]

M. Implementation Date

Comment: A meat industry research institute stated that the Agency must allow a reasonable timeframe to implement the final determination. The commenter noted that establishments

[78] For additional information on lotting see the *FSIS Guideline for Holding and Controlling Meat, Poultry, and Egg Products Pending FSIS Test Results.* Available at: *https://www.fsis.usda.gov/policy/fsis-guidelines.*

will need to adjust and put processes in place to hold product during testing and divert positive product. Moreover, according to the commenter, establishments may need to weigh the costs of these processes to determine whether continued production of these types of products is viable. According to the commenter, an effective date one year from the publication of a final determination would be reasonable.

Response: FSIS agrees that industry will need a reasonable amount of time to adjust to this determination. As such, this final determination will not be effective until 12 months after publication of this final determination. Also, FSIS inspection verification sampling will be implemented 12 months after publication of this final determination.

N. Cost Benefit Analysis

Comment: Poultry products trade associations, a meat industry research institute, and a member of the poultry products industry, asserted that storage costs under the proposal would be greater than anticipated in the proposed determination; however, they did not provide any costs estimates to support their assertion. Specifically, the commenters argued that some establishments do not have enough storage capacity to hold products awaiting test results and would, thus, have to purchase off-site storage. Further, commenters stated that the proposed determination did not adequately account for transportation or labor costs, associated with moving product to and from off-site storage facilities. Commenters also asserted that FSIS test results are likely to take longer than estimated in the proposed determination's CBA and that test and hold requirements will reduce shelf life for these products.

Response: FSIS disagrees that the anticipated costs for cold storage will be greater than estimated in the proposed determination. FSIS requires that establishments maintain control of sampled product pending FSIS verification testing results so that product does not enter commerce, while allowing establishments the flexibility of determining where to hold product as well as deciding whether to divert product into other uses. Additionally, as mentioned above, establishments will be able to complete the production process using sampled product, provided they maintain control of any finished products and do not release them into commerce, pending acceptable test results. This will likely reduce an establishment's need for cold storage capacity. To be conservative, FSIS' preliminary cost benefit analysis (CBA; 88 FR 26267) accounted for cold storage costs assuming every lot would be sampled and held. The final CBA assumes FSIS would sample up to 5 lots per establishment per month. The preliminary CBA also assumed that sampling would take place right before the chicken component was stuffed and formed into a NRTE breaded stuffed chicken product. However, as discussed above, FSIS has updated the sampling location to give establishments greater flexibility to divert products for other uses and otherwise reduce operating costs. Given FSIS' assumed lower sampling frequency, greater flexibility in sampling location and establishments' ability to divert components or products, FSIS does not expect establishments to have challenges holding or controlling FSIS sampled product or have additional labor or transportation issues. Moreover, FSIS does not believe the quality or shelf-life of NRTE breaded stuffed chicken products would be impacted during cold storage while industry awaits FSIS sampling results because these products are frozen. In response to comments, FSIS updated the final CBA by conservatively using the higher estimate for frozen cold storage costs instead of the refrigerated cold storage costs used in the preliminary CBA.

FSIS also does not foresee an issue with cold storage capacity. Cold storage construction in the United States has increased since 2020 to meet higher refrigeration demands. According to the U.S. Bureau of Labor Statistics, the number of private refrigerated warehouse facilities increased by 7.5 percent from 2020 to 2021 and an additional 6.8 percent from 2021 to 2022.[79] This increase compares to an average annual growth rate of 2.5 percent per year from 2013 to 2020.[80] With the increase in the number of cold storage establishments, FSIS does not expect the cold storage availability to impact the establishments' ability to store lots of product when FSIS collects a sample. For a conservative estimate, the Agency assumed that all costs of storing product for the sampled lots are due to this final determination; however, establishments may already store the chicken components for NRTE breaded stuffed chicken products in their facilities or in an off-site location for a certain amount of time.

FSIS is confident in its estimated sampling timeframes. In the final determination, FSIS estimates all product sampled and tested by FSIS will be held for 2 days pending screening and enumeration results. At the 1 CFU/g limit, FSIS estimates that about 97 percent of product could be released after two days. Receiving the enumeration results within two days will help industry make more timely decisions about their product and save on cold storage and lost product costs.

Comment: A poultry products trade association and meat industry research institute stated that there are issues with FSIS' analysis of costs in the proposed determination associated with diverted or destroyed product. Specifically, these commenters noted that there is not a market for raw chicken components that are already formulated for use in NRTE breaded stuffed chicken products and, thus, establishments producing raw poultry products cannot readily divert such products for other uses.

Response: FSIS proposed an inspection verification sampling program for *Salmonella* in NRTE breaded stuffed chicken products in which the Agency would collect a sample from the chicken component of NRTE breaded stuffed chicken product prior to breading and stuffing, but after the establishment had completed all the processes needed to prepare the chicken to be stuffed and breaded. However, in the final determination, and based on public comment, FSIS decided to modify the verification sampling location by collecting verification samples on the incoming chicken components. This change may provide establishments with additional flexibility and allow them to divert chicken components more readily.

Comment: A poultry products trade association and meat industry research institute noted that many establishments would be hesitant to divert *Salmonella*-positive product for other NRTE purposes. According to the commenters, to avoid potential liability, many establishments may cook the affected product or employ some other lethality step, resulting in a lower value product. The commenters also asserted that many establishments would need to incorporate sampled lots into finished NRTE breaded stuffed chicken products to avoid spoilage.

Response: FSIS accounts for the lost value in the CBA by assuming diverted chicken components would lose ⅔ of their market value. Alternatively, the establishment is not required to divert

[79] Bureau of Labor of Statistics. Number of Establishments in Private NAICS 49312 Refrigerated warehousing and storage for All establishment sizes in U.S. TOTAL, NSA. Annual totals from 2013 to 2022. Accessed on September 27, 2023.

[80] Bureau of Labor of Statistics. Number of Establishments in Private NAICS 49312 Refrigerated warehousing and storage for All establishment sizes in U.S. TOTAL, NSA. Annual totals from 2013 to 2022. Accessed on September 27, 2023.

product because FSIS collected a sample and thus, may choose to continue to produce NRTE breaded stuffed chicken and hold the finished product pending verification, which FSIS also included in its estimates for cold storage costs. NRTE breaded stuffed chicken finished product produced from chicken components that FSIS detects to contain *Salmonella* at levels of 1 CFU/g or higher are considered adulterated; however, establishments may be able to fully cook these finished products to achieve lethality resulting in a ready-to-eat product.

Comment: Industry asked FSIS to clarify how it estimated lot sizes in the proposed determination's CBA and noted that the lot sizes may be larger than estimated in the preliminary CBA.

Response: The lot size estimates used in the preliminary CBA were an assumption based on the Agency's data on annual production volumes at these establishments. The preliminary CBA assumed establishments producing at least 1 million pounds of NRTE breaded stuffed chicken annually were high volume establishments with 10,000-pound lots. This assumption was based on examples from the 2013 FSIS Compliance Guideline: Controlling Meat and Poultry Products Pending FSIS Test Results.[81] The preliminary CBA assumed establishments producing less than 1 million pounds of NRTE breaded stuffed chicken annually were low-volume establishments with 1,000-pound lots. This assumption was based on production data from FSIS' Public Health Information System. FSIS requested comments on these assumptions but did not receive specific comments on lot size for these products. However, in responses to the comments that the lot sizes may be larger, the final CBA has been updated to consider a day's production as a lot at both high and low volume establishments. This is a conservative estimate because the lot sizes may be smaller than a day's production. Establishments ultimately define and support their lot sizes.

Comment: A meat industry research institute and a poultry products industry member stated that FSIS' CBA should have accounted for different employee types to estimate sampling or HACCP plan reassessment labor costs. The same commenters stated that a food safety, quality assurance, or a laboratory employee are more likely to conduct sampling. They stated that establishments typically do not use line personnel to conduct sampling and, thus, would need to hire additional personnel to conduct tasks associated with sampling and testing. Another commenter suggested that FSIS should better account for the wages of an ''experienced production employee'' in estimating the labor costs of HACCP plan reassessment.

Response: In response to comments, the final CBA has been updated to include that sample collection is conducted by food scientists and technologists. In addition, the final CBA has been updated to included wage ranges for all the wage estimates to account for the variability in wage rates within the professions. FSIS maintains the assumption that establishments would use and train current employees to implement any new or additional sampling in response to this final determination. While the CBA conservatively assumed every establishment would begin or increase sampling in response to this new policy, some establishments already have robust sampling procedures in place and may not make any changes to their sampling in response to the final determination, while other establishments may choose not to conduct any sampling. Additionally, the Agency did not receive any information on the number of additional employees an establishment would hire in response to this final determination.

Comment: Poultry product trade associations, a member of the poultry products industry, and a meat industry research institute stated that FSIS' CBA underestimated miscellaneous costs associated with the proposed determination, such as testing by industry, employee training, applying new *Salmonella* interventions, changing production processes, and validating new production methods and cooking instructions. These commenters also stated that the CBA underestimated the market price of NRTE breaded stuffed chicken products and, specifically, failed to adjust the price for inflation.

Response: FSIS disagrees that miscellaneous costs are underestimated. FSIS included the cost of HACCP reassessment in the CBA for all establishments producing NRTE breaded stuffed chicken products. Sanitation procedures are a prerequisite to HACCP and according to 9 CFR 416.1, ''Each official establishment must be operated and maintained in a manner sufficient to prevent the creation of insanitary conditions and to ensure that product is not adulterated.''[82] Any sanitation issues should be addressed as a condition for the establishment's grant of inspection. Any costs associated with sanitation will not be a result of the new policy.

FSIS did not include the cost of validating cooking instructions in the CBA because industry has already made the recommended changes after the 2015–2016 outbreaks. Any expenses establishments incur to validate cooking instructions or update labels are outside the scope of the policy.

FSIS updated the final CBA to 2022 dollars and used the 2022 average price of chicken breast to represent the price of chicken components for NRTE breaded stuffed chicken product. To be conservative, FSIS used the retail price of boneless chicken breast, which is the premium chicken component utilized in these products.

Comment: Poultry product trade associations, a member of the poultry product industry, and a meat industry research institute noted that sampling and testing alone does not change pathogen loads. Thus, according to commenters, the CBA should assume that establishments will bear the costs of updating their processes to control *Salmonella.*

Response: The final determination and FSIS inspection verification of the adequacy of the HACCP system to control the *Salmonella* hazard, will require industry to use effective methods to control *Salmonella* in NRTE breaded stuffed chicken products regardless of whether FSIS collects an inspection verification sample. FSIS included the cost for establishment-led sampling and testing in the CBA. Establishment-led sampling is an establishment HACCP validation and verification activity that would allow for establishments to support the adequacy of their HACCP system to control the *Salmonella* hazard at one or more steps in the process and verify that they are producing NRTE breaded stuffed chicken products with less than 1 CFU/g *Salmonella.*

Establishments may implement additional interventions to reduce the pathogen loads on their chicken component, but since FSIS did not receive specific comments on the interventions that establishments would use to reduce the *Salmonella* levels on the product, the cost of interventions are not included in the total cost estimate. Though the cost of interventions is not

[81] FSIS Compliance Guideline: Controlling Meat and Poultry Products. Pending FSIS Test Results. 2013. *https://www.fsis.usda.gov/sites/default/files/media_file/2021-09/FSIS-GD-2013-0003.pdf.* Accessed on: November 9, 2023.

[82] National Archives. Code of Federal Regulations. Part 416.1 Sanitation Rules: General Rules. Accessed on October 11, 2023: *https://www.ecfr.gov/current/title-9/chapter-III/subchapter-E/part-416.*

included in the CBA, establishments would only adopt new interventions if the new interventions and the cost to implement interventions is more beneficial than diverting or destroying product. Any new interventions used should offset the cost of diverted or destroyed product already accounted for in the CBA.

Comment: A poultry products trade association stated that the benefits of the proposed determination would need to be greater than estimated to achieve the breakeven effect noted in FSIS' CBA, as costs were underestimated. According to the commenter, the use of the Grocery Manufacturers Association (GMA) data does not address the specific nature of recalls for this product class, and the CBA should account for every recall and not every outbreak. The commenter also argued that since trends show the number of outbreaks in these products has decreased over the years, industry may already be implementing interventions and trending toward less outbreaks through voluntary actions.

Response: FSIS disagrees that costs are underestimated and that benefits need to be higher for the final breakeven analysis. FSIS also disagrees that the GMA report [106] is not in scope for NRTE breaded stuffed chicken products. The GMA report is based on survey results from 36 companies and nearly 91 percent of respondents came from the food and beverage industry. FSIS used this report to determine the average impact of a recall on industry. The cost of recalls in NRTE breaded stuffed chicken products would be similar to the cost of recalls averaged over other food products represented in the GMA report.

While the number of outbreaks has slowed slightly in recent years, outbreaks are still occurring regularly, and we have no reason to believe that there would be a downward trend absent this new policy. The most recent 2021 outbreak resulted in more hospitalizations than any of the 14 other NRTE breaded stuffed chicken product outbreaks, with 36 illnesses, and 12 hospitalizations (88 FR 26258–26259). *Salmonella* outbreaks have been disproportionately associated with NRTE breaded stuffed chicken products, which account for less than 0.15 percent of the total domestic chicken supply yet represented approximately five percent of all chicken-associated outbreaks in the United States (88 FR 26252). Based on the available data, FSIS believes that a downward trend in *Salmonella* outbreaks and illnesses from NRTE breaded stuffed chicken can only be achieved by a policy change. The new policy is expected to cause industry to use more effective methods to control for *Salmonella* in NRTE breaded stuffed chicken products, including diverting, or destroying chicken components with *Salmonella* levels at or over the 1 CFU/g limit.

O. Additional Action

Comment: One individual stated that, in addition to the actions discussed in the proposed determination, FSIS should incentivize establishments to only implement validated control programs in their HACCP Systems.

Response: FSIS regulations at 9 CFR 417.4(a) require that every establishment validate their HACCP plan's adequacy in controlling the food safety hazards identified during the hazard analysis and verify that the plan is being effectively implemented. Therefore, establishments are currently required to implement control programs into their HACCP Systems that are validated. FSIS has published guidance for industry on how to validate their HACCP Systems.[83]

Comment: In addition to the actions discussed in the proposed determination, a consumer advocacy organization suggested that FSIS create final product standards for all poultry products contaminated with *Salmonella.*

Response: This determination is only concerned with *Salmonella* in NRTE breaded stuffed chicken products. The recommendation is, thus, outside the scope of the proposed determination. FSIS intends to address issues related to *Salmonella* illnesses associated with other raw poultry products separately through the *Salmonella* Framework Initiative.[84]

Comment: One animal welfare organization noted that stress can cause or exacerbate *Salmonella* infections in live poultry and, thereby, increase contamination in final products. Thus, in addition to the actions discussed in the proposed determination, the commenter asked FSIS to consider strategies to minimize the time poultry spend awaiting slaughter, protect live poultry from severe environmental conditions during holding, ensure stun baths are designed to prevent pre-stun shocks, and otherwise minimize stress, bruising, and injury to birds during transport.

Response: The final determination is concerned with *Salmonella* in NRTE breaded stuffed chicken products and specifically, establishing an adulteration threshold, and inspection verification of the new policy. Thus, the commenters' suggestions are not within the scope of this action. However, FSIS guidance specifically addresses best practices to control *Salmonella* prior to and during slaughter and processing.[85] FSIS inspection program personnel (IPP) also routinely verify that poultry establishments operate in accordance with Good Commercial Practices, which includes the employment of humane methods of handling and slaughtering.[86]

Comment: An industry member asked FSIS to partner with the U.S. Food and Drug Administration (FDA) to implement the 1 CFU/g standard for other RTE items such as peanut butter, lettuce, tomatoes, and other goods that have been linked to *Salmonella* outbreaks so there is a consistent standard for all such products.[87] Another industry member recommended that FSIS partner with universities to develop education programs aimed at ensuring that robust statistical process control systems are implemented at establishments. The commenter also asked FSIS to work with the USDA Animal and Plant Health Inspection Service to promote vaccine approval, and with other Federal partners to develop more widespread salmonellosis risk assessments.

Response: Recommendations, petitions, and comments on non-FSIS-regulated food products should be directed to FDA. FSIS regularly partners with Federal and State health partners and academia to address issues pertaining to *Salmonella* in FSIS-regulated products. FSIS will continue these partnerships to ensure food safety and further consumer protections.

Comment: A poultry products trade association and an industry member stated that FSIS should amend 9 CFR 381.173 and 381.174 to prohibit mechanically separated chicken (MSC) from being used as a component of NRTE breaded stuffed chicken products.

[83] FSIS Compliance Guideline: HACCP Systems Validation. April 2015. Available at: *https://www.fsis.usda.gov/sites/default/files/import/HACCP_Systems_Validation.pdf.*

[84] FSIS, Proposed Regulatory Framework to Reduce *Salmonella* Illnesses Attributable to Poultry, available *https://www.fsis.usda.gov/inspection/inspection-programs/inspection-poultry-products/reducing-salmonella-poultry/proposed.*

[85] FSIS Guideline for Controlling *Salmonella* in Raw Poultry. June 2021. Available at: *https://www.fsis.usda.gov/sites/default/files/media_file/2021-07/FSIS-GD-2021-0005.pdf.*

[86] FSIS Directive 6110.1, *Verification of Poultry Good Commercial Practices,* available at: *https://www.fsis.usda.gov/policy/fsis-directives/6110.1.*

[87] Foodborne illness source attribution estimates for 2019 for *Salmonella, Escherichia coli* O157, Listeria monocytogenes, and Campylobacter using multi-year outbreak surveillance data, United States. The Interagency Food Safety Analytics Collaboration (IFSAC); October 2021.

Response: At this time, FSIS does not believe that 9 CFR 381.173 and 381.174 need to be revised because, under this determination, all source material received and used to produce NRTE breaded stuffed chicken must be considered in the establishment's hazard analysis to support the *Salmonella* hazard control required and intended by the HACCP system. Any raw chicken components establishments use to produce NRTE breaded stuffed chicken, including MSC, will be subject to FSIS' food safety inspection verification. MSC must also appear in the ingredients statement.

P. Alternatives to the Proposed Action

Comment: In lieu of the proposed action, a poultry products trade association and an industry member stated that FSIS should take the actions described in the 2022 supplement to the National Chicken Council's 2016 petition [88] and otherwise focus on improved labeling for NRTE breaded stuffed chicken products.

Response: As discussed throughout the proposed determination and above, over the years, establishments have repeatedly updated their NRTE breaded stuffed chicken product labeling practices in response to reoccurring illness outbreaks caused by these products in an attempt to reduce future instances of salmonellosis. However, these attempts have been unsuccessful. Thus, FSIS does not believe codifying special labeling requirements for NRTE breaded stuffed chicken products is likely to address the *Salmonella* concerns related to these types of products.

Comment: In lieu of the proposed action, a poultry products trade association stated that FSIS should, amongst other actions, require all NRTE breaded stuffed chicken to reassess their HACCP plan, noting that FSIS has taken similar approaches in the past.

Response: HACCP system regulations require that every establishment reassess the adequacy of its HACCP plan at least annually and whenever any changes occur that could affect the underlying hazard analysis or alter the HACCP plan (9 CFR 417.4(a)(3)). This final determination that *Salmonella* at levels of 1 CFU/g or higher is an adulterant in NRTE breaded stuffed chicken products constitutes such a change. Thus, all establishments that produce NRTE breaded stuffed chicken products must reassess their HACCP plans. Establishments that make changes to their production process as a result of their reassessment would also need to re-validate their HACCP plans. FSIS will issue instructions to IPP in establishments that produce NRTE breaded stuffed chicken products to verify that these establishments have completed their reassessment before the effective date of this final determination. That said, FSIS does not believe that a HACCP reassessment, in the absence of a change in policy, is likely to be a sufficient option to address the *Salmonella* concerns related to these types of products. As discussed in the proposed determination, FSIS believes the appropriate response to protect public health is to ensure that NRTE breaded stuffed chicken products contaminated with *Salmonella* at levels sufficient to cause human illness are excluded from commerce.

Comment: In lieu of the proposed action, a poultry products trade association and meat industry research institute suggested that FSIS, amongst other things, develop guidance for processing NRTE breaded stuffed chicken products to reinforce best practices and help small establishments.

Response: FSIS currently has several applicable industry guidance resources available. FSIS has, for example, published industry guidance on NRTE breaded stuffed chicken product labeling [89] and industry guidance for controlling *Salmonella* in raw poultry to assist establishments that slaughter or process raw poultry products to prevent and minimize the risk of *Salmonella* in their operations.[90] These documents contain best practices and recommendations for industry to consider in their food safety system(s). FSIS will continue to publish and revise relevant guidance, as needed. However, FSIS does not believe that new or updated guidance, in the absence of a change in policy, is likely to be a sufficient option to address the *Salmonella* concerns related to these types of products.

Comment: In lieu of the proposed action, a poultry products trade association stated that FSIS should, amongst other things, conduct food safety assessments (FSAs) at establishments producing NRTE breaded stuffed chicken products to verify that food safety systems are being implemented properly for these products. The commenter also noted that these FSAs could also help identify best food safety practices for producing such products.

Response: FSIS does not believe that conducting FSAs, in lieu of this final determination, would sufficiently address the *Salmonella* concerns related to these types of products.

FSIS assigns and conducts Public Health Risk Evaluations (PHREs) as described in FSIS Directive 5100.4 [91] using both for-cause and routine risk-based PHRE criteria. PHREs are an analysis of establishment performance and use risk-based criteria to determine if FSIS will conduct an FSA. FSAs, as described in FSIS Directive 5100.1,[92] are conducted to assess an establishment's food safety system and verify that meat, poultry, or egg products are safe, wholesome, and produced in accordance with FSIS statutory and regulatory requirements. FSIS will continue to conduct PHREs and FSAs following the criteria described in these FSIS Directives at establishments that produce NRTE breaded stuffed chicken products.

Comment: A poultry products trade association and a trade association representing the frozen food industry stated that FSIS should implement the recommendations outlined in NACMPI's 2021 report.[93]

Response: As discussed in the proposed determination (88 FR 26259), the report provided several recommendations that primarily focus on the labeling of NRTE breaded stuffed chicken products. Specifically, the subcommittee recommended that FSIS re-verify that companies continue to voluntarily label NRTE breaded stuffed chicken products as raw in several places on the label and that labels of these products include validated cooking instructions. The subcommittee also recommended that FSIS update the 2006 labeling guidance to warn consumers not to use microwaves and air fryers if validated instructions are not provided for these methods and to cook the product to a minimum of

[88] FSIS Petition 16–03, Establish Labeling Requirements for Not-Ready-To-Eat Stuffed Chicken Products. Originally submitted on May 24, 2016. Supplemented on February 25, 2022. Available at: *https://www.fsis.usda.gov/federal-register/petitions/establish-labeling-requirements-not-ready-eat-stuffed-chicken-products.*

[89] FSIS Labeling Policy Guidance: Uncooked, Breaded, Boneless Poultry Products. Available at: *https://www.fsis.usda.gov/sites/default/files/import/Labeling_Policy_Guidance_Uncooked_Breaded_Boneless_Poultry_Products.pdf.*

[90] FSIS Guideline for Controlling *Salmonella* in Raw Poultry. June 2021. Available at: *https://www.fsis.usda.gov/sites/default/files/media_file/2021-07/FSIS-GD-2021-0005.pdf.*

[91] FSIS Directive 5100.4, *Public Health Risk Evaluation Methodology, available at:https://www.fsis.usda.gov/sites/default/files/media_file/2021-08/5100.4.pdf.*

[92] FSIS Directive 5100.1, *Public Health Risk Evaluation Methodology,* available at: *https://www.fsis.usda.gov/sites/default/files/media_file/2021-08/5100.4.pdf.*

[93] National Advisory Committee on Meat and Poultry Inspection, Subcommittee II: Stuffed Not Ready-to-Eat Poultry Products, USDA (Sept. 28, 2021).

165 °F as measured using a food thermometer. The subcommittee further recommended that FSIS add label verification for these products as a recurring task for inspectors and review labels from the 2021 outbreak. In addition, the subcommittee recommended that FSIS require establishments that produce these products to reassess their HACCP plans in light of the outbreaks and encouraged FSIS to conduct targeted consumer outreach regarding these types of products, including creating an FSIS web page highlighting NRTE breaded stuffed chicken products. The subcommittee also recommended that FSIS establish requirements for the labeling of NRTE breaded stuffed chicken products and publish industry guidance explaining how to validate cooking instructions for such products.

In light of the 2021 *Salmonella* outbreak and earlier outbreaks associated with these products, the Agency concluded and shared with NACMPI in 2023 that the recommendations, which focus primarily on product labeling and consumer handling practices, are unlikely to be effective in preventing additional foodborne illnesses associated with NRTE breaded stuffed chicken products. Therefore, FSIS concluded that public health measures that focus primarily on product labeling and consumer handling practices have not been effective in preventing additional foodborne illnesses associated with NRTE breaded stuffed chicken products.

III. Implementation

A. HACCP Reassessment

FSIS' regulations require that every establishment reassess the adequacy of its HACCP plan at least annually and whenever any changes occur that could affect the underlying hazard analysis or alter the HACCP plan (9 CFR 417.4(a)(3)). This final determination that *Salmonella* at levels of 1 CFU/g or higher is an adulterant in NRTE breaded stuffed chicken products constitutes such a change. Thus, as discussed in the proposed determination (88 FR 26264), FSIS is announcing that all establishments that produce Heat Treated but Not Fully Cooked—Not Shelf Stable NRTE breaded stuffed chicken products must reassess their HACCP plans; establishments can reassess as part of their annual reassessment if their annual reassessment occurs before the effective date. Establishments that make changes to their production process as a result of their reassessment would also need to revalidate their HACCP plans. Prior to the effective date of this final determination, FSIS will issue instructions to IPP in establishments that produce NRTE breaded stuffed chicken products to verify that these establishments have completed their reassessment. Establishments must complete the reassessment and revalidate their HACCP plans by May 1 2025.

B. Implementation and Status of Laboratory Methods

As explained in the proposed determination (88 FR 26264–26266), FSIS will implement routine sampling and verification testing for *Salmonella* in NRTE breaded stuffed chicken products. In the proposed determination (88 FR 26264), FSIS stated that it would collect samples from the chicken component of a NRTE breaded stuffed chicken product prior to breading and stuffing after the establishment had completed all the processes needed to prepare the chicken to be stuffed and breaded. However, in response to public comments, FSIS has decided to modify the proposed verification sampling location to give establishments greater flexibility to divert source components for other appropriate uses and, thereby, lower lost product costs. Therefore, instead of collecting verification samples after the establishment has completed all processes needed to prepare the chicken component to be stuffed and breaded to produce a final NRTE breaded stuffed chicken product, as was proposed, FSIS will collect verification samples on the raw incoming chicken components used to produce NRTE breaded stuffed chicken product. In implementing sampling and verification testing for these products, FSIS will consider the production process at each impacted establishment and the Agency's ability to collect samples safely and effectively.

FSIS intends to perform, evaluate, determine, and report whole genome sequencing (WGS), serotype, levels, and antimicrobial resistance (AMR) profile for *Salmonella* isolates identified.[94] As noted in the proposed determination (88 FR 26262), FSIS intends to continuously evaluate and, if necessary, refine the status of *Salmonella* as an adulterant in NRTE breaded stuffed chicken products as advances in science and technology related to pathogen levels, serotypes, virulence genes, and product matrices become available. FSIS will likewise refine its sampling and verification testing for these products, as needed.

The detection and isolation methodology for *Salmonella* is described in chapter 4.14, of the FSIS Microbiology Laboratory Guidebook (MLG).[95] When sampling the raw incoming chicken components of NRTE breaded stuffed chicken products under this final determination, FSIS will collect one pound of the selected incoming chicken component from the establishment to analyze 325 grams per test for *Salmonella.* Samples will be initially screened, post-enrichment, for the presence or absence of *Salmonella.* Samples that screen negative will be reported as ''negative.'' For samples that screen positive, FSIS will then analyze *Salmonella* levels. Potential positives that screen positive for *Salmonella* presence and contain levels ≥1 CFU/g will then be analyzed using selective and differential culture-based media to identify the presumptive positive samples. Presumptive positives will then be confirmed by molecular-based mass spectrometric identification. A sample is only considered a ''confirmed positive'' for *Salmonella* after completion of both cultural and confirmatory testing. If any chicken component is ''confirmed positive'' with *Salmonella* levels of 1 CFU/g or higher, the entire sampled lot will need to be diverted to a use other than NRTE breaded stuffed chicken products. Any NRTE breaded stuffed chicken products that contain a chicken component from a sampled lot confirmed positive with *Salmonella* levels of 1 CFU/g or higher prior to stuffing and breading will be considered adulterated and excluded from commerce.

FSIS estimates that negative results will routinely be available within two days of sample collection, assuming overnight sample transit to the laboratory coupled with an overnight sample enrichment followed by screening and quantification at the laboratory. Enumeration is conducted from the same sample as screen testing and both results will be reported on the same day. For samples that are potential positives, an additional 3 days may be necessary for a confirmed positive or negative result. These timeframes and methods may change as FSIS incorporates new laboratory

[94] This information would be reported as with any test result. Inspectors would get result through the Public Health Information System (PHIS). FSIS would report out through Laboratory Information Management System (LIMS) Direct for industry as well as the result would be in the new PHIS sample result history report. The results would also be in public release data sets that the Agency does quarterly. The WGS data would also be uploaded to NCBI as are other *Salmonella* isolates.

[95] FSIS Microbiology Laboratory Guidebook available at: *https://www.fsis.usda.gov/news-events/publications/microbiology-laboratory-guidebook.*

technologies into its sampling and verification testing.[96]

FSIS does not intend to begin the sampling and verification testing discussed in this final determination until May 1, 2025. This should give establishments enough time to adjust their relevant procedures and processes to facilitate such sampling and testing.

C. Sampled Lot

When FSIS tests a product for adulterants, the Agency withholds its determination as to whether product is not adulterated, and thus eligible to enter commerce, until all test results that bear on the determination have been received.[97] Under this policy, establishments must maintain control of products tested for adulterants to ensure that the products do not enter commerce while waiting for receipt of the test results. Thus, when FSIS samples raw incoming chicken components intended for use in NRTE breaded stuffed chicken products, establishments will need to control and maintain the integrity of the sampled chicken components (*i.e.,* the sampled lots) pending the availability of test results. As noted above, establishments may incorporate sampled lots into finished NRTE breaded stuffed chicken products, so long as those finished products remain under establishment control awaiting test results.

FSIS IPP will give establishments that produce NRTE breaded stuffed chicken product advance notice before they collect a product sample for verification testing to give the establishment enough time to hold or control the sampled lot. Establishments are responsible for providing a supportable basis for defining the sampled lot. For sampling purposes, production lots should be defined such that they are microbiologically independent. Microbiological independence is documented by separation, (*e.g.,* physical, temporal, or by sanitation intervention), that clearly delineates the end of one production lot and the beginning of the next. The microbiological results from one test are independent of prior or later lots. In other words, if a chicken component sample collected prior to stuffing and breading tests positive for *Salmonella* at a level of 1 CFU/g or higher, products from other chicken component lots should not be implicated if the lots are microbiologically independent.

Generally, FSIS recommends that establishments develop and implement in-plant sampling plans that define production lots or sub-lots that are microbiologically independent of other production lots or sub-lots. Production lots that are so identified may bear distinctive markings on the shipping cartons. FSIS has issued guidance to help establishments comply with the requirement that product that FSIS has tested for adulterants does not enter commerce until test results become available.[98] FSIS intends to update the guidance to add NRTE breaded stuffed chicken products. In addition to providing guidance on adequate control measures establishments can implement for products tested for adulterants, the document also includes guidance on how establishments can define a product lot in order to determine the amount of product that must be controlled pending test results. Before implementation, FSIS will update the guidance to cover sampling and verification testing for *Salmonella* in the selected raw incoming chicken components intended for use in NRTE breaded stuffed chicken products.

D. State Programs and Foreign Government Programs

States that have their own poultry inspection programs for poultry products produced and transported solely within the State are required to have mandatory ante-mortem and post-mortem inspection, reinspection, and sanitation requirements that are at least equal to those in the PPIA (21 U.S.C. 454(a)(1)). In accordance with this final determination, these States will need to adopt sampling procedures and testing methods to detect *Salmonella* at 1 CFU/g or above in the chicken component in NRTE breaded stuffed chicken products that are at least equal to FSIS' procedures and testing methods for State-inspected establishments that produce these products.[99] Any State participating in a Cooperative Interstate Shipment Program will need to adopt FSIS' sampling procedures and testing methods to detect *Salmonella* at 1 CFU/g or above in NRTE breaded stuffed chicken products in selected establishments that produce these products for shipment in interstate commerce that are the ''same as'' those utilized by FSIS (21 U.S.C. 472).

Foreign countries that are eligible to export poultry products to the United States must apply inspection, sanitation, and other standards that are equivalent to those that FSIS applies to those products (21 U.S.C. 466). At this time, no foreign countries export NRTE breaded stuffed chicken products to the United States. As discussed in the proposed determination (88 FR 26267), in evaluating a foreign country's poultry products inspection system to determine the country's eligibility to export NRTE breaded stuffed chicken products to the United States, FSIS would consider whether the sampling procedures and testing methods the country uses to detect *Salmonella* at 1 CFU/g in these products are equivalent to those that FSIS uses.

IV. Anticipated Costs and Benefits of This Final Determination

FSIS has considered the economic effects of this determination and has updated the final CBA in response to public comments. In the final CBA, FSIS updated the estimated costs and benefits for the final policy from those published in the preliminary CBA from 2021 to 2022 dollars. Also, in response to public comments, FSIS updated the assumed lot size for FSIS and industry sampling, included a range of wages, updated the assumed type of employee that will conduct establishment led sampling, and updated the assumptions used to estimate cold storage time and costs. With input from the Centers for Disease Control and Prevention (CDC), the Agency included an under-reporting multiplier of 25.5 to estimate the actual number of *Salmonella* illnesses associated with outbreaks from NRTE breaded stuffed chicken products.[100] [101]

[96] For example, on July 8, 2022, FSIS announced that it had awarded a contract to bioMérieux to incorporate its non-enrichment quantification system for *Salmonella,* 'GENE–UP™ QUANT *Salmonella,*' into the Agency's laboratory system. The Agency evaluated commercially available quantification systems and determined that this technology is the most appropriate for use in the high throughput FSIS laboratory environment. FSIS stated that in the future, the Agency would announce when the method is available and when it will be implemented in all three FSIS food testing laboratories. FSIS also stated that it plans to extend pathogen quantification technology to sample types other than raw poultry rinses in the future (see FSIS Constituent Update, Jul 8, 2022, *FSIS to include Salmonella Quantification in Raw Poultry Rinse Samples.* Available at: *https://www.fsis.usda.gov/news-events/news-press-releases/constituent-update-july-8-2022#:~:text=Salmonella%20quantification%20is%20a%20significant%20step%20in%20FSIS%E2%80%99,regulatory%20sample%2C%20not%20solely%20its%20presence%20or%20absence.*

[97] *Not Applying the Mark of Inspection Pending Certain Test Results,* 77 FR 73401, December 10, 2012.

[98] FSIS Compliance Guideline: Controlling Meat and Poultry Product Pending FSIS Test Results (2013) at: *https://www.fsis.usda.gov/guidelines/2013-0003.*

[99] FSIS is not aware of any State-inspected establishments that produce NRTE stuffed chicken products.

[100] Scallan E, Hoekstra RM, Angulo FJ, Tauxe RV, Widdowson MA, Roy SL, Jones JL, Griffin PM. Foodborne illness acquired in the United States—major pathogens pdf icon [PDF—9 pages]. Emerging Infectious Diseases. 2011;17(1):7–15: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3375761/.*

Continued

In the final determination, the Agency also includes an estimated opportunity cost for the Agency to implement the new sampling and testing program and updated the impact on small businesses analysis.[102] The full analysis is available at: *https://www.regulations.gov/docket/FSIS-2022-0013/document.*

Summary of Estimated Costs and Benefits

The final determination is expected to impact six domestic establishments and cost industry at least $5.29 million annually, assuming a 7 percent discount rate over a ten-year period. These costs are associated with HACCP plan reassessments, holding sampled chicken components or finished products in storage awaiting FSIS test results, the costs associated with developing and implementing an establishment-conducted sampling program and destroying or diverting the chicken components of NRTE breaded stuffed chicken with *Salmonella* levels at or over the 1 CFU/g limit. Industry may also incur other costs associated with their individual responses to this policy, including applying interventions, training, product reformulation and label changes, and subsequent HACCP plan validation. However, based on public comments, the Agency does not expect establishments to make these changes. If establishments were to implement these additional changes, then we would expect both additional costs and benefits. The Agency would incur an opportunity cost of $0.02 million associated with sampling and testing for *Salmonella.,* FSIS will be able to shift existing resources as necessary to conduct sampling, testing, and associated FSAs to implement the final determination. The estimated total cost for this policy is $5.31 million: $5.29 million in costs to industry and $0.02 million in opportunity costs for FSIS, assuming a 7 percent discount rate over a 10-year period.

The estimated benefits for this policy are derived from preventing outbreak-related recalls.[103] Each prevented outbreak-related recall has an estimated benefit of $34.99 million ($1.42 million in health benefits + $33.57 million in industry benefits). Between 2006 and 2021 there was one outbreak every 1.36 years on average (15 years ÷ 11 outbreaks). Total benefits will exceed total costs if the new policy prevents at least 1 outbreak-related recall every 6.6 years ($34.99 million ÷ $5.31million).[104] Though the policy may not prevent every possible outbreak-related recall, the Agency expects it will prevent at least 1 every 6.6 years.

Without this policy, there is a higher risk of *Salmonella* illnesses from NRTE breaded stuffed chicken products. When only considering health benefits, the policy would break-even if 1,134 illnesses were avoided annually ($5.31 million ÷ $4,682).[105] The smallest number of cases associated with an outbreak from NRTE breaded stuffed chicken products occurred in 2009, with 2 reported cases, which represents an estimated 51 cases and a cost burden of $0.24 million, when applying the under-reporting multiplier of 25.5.[106] The largest number of reported cases associated with outbreaks occurred between 2008–2009, with 47 reported cases, which represents 1,199 estimated cases and a cost burden of $5.6 million, when applying the under-reporting multiplier.[107] [108] Despite proper labeling, the most recent outbreak in 2021 occurred with 36 reported cases, which represents 918 estimated cases and a cost burden of $4.3 million. In the final determination, FSIS is declaring NRTE breaded stuffed chicken products that contain *Salmonella* at levels of 1 CFU/g or higher adulterated. FSIS intends to carry out verification procedures, including sampling and testing of the raw incoming chicken components used to produce NRTE breaded stuffed chicken products, to verify that producing establishments do not produce adulterated products. This determination, and the associated FSIS verification procedures, should decrease the number of illnesses associated with *Salmonella* in NRTE breaded stuffed chicken products.

Impact on Small Businesses

In the CBA, FSIS defines high-volume establishments as establishments that produce at least 1 million pounds of NRTE breaded stuffed chicken products annually and low-volume establishments as establishments that produce less than 1 million pounds annually. Using these categories, three of the six establishments that produce NRTE stuffed chicken products were classified as high-volume, and three establishments as low volume. All three of the low-volume establishments are HACCP size small or very small.[109] FSIS expects the cost burden of this determination on low-volume establishments would be under 4.2 percent of the estimated revenue from NRTE stuffed chicken for these three establishments. Establishments are not required to develop and implement their own sampling programs in response to this determination. If establishments chose to avoid these voluntary costs, the final determination is estimated to cost low-volume establishments about 1.9 percent of estimated revenue from NRTE breaded stuffed chicken products produced at these three establishments. In addition, nearly 90 percent of production at two of the three low-volume establishments is product other than NRTE breaded stuffed chicken. Thus, the impact of this final determination would represent a smaller percentage of these establishments' overall total revenue. Further, once the policy is implemented, FSIS does not intend to begin the FSIS sampling and the verification testing discussed in the final determination until 12 months after the date of publication in the **Federal Register**. A small business would have this time to prepare for changes, lowering the burden. Finally, establishments needing monetary assistance with this new policy may be able to take advantage of the grants and financial options available to small

[101] FSIS used the under-reporting multiplier of 25.5 estimated in Scallan et al. for a group of pathogens for which only outbreak data were available to approximate the total number of cases for NRTE stuffed chicken products. FSIS used this under-reporting multiplier as only outbreak data is available for NRTE stuffed chicken products.

[102] As noted by the Office of Management and Budget in the Circular No. A–4 published on November 9, 2023. Opportunity costs ''is the cost attributable to a regulation if an agency will be performing enforcement activities or otherwise using resources in connection with that regulation, even if the agency's budget is not increasing.'' *https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf.* Accessed on 02/15/2024.

[103] Though each reported outbreak between 2006 and 2021 did not result in a recall, FSIS assumes there is a risk of recall with each possible *Salmonella* outbreak.

[104] Numbers may not add up due to rounding.

[105] Number rounded to the nearest whole number.

[106] Scallan E, Hoekstra RM, Angulo FJ, Tauxe RV, Widdowson MA, Roy SL, Jones JL, Griffin PM. Foodborne illness acquired in the United States—major pathogens pdf icon [PDF—9 pages]. Emerging Infectious Diseases. 2011;17(1):7–15: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3375761/.*

[107] Food Safety and Inspection Service, USDA. *Salmonella* in Not Ready-To-Eat Breaded Stuffed Chicken Products. Final Determination. Docket No. FSIS–2022–0013, available at: *https://www.regulations.gov/docket/FSIS-2022-0013.*

[108] The FSIS estimate for the cost of *Salmonella*-related illness $4,682 per case, (2022 dollars) was developed using the USDA, Economic Research Service, Cost Estimates of Foodborne Illness *Salmonella* (October 2014) updated for inflation. *https://www.ers.usda.gov/data-products/cost-estimates-of-foodborne-illnesses/.* The cost model accounts for medical costs (including hospitalizations), premature death and productivity loss. Numbers may not calculate due to rounding.

[109] Under the HACCP size definitions, large establishments have 500 or more employees, small establishments have between 10 and 499 employees, and very small establishments have less than 10 employees or less than $2.5 million in annual revenue. 61 FR 38806.

establishments, reducing potential burden. More information on these loans and grants can be found on the FSIS website.[110]

V. USDA Non-Discrimination Statement

In accordance with Federal civil rights law and USDA civil rights regulations and policies, 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; the USDA TARGET Center at (202) 720–2600 (voice and TTY).

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/forms/electronicforms,* 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;

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

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

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[110] Grants and Financial Options, USDA FSIS *https://www.fsis.usda.gov/inspection/apply-grant-inspection/grants-financial-options.*

VI. Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register.* FSIS also will make copies of this publication available through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

Paul Kiecker,

Administrator.

[FR Doc. 2024–09393 Filed 4–30–24; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket ID: NRCS–2024–0007]

Urban Agriculture and Innovative Production Advisory Committee

AGENCY: Natural Resources Conservation Service, United States Department of Agriculture.

ACTION: Notice to solicit nominees.

SUMMARY: The Department of Agriculture's (USDA) Office of Urban Agriculture and Innovative Production (OUAIP) is seeking nominations for individuals to serve on the Urban Agriculture and Innovative Production Advisory Committee (UAIPAC). The UAIPAC advises the Secretary of Agriculture on the development of policies and outreach relating to urban, indoor, and other emerging agricultural production practices. The 12 members appointed by the Secretary of Agriculture are expected to serve a 3-year term. The nomination period includes four vacancies, including the: urban producer representative; higher education or extension program representative; business and economic development representative; and representative with related experience in urban, indoor, and other emerging agriculture production practices.

DATES: USDA will consider nominations received via email or postmarked by July 1, 2024.

ADDRESSES: Please send nominations via email to: *UrbanAgricultureFederalAdvisoryCommittee@usda.gov.* Email is the preferred method for sending nominations; alternatively, nominations can be mailed to Brian Guse, Director of the Office of Urban Agriculture and Innovative Production, Department of Agriculture, 1400 Independence Avenue SW, Room 4083, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Markus Holliday, Coordinator, Office of Urban Agriculture and Innovative Production; telephone: (301) 974–1287; email: *UrbanAgricultureFederalAdvisoryCommitee@usda.gov.*

Individuals who require alternative means for communication may contact the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

UAIPAC Overview and Membership

Section 222 of the Department of Agriculture Reorganization Act of 1994, as amended, by section 12302 of the 2018 Farm Bill (7 U.S.C. 6923; Pub. L. 115–334), directed the Secretary of Agriculture to establish an ''Urban Agriculture and Innovative Production Advisory Committee'' to advise the Secretary on any aspect of section 222, including the development of policies and outreach relating to urban, indoor, and other emerging agricultural production practices as well as identify any barriers to urban agriculture. UAIPAC will host public meetings to deliberate on recommendations for the Secretary of Agriculture. These recommendations provide advice to the Secretary on supporting urban agriculture and innovative production through USDA's programs and services. For additional background and member information visit the UAIPAC website at *https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag.*

The UAIPAC consists of 12 members including:

- 4 representatives who are agriculture producers including 2 individuals who are located in an urban

area or urban cluster; and 2 individuals who are farmers that use innovative technology;

- 2 representatives from an institution of higher education or extension program;
- 1 representative from a nonprofit organizaton, which may include a public health, environmental, or community organization;
- 1 representative who represents business and economic development, which may include a business development entity, a chamber of commerce, a city government, or a planning organization;
- 1 expert with supply chain experience, which may include a food aggregator, wholesale food distributor, food hub, or an individual who has direct-to-consumer market experience;
- 1 representative from a financing entity; and
- 2 representatives with related experience or expertise in urban, indoor, and other emerging agriculture production practices, as determined by the Secretary.

Member Nominations

Nominations are open to the public. Any interested person or organization may nominate qualified individuals for membership, including self-nominations. Individuals who wish to be considered for membership must submit a nomination package to include the following required items:

(1) A completed background disclosure form (Form AD–755) signed by the nominee (see *https://www.usda.gov/sites/default/files/documents/ad-755.pdf*);

(2) A brief summary explaining the nominee's interest in one or more open vacancies including any unique qualifications that address the membership composition and criteria described above; and

(3) A résumé providing the nominee's background, experience, and educational qualifications.

It will be helpful to include the following optional items in your nomination package:

(1) Recent publications by the nominee relative to extending support for urban agriculture or innovative production; and

(2) Letter(s) of endorsement.

Please send nominations via email to: *UrbanAgricultureFederalAdvisoryCommittee@usda.gov* as the preferred method. Alternatively, nominations can be mailed to Brian Guse, Director of the Office of Urban Agriculture and Innovative Production, Department of Agriculture, 1400 Independence Avenue SW, Room 4083, Washington, DC 20250.

Ethics Statement

To maintain the highest levels of honesty, integrity, and ethical conduct, no committee or subcommittee member may participate in any ''specific party matters'' (for example, matters are narrowly focused and typically involve specific transactions between identified parties) such as a lease, license, permit, contract, claim, grant, agreement, or related litigation with USDA in which the committee or subcommittee member has a direct financial interest. This includes the requirement for committee or subcommittee members to immediately disclose to the Designated Federal Officer (DFO) (for discussion with USDA's Office of Ethics) any specific party matter in which the member's immediate family, relatives, business partners or employer would be directly seeking to financially benefit from the committee's recommendations.

All members will receive ethics training to identify and avoid any actions that would cause the public to question the integrity of the committee's advice and recommendations. Members who are appointed as ''Representatives'' are not subject to Federal ethics laws because the appointment allows them to represent the point(s) of view of a particular group, business sector or segment of the public.

Members appointed as ''Special Government Employees'' (SGEs) are considered intermittent Federal employees and are subject to Federal ethics laws. SGE's are appointed due to their personal knowledge, academic scholarship, background or expertise. No SGE may participate in any activity in which the member has a prohibited financial interest. Appointees who are SGEs are required to complete and submit a Confidential Financial Disclosure Report (OGE–450 form) via the FDonline e-filing database system. Upon request USDA will assist SGEs in preparing these financial reports. To ensure the highest level of compliance with applicable ethical standards USDA will provide ethics training to SGEs on an annual basis. The provisions of these paragraphs are not meant to exhaustively cover all Federal ethics laws and do not affect any other statutory or regulatory obligations to which advisory committee members are subject.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunicaions Relay Service (both voice and text telephone users can initiate this call from any phone). Additionally, program information may be made available in languages other than English.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the FACA Committee: UAIPAC. To ensure that the recommendations of UAIPC have taken into account the needs of the diverse groups served by USDA, membership will include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: *OAC@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Dated: April 25, 2024.

Cikena Reid,

Committee Management Officer, USDA.

[FR Doc. 2024–09267 Filed 4–30–24; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–24–NONE–0015]

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Rural Housing Service.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites comments on the Planning and Performing Construction and Other Development information collection package and announces the Rural Housing Service (RHS or the Agency) intention to request a revision for a currently approved information collection from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by July 1, 2024.

FOR FURTHER INFORMATION CONTACT: Contact Adyam Negasi, Innovation Center, Regulations Management Division, U.S. Department of Agriculture, 1400 Independence Ave. SW, Washington, DC 20250; Tel: 202–221–9298; Email: *Adyam.Negasi@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that the Agency is submitting to OMB for revision.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms and information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *https://www.regulations.gov* and, in the ''Search'' box, type in the Docket No. RHS–24–NONE–0015. A link to the Notice will appear. You may submit a comment here by selecting the ''Comment'' button or you can access the ''Docket'' tab, select the ''Notice,'' and go to the ''Browse & Comment on Documents'' tab. Here you may view comments that have been submitted as well as submit a comment. To submit a comment, select the ''Comment'' button, complete the required information, and select the ''Submit Comment'' button at the bottom. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link at the bottom.

Title: 7 CFR 1924–A, Planning and Performing Construction and other Development.

OMB Number: 0575–0042.

Expiration Date of Approval: 08/30/2024.

Type of Request: Revision of a currently approved information collection.

Abstract: RHS offers a supervised credit program to build modest housing and essential community facilities in rural areas. The information collection under OMB Number 0575–0042 enables RHS to effectively administer the policies, methods, and responsibilities needed to demonstrate compliance with applicable acts for planning and performing development work for these facilities.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .32 hours per response.

Respondents: Individuals or households, farms, business or other for-profit, non-profit institutions, and small businesses or organizations.

Estimated Number of Respondents: 189,639.

Estimated Number of Responses per Respondent: 1.81.

Estimated Number of Responses: 343,109.

Estimated Total Annual Burden on Respondents: 108,713 hours.

Copies of this information collection can be obtained from Adyam Negasi, Rural Development Innovation Center, Regulations Management Division, at 202–221–9298. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Cathy Glover,

Acting Administrator, Rural Housing Service.

[FR Doc. 2024–09315 Filed 4–30–24; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[DOCKET #: RUS–24–AGENCY–0007]

Notice of Revision of a Currently Approved Information Collection

AGENCY: Rural Utilities Service

ACTION: Notice; request for comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 the Rural Utilities Service (RUS) announces its intention to request a revision for a currently approved information collection package for the Rural Broadband Loans, Loan/Grant Combinations, and Loan Guarantees program.

DATES: Comments on this notice must be received by July 1, 2024 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically by the Federal eRulemaking Portal, *regulations.gov*.

Other Information: Additional information about Rural Development (RD) and its programs is available on the internet at *rd.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Adyam Negasi, RD Innovation Center—Regulations Management Division, U.S. Department of Agriculture, 1400 Independence Ave. SW, Washington, DC 20250; Tel: 202–221–9298; Email: *Adyam.Negasi@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that the Agency is submitting to OMB for revision.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms and information technology.

Comments may be sent by the Federal eRulemaking Portal, *regulations.gov*. In the ''Search for dockets and documents on agency actions'' box enter the Docket No. RUS–24–AGENCY–0007 and click the ''Search'' button. From the search results: click on or locate the document title and select the ''Comment'' button. To submit a comment: Insert comments under the ''Comment'' title. Select if you are an individual, organization, or anonymous. Select the box ''I'm not a robot,'' and then select ''Submit Comment.'' Information on using *regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

All comments will be available for public inspection online at the Federal eRulemaking Portal (*https://www.regulations.gov*).

Title: Rural Broadband Loans, Loan/Grant Combinations, and Loan Guarantees.

OMB Control Number: 0572–0154.

Type of Request: Revision of a currently approved information collection under 7 CFR part 1738.

Abstract: RUS is authorized by Title VI, Rural Broadband Access, of the Rural Electrification Act of 1936, as amended (RE Act), to provide loans, loan/grant combinations and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural areas in the States and Territories of the United States. The regulation, 7 CFR part 1738, prescribes the types of loans and/or grants available, facilities financed, and eligible applicants, as well as minimum equity requirements to be considered for a loan.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.04 hours per response.

Respondents: Public Bodies; Non-Profits; Special Districts; Tribal Organizations.

Estimated Number of Respondents: 90.

Estimated Number of Responses per Respondent: 3.03.

Estimated Number of Responses: 273.

Estimated Total Annual Burden on Respondents: 831 hours.

Copies of this information collection can be obtained from Adyam Negasi, RD Innovation Center—Regulations Management Division, at 202–221–9298 or *Adyam.negasi@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Andrew Berke,

Administrator, Rural Utilities Service, USDA Rural Development.

[FR Doc. 2024–09459 Filed 4–30–24; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

[Docket No. RBS–23–BUSINESS–0025]

Notice of Solicitation of Applications (NOSA) for the Strategic Economic and Community Development Program for Fiscal Year (FY) 2024; Correction

AGENCY: Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, agencies that comprise the Rural Development Mission Area within the United States Department of Agriculture, published a notice of solicitation of applications in the **Federal Register** on February 13, 2024, entitled ''Notice of Solicitation of Applications (NOSA) for the Strategic Economic and Community Development Program for Fiscal Year (FY) 2024.'' The NOSA provides requirements to applicants submitting applications for Strategic Economic and Community Development (SECD) points through Secretary of Agriculture designated covered programs. Based on funding availability guidance published in the NOSA, this Correction Notice is issued to clarify that Community Facilities Grant Program funds will not be reserved for SECD in FY 2024. This Correction Notice also clarifies that approved USDA Rural Partners Network (RPN) networks are considered multi-jurisdictional entities for purposes of SECD and that community and economic development plans created in association with an RPN network will be accepted as plans under SECD.

FOR FURTHER INFORMATION CONTACT: Greg Batson, Rural Development Innovation Center, U.S. Department of Agriculture, Stop 0793, 1400 Independence Avenue SW, Washington, DC 20250–0783, Telephone: (573) 239–2945. Email: *gregory.batson@usda.gov.*

SUPPLEMENTARY INFORMATION:

Corrections

In FR Doc 2024–02782 of February 13, 2024 (89 FR 10026), make the following correction of reference in the NOSA to ''Community Facilities Grants'' which is being removed by this Correction:

(1) On page 10026, in column 3, under Supplementary Information in the Overview section, following the funding opportunity number, remove the second bullet for ''Community Facilities Grants; see 7 CFR part 3570, subpart B.''

(2) On page 10027, in column 1, under section A.3. The Covered Programs, following the second paragraph, remove the second bullet, ''Community Facilities Grants; see 7 CFR part 3570, subpart B.''

(3) On page 10027, in column 2, section B. Federal Award Information, after the Available Funds heading, remove the first three sentences and replace with: ''The amount of reserved funds available for SECD covered projects is as follows; Community Facilities Loans funding is $280,000,000, and Community Facilities Guaranteed Loans funding is $32,500,000, Water and Waste Disposal Programs Guaranteed Loans funding is $5,000,000, Water and Waste Disposal Direct Loans funding is $42,500,000, Water and Waste Disposal Grants funding is $11,935,000, and Rural Business Development Grants funding is $1,350,000 for Enterprise Grants and $150,000 for Opportunity Grants.

(4) On page 10027, in column 2, in section B. Federal Award Information, remove the second line of the table referencing ''Community Facilities Grant Program'' and the associated percentage of funds reserved for SECD Community Facilities Grant Program in column 2 of the table.

(5) On page 10027, in column 3, under section C. Eligibility Information, 1. Eligible Applicants, replace the 5th paragraph with ''The third criterion is that the project supports partial or complete implementation of a strategic community investment plan on a multi-jurisdictional and multi-sectoral basis as defined in 7 CFR 1980.1005. USDA Rural Partners Network (RPN) networks are considered multi-jurisdictional entities for purposes of SECD and community and economic development plans created in association with an RPN network will be accepted as plans under SECD.''

Basil I. Gooden,

Under Secretary, Rural Development.

[FR Doc. 2024–09449 Filed 4–30–24; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic for Funding Opportunity Announcements and Related Forms

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Notice of information collection, request for comment.

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

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before July 1, 2024.

ADDRESSES: Interested persons are invited to submit written comments by mail to the Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, at *PRAcomments@doc.gov.* Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to the Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, at 1401 Constitution Avenue NW, Washington, DC 20230 or *PRAcomments@doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for a new generic clearance to collect data to help to ensure grants, cooperative agreements and other Federal financial assistance programs are awarded to applicants best suited to perform the functions of the awards.

Periodically Commerce solicits grant applications on *http://grants.gov* by issuing a Funding Opportunity Announcement, Request for Applications, Notice of Funding Announcement, Notice of Solicitation of Applications, *Grants.gov* announcement, or other funding announcement type. Applicants are generally required to perform two pre-award steps The first part of Commerce grant applications consists of submitting the application form(s), which includes the Standard Form 424, Application for Federal Assistance and may include additional standard grant application forms. The second part of a grant application usually requires a technical proposal demonstrating the applicant's capabilities in accordance with a statement of work or selection criteria and other related information as specified in the funding announcement. Following the grant award, the grant awardee may also be required to provide progress reports or additional documents.

In addition to grants and agreements, there are other types of funding announcements. Commerce agencies announce new Federal financial assistance programs in the **Federal Register** in a Notice of Funding Availability (NOFA) or other types of funding or program announcements. Generally, the applicants need to apply for financial assistance under the new program. The agencies generally require application forms and related forms for the applicants to apply for Federal financial assistance.

II. Method of Collection

Program offices may use various methods of collection. This could include web pages, email, mail, *Grants.gov* or other online data management systems.

III. Data

OMB Control Number: 0690–NEW.

Form Number(s): Varies or None.

Type of Review: Regular submission. This is a new information collection.

Affected Public: Individuals or households; Private Sector; Not-for-profit institutions; State, Local, or Tribal government.

Estimated Number of Respondents: 10,000.

Estimated Time per Response: Varies.

Estimated Total Annual Burden Hours: 100,000.

Respondent's Obligation: Voluntary or Mandatory.

IV. Request for Comments

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

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

Sheleen Dumas,

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

[FR Doc. 2024–09394 Filed 4–30–24; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2161]

Approval of Expansion of Subzone 183B; Samsung Austin Semiconductor, LLC; Taylor, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the Foreign Trade Zone of Central Texas, Inc., grantee of Foreign-Trade Zone 183, has made application to the Board for an expansion of Subzone 183B on behalf of Samsung

Austin Semiconductor, LLC, to include a site located in Taylor, Texas (FTZ Docket B–66–2023, docketed December 28, 2023);

Whereas, notice inviting public comment has been given in the **Federal Register** (89 FR 319, January 3, 2024) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiners' memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves the expansion of Subzone 183B on behalf of Samsung Austin Semiconductor, LLC, located in Taylor, Texas, as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including section 400.13.

Dated: April 25, 2024.

Dawn Shackleford,

Executive Director of Trade Agreements Policy & Negotiations, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2024–09369 Filed 4–30–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–70–2024]

Foreign-Trade Zone 273; Application for Subzone; Sediver USA, Inc.; West Memphis, Arkansas

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the City of West Memphis, Arkansas Public Facilities Board, grantee of FTZ 273, requesting subzone status for the facility of Sediver USA, Inc., located in West Memphis, Arkansas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on April 17, 2024.

The proposed subzone (1.926 acres) is located at One Sediver Way in West Memphis, Arkansas. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 273.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is June 10, 2024. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 25, 2024.

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

For further information, contact Camille Evans at *Camille.Evans@trade.gov.*

Dated: April 17, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–09419 Filed 4–30–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. (Senmao) made sales of multilayered wood flooring (wood flooring) from the People's Republic of China (China) at prices below normal value during the period of review (POR) December 1, 2021, through November 30, 2022. Commerce also determines that certain companies had no shipments during the POR.

DATES: Applicable May 1, 2024.

FOR FURTHER INFORMATION CONTACT: Davyd Williams, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4338.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the preliminary results of the administrative review on December 26, 2023.[1] For a complete description of the events that occurred since Commerce published the *Preliminary Results, see* the Issues and Decision Memorandum.[2] Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order[3]

The product covered by the *Order* is wood flooring from China. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the parties' case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of these issues is included as 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 From the Preliminary Results

Based on our analysis of the comments received, Commerce made certain revisions to the calculation of the preliminary weighted-average dumping margin assigned to Senmao and the non-examined, separate rate respondents. The Issues and Decision Memorandum contains descriptions of these revisions.

[1] *See Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Rescission of Review, in Part; 2021–2022,* 88 FR 88869 (December 26, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2021–2022 Administrative Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Multilayered Wood Flooring from the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less than Fair Value and Antidumping Duty Order,* 76 FR 76690 (December 8, 2011), as amended in *Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders,* 77 FR 5484 (February 3, 2012) (collectively, *Order*); *see also Multilayered Wood Flooring from the People's Republic of China: Final Clarification of the Scope of the Antidumping and Countervailing Duty Orders,* 82 FR 27799 (June 19, 2017).

Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined that certain companies did not have shipments of subject merchandise during the POR. As we received no information to contradict our preliminary determination with respect to those companies, we continue to find that they made no shipments of subject merchandise to the United States during the POR. Accordingly, we will issue appropriate instructions that are consistent with our ''automatic assessment'' clarification for all of the companies listed in Appendix II.[4]

Separate Rates

Consistent with the *Preliminary Results,* we determine that Senmao and two additional companies that were not selected for individual examination, Dalian Jaenmaken Wood Industry Co., Ltd. and Dalian Deerfu Wooden Product Co., Ltd., demonstrated their eligibility for separate rates.[5]

Rate for Non-Examined Separate Rate Respondents

The statute and Commerce's regulations do not address the establishment of a rate to be assigned to respondents not selected for individual examination when we limit our examination of companies subject to the administrative review pursuant to section 777A(c)(2)(B) of the Act. Generally, we look to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not individually examined in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' Accordingly, Commerce's normal practice in determining the rate for separate-rate respondents not selected for individual examination, has been to average the weighted-average dumping margins of the selected companies, excluding rates that are zero, *de minimis,* or based entirely on facts available.[6] However, when the weighted-average dumping margins established for all individually investigated respondents are zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act permits Commerce to ''use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.'' [7]

For the final results of this administrative review, we determine that the estimated weighted-average dumping margin for Senmao is not zero or *de minimis.* Thus, we are assigning Senmao's weighted-average dumping margin as the rate for the non-examined respondents which qualify for a separate rate in this review as a ''reasonable method'' for assigning a rate to the non-examined respondents.[8]

The China-Wide Entity

Aside from the companies for which we made a final no-shipment determination, Commerce considers all other companies for which a review was requested, and which did not demonstrate separate rate eligibility, to be part of the China-wide entity.[9]

Final Results of Review

Commerce determines that the following weighted-average dumping margins exist for the period December 1, 2021, through November 30, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd	19.78
Dalian Jaenmaken Wood Industry Co., Ltd	19.78
Dalian Deerfu Wooden Product Co., Ltd	19.78

Disclosure

Commerce intends to disclose the calculations performed in connection with these final results of review to interested parties within five days after public announcement of the final results or, if there is no public announcement, within five days of the date of publication of 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), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these final results of review. We intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these final results. 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).

For Senmao, whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, and because we do not have entered values for all U.S. sales to a particular importer (or customer), Commerce calculated a per-unit assessment rate by dividing the total amount of dumping for reviewed sales of subject merchandise to that importer (or customer) by the total quantity sold to that importer (or customer).

We intend to instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated is above *de minimis* (*i.e.,* 0.50 percent). To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculate importer- (or customer-) specific *ad valorem* ratios based on the estimated entered value. Where an importer-specific per-unit assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[10]

For U.S. entries that were not reported in the U.S. sales data submitted by Senmao, but that entered under Senmao's case number (*i.e.,* at Senmao's cash deposit rate), Commerce will instruct CBP to liquidate such entries at the cash deposit rate for the China-wide

[4] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (*Assessment Notice*); *see also* the ''Assessment Rates'' section, *infra.*

[5] *See Preliminary Results* PDM at 8–11.

[6] *See Longkou Haimeng Mach. Co.* v. *United States,* 581 F. Supp. 2d 1344, 1357–60 (CIT 2008) (affirming Commerce's determination to assign a 4.22 percent dumping margin to the separate rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively); *see also Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 36656, 36660 (July 24, 2009).

[7] *See Albemarle Corp.* v. *United States,* 821 F.3d 1345 (Fed. Cir. 2016).

[8] *See* section 735(c)(5)(B) of the Act.

[9] *See* Appendix III.

[10] *See* 19 CFR 351.106(c)(2).

entity (*i.e.,* 85.13 percent).[11] For the companies not individually examined in this administrative review that qualified for a separate rate, the assessment rate will be equal to the weighted-average dumping margin calculated for Senmao in these final results of review.

Consistent with Commerce's assessment practice in non-market economy cases, for the companies which Commerce determined had no shipments of the subject merchandise, any suspended entries made under those exporters' case numbers (*i.e.,* at the exporters' rates) will be liquidated at the China-wide rate.[12]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for companies which were found eligible for a separate rate in this review, the cash deposit rate will be 19.78 percent; (2) for previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of countervailing duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. 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

This determination is issued and published in accordance with sections 751(a) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: April 24, 2024.

Ryan Majerus, Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

Appendix II

No Shipments

Anhui Longhua Bamboo Product Co., Ltd.
Benxi Flooring Factory (General Partnership)
Dalian Shengyu Science And Technology Development Co., Ltd.
Dun Hua Sen Tai Wood Co., Ltd.
Dunhua City Dexin Wood Industry Co., Ltd.
Dunhua Shengda Wood Industry Co., Ltd.
HaiLin LinJing Wooden Products Co., Ltd.
Hunchun Xingjia Wooden Flooring Inc.
Huzhou Sunergy World Trade Co., Ltd.
Jiangsu Keri Wood Co., Ltd.
Jiangsu Mingle Flooring Co., Ltd
Jiangsu Simba Flooring Co., Ltd.
Jiashan On-Line Lumber Co., Ltd.
Kingman Wood Industry Co., Ltd.
Linyi Youyou Wood Co., Ltd.
Power Dekor Group Co., Ltd.
Sino-Maple (Jiangsu) Co., Ltd.
Suzhou Dongda Wood Co., Ltd.
Zhejiang Dadongwu Greenhome Wood Co., Ltd.
Zhejiang Longsen Lumbering Co., Ltd.
Zhejiang Shiyou Timber Co., Ltd.

Appendix III

China-Wide Entity

Benxi Wood Company
Dalian Jiahong Wood Industry Co., Ltd.
Dalian Penghong Floor Products Co., Ltd./Dalian Shumaike Floor Manufacturing Co., Ltd.
Dunhua City Hongyuan Wood Industry Co., Ltd.
Huzhou Chenghang Wood Co., Ltd.
Huzhou Fulinmen Imp. & Exp. Co., Ltd.
Jiangsu Guyu International Trading Co., Ltd.
Jiangsu Yuhui International Trade Co., Ltd.
Jiashan HuiJiaLe Decoration Material Co., Ltd.
Jiaxing Hengtong Wood Co., Ltd
Lauzon Distinctive Hardwood Flooring, Inc.
Linyi Anying Wood Co., Ltd.
Metropolitan Hardwood Floors, Inc.
Muchsee Wood (Chuzhou) Co., Ltd.
Tongxiang Jisheng Import and Export Co., Ltd.
Yekalon Industry Inc.
Yihua Lifestyle Technology Co., Ltd. (successor-in-interest to Guangdong Yihua Timber Industry Co., Ltd.)
Yingyi-Nature (Kunshan) Wood Industry Co., Ltd.
Zhejiang Fuerjia Wooden Co., Ltd.
Zhejiang Shuimojiangnan New Material Technology Co., Ltd.
Zhejiang Simite Wooden Co., Ltd.

[FR Doc. 2024–09316 Filed 4–30–24; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments: 2016–2017,* 84 FR 38002, 38003 (August 5, 2019).

[12] *Id.; see also Assessment Notice.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–876]

Welded Line Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that SeAH Steel corporation (SeAH), the sole producer/exporter of welded line pipe (WLP) from the Republic of Korea (Korea) subject to this administrative review, did not make sales of subject merchandise at less than normal value during the period of review (POR), December 1, 2021, through November 30, 2022.

DATES: Applicable May 1, 2024.

FOR FURTHER INFORMATION CONTACT: Adam Simons, AD/CVD Operations, Office II, Enforcement and Compliance,

International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6172.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 2023, Commerce published the *Preliminary Results* and invited interested parties to comment.[1]

On January 29, 2024, we received a case brief from American Cast Iron Pipe Company, Dura-Bond Industries, Stupp Corporation, Welspun Global Trade LLC, and Axis Pipe & Tube (collectively, the Domestic Interested Parties).[2] On February 12, 2024, we received a rebuttal brief from SeAH.[3] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[4]

Scope of the Order [5]

The merchandise subject to the *Order* is welded line pipe. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are listed in the appendix to this notice and addressed in the Issues and Decision Memorandum. Interested parties can find a complete discussion of these issues and the corresponding recommendations in this public memorandum, which 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 a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain changes to our calculations for SeAH; however, these changes did not result in a revised margin for SeAH. For a detailed discussion of these changes, *see* the Issues and Decision Memorandum.

Final Results of the Review

As a result of this review, we determine the following estimated weighted-average dumping margin for the period December 1, 2021, through November 30, 2022:

Producer or exporter	Weighted-average dumping margin (percent)
SeAH Steel Corporation	0.00

Disclosure

We intend to disclose the calculations performed for SeAH in connection with these final results to interested parties within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), SeAH did not report the actual entered value for all of its U.S. sales; in such instances, we calculated importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for the future deposits of estimated duties where applicable.[6]

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by SeAH for which it did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

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

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for SeAH will be zero; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 4.38 percent, the all-others rate established in the LTFV investigation.[7] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to

[1] *See Welded Line Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2021–2021,* 88 FR 89659 (December 28, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Domestic Interested Parties' Letter, ''Case Brief,'' dated January 29, 2024.

[3] *See* SeAH's Letter, ''Rebuttal Brief of SeAH Steel Corporation,'' dated February 12, 2024.

[4] *See* Memorandum, ''Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Welded Line Pipe from Korea; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders,* 80 FR 75056, 75057 (December 1, 2015) (*Order*).

[6] *See* section 751(a)(2)(C) of the Act.

[7] *See Order.*

liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 25, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2024–09455 Filed 4–30–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–156]

Aluminum Lithographic Printing Plates From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination and Extension of Provisional Measures

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that aluminum lithographic printing plates (printing plates) from People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2023, through June 30, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable May 1, 2024.

FOR FURTHER INFORMATION CONTACT: Benito Ballesteros, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7425.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce initiated this investigation on October 18, 2023.[1] On February 14, 2024, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now April 25, 2024.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics addressed 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 printing plates from China. 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] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.* Therefore, Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated constructed export prices in accordance with section 772(b) of the Act. Because China is a non-market economy, within the meaning of section 771(18) of the Act, Commerce has calculated normal value in accordance with section 773(c) of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce preliminarily has relied upon facts otherwise available, with adverse inferences, in determining the estimated weighted-average dumping margin for the China-wide entity. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily determines that critical

[1] *See Aluminum Lithographic Printing Plates from the People's Republic of China and Japan: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 73316 (October 25, 2023) (*Initiation Notice*).

[2] *See Aluminum Lithographic Printing Plates from the People's Republic of China and Japan: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 89 FR 11248 (February 14, 2024).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Aluminum Lithographic Printing Plates from the People's Republic of China,'' 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 73317.

circumstances exist with respect to imports of printing plates from China for Fujifilm Printing Plate (China) Co., Ltd. (Fujifilm) and the China-wide entity. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice*,[6] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[7]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset) (percent)
Fujifilm Printing Plate (China) Co., Ltd	Fujifilm Printing Plate (China) Co., Ltd	38.57	38.56
China-wide Entity		107.62	107.61

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted average amount by which normal value exceeds U.S. price, as indicated in the chart above, as follows: (1) for the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of Chinese producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (3) for all third-county exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Chinese producer/exporter combination (or the China-wide entity) that supplied that third-country exporter.

Should the final estimated weighted-average dumping margin be zero or *de minimis* for the producer/exporter combination identified above, entries of merchandise from this producer/exporter combination will be excluded from the order. Such exclusion will not be applicable to merchandise exported to the United States by any other producer/exporter combinations or by third country exporters that sourced from the excluded producer/exporter combination.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise from Fujifilm and the China-wide entity. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to all unliquidated entries of merchandise that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, where Commerce has made a preliminary affirmative determination for domestic subsidy pass-through or export subsidies, Commerce has offset the calculated estimated weighted-average dumping margin by the appropriate rate(s). Any such adjusted rates may be found in the ''Preliminary Determination'' section's chart of estimated weighted-average dumping margins above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margins calculated in this preliminary determination unadjusted for the passed-through domestic subsidies or for export subsidies at the time the CVD provisional measures expire.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

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

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. 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.[8] Interested

[6] *Id.* at 73320.

[7] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *https://enforcement.trade.gov/policy/bull05-1.pdf.*

[8] *See* 19 CFR 351.309(d); *see also* 19 CFR 351.303 (for general filing requirements).

parties who submit case briefs or rebuttal briefs in this investigation must submit: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9]

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.[10] 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).[11]

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 (1) party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On March 28, 2024, pursuant to 19 CFR 351.210(e), Fujifilm requested that Commerce postpone the final determination and extend provisional measures to a period not to exceed six months.[12] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination of sales at LTFV. 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 the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: April 25, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is aluminum lithographic printing plates. Aluminum lithographic printing plates consist of a flat substrate containing at least 90 percent Aluminum. The aluminum-containing substrate is generally treated using a mechanical, electrochemical, or chemical graining process, which is followed by one or more anodizing treatments that form a hydrophilic layer on the aluminum-containing substrate. An image-recording, oleophilic layer that is sensitive to light, including but not limited to ultra-violet, visible, or infrared, is dispersed in a polymeric binder material that is applied on top of the hydrophilic layer, generally on one side of the aluminum lithographic printing plate. The oleophilic light-sensitive layer is capable of capturing an image that is transferred onto the plate by either light or heat. The image applied to an aluminum lithographic printing plate facilitates the production of newspapers, magazines, books, yearbooks, coupons, packaging, and other printed materials through an offset printing process, where an aluminum lithographic printing plate facilitates the transfer of an image onto the printed media. Aluminum lithographic printing plates within the scope of this investigation include all aluminum lithographic printing plates, irrespective of the dimensions or thickness of the underlying aluminum substrate, whether the plate requires processing after an image is applied to the plate, whether the plate is ready to be mounted to a press and used in printing operations immediately after an image is applied to the plate, or whether the plate has been exposed to light or heat to create an image on the plate or remains unexposed and is free of any image.

Subject merchandise also includes aluminum lithographic printing plates produced from an aluminum sheet coil that has been coated with a light-sensitive image-recording layer in a subject country and that is subsequently unwound and cut to the final dimensions to produce a finished plate in a third country (including the United States), or exposed to light or heat to create an image on the plate in a third country (including in a foreign trade zone within the United States).

Excluded from the scope of this investigation are lithographic printing plates manufactured using a substrate produced from a material other than aluminum, such as rubber or plastic.

Aluminum lithographic printing plates are currently classifiable under Harmonized Tariff of the United States (HTSUS) subheadings 3701.30.0000 and 3701.99.6060. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS

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

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

[11] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023).

[12] *See* Fujifilm's Letter, ''Fujifilm's Request to Postpone Final Determination,'' dated March 28, 2024.

subheadings 3701.99.3000 and 8442.50.1000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–09457 Filed 4–30–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–881]

Aluminum Lithographic Printing Plates From Japan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that aluminum lithographic printing plates (printing plates) from Japan are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2022, through June 30, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable May 1, 2024.

FOR FURTHER INFORMATION CONTACT: Caroline Carroll, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4948.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce initiated this investigation on October 18, 2023.[1] On February 14, 2024, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now April 25, 2024.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics addressed 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 printing plates from Japan. 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] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.* Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

Preliminary Collapsing Determination

Based on record evidence in this investigation, Commerce preliminarily finds that Fujifilm Corporation (Fujifilm Corp.) and Fujifilm Shizuoka Co., Ltd. (FFSH) are affiliated companies, pursuant to sections 771(33)(E) and (F) of the Act. Furthermore, pursuant to 19 CFR 351.401(f)(1)–(2), we find that Fujifilm Corp. and FFSH should be collapsed and treated as a single entity (collectively, Fujifilm). For additional information, *see* the Affiliation and Collapsing Memorandum.[6]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(ii) of the Act provides that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. Pursuant to section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, Commerce preliminarily assigned a rate based entirely on facts available to Miraclon Corporation Ltd. Therefore, the only rate that is not zero, *de minimis,* or based entirely on facts otherwise available is the rate calculated for Fujifilm. Consequently, the rate calculated for Fujifilm is also assigned as the rate for all other producers and exporters.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Fujifilm Corporation; Fujifilm Shizuoka Co., Ltd	87.81
Miraclon Corporation Ltd	* 157.16
All Others	87.81

* Rate based on facts available with adverse inferences.

[1] *See Aluminum Lithographic Printing Plates From the People's Republic of China and Japan: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 73316 (October 25, 2023) (*Initiation Notice*).

[2] *See Aluminum Lithographic Printing Plates from the People's Republic of China and Japan: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 89 FR 11248 (February 14, 2024).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Aluminum Lithographic Printing Plates from Japan,'' 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 73317.

[6] *See* Memorandum, ''Preliminary Affiliation and Collapsing Memorandum'' dated concurrently with this memorandum (Affiliation and Collapsing Memorandum).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise ; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

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

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[7] Interested parties who submit case or rebuttal briefs in this investigation must submit: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[8]

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.[9] 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).[10]

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 (1) party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On March 28, 2024, pursuant to 19 CFR 351.210(e), Fujifilm requested that Commerce postpone the final determination and extend provisional measures to a period not to exceed six months.[11] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination of sales at LTFV. 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 the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: April 25, 2024

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is aluminum lithographic

[7] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

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

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

[10] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023).

[11] *See* Fujifilm's Letter, ''Fujifilm's Request to Postpone Final Determination,'' dated March 28, 2024.

printing plates. Aluminum lithographic printing plates consist of a flat substrate containing at least 90 percent aluminum. The aluminum-containing substrate is generally treated using a mechanical, electrochemical, or chemical graining process, which is followed by one or more anodizing treatments that form a hydrophilic layer on the aluminum-containing substrate. An image-recording, oleophilic layer that is sensitive to light, including but not limited to ultra-violet, visible, or infrared, is dispersed in a polymeric binder material that is applied on top of the hydrophilic layer, generally on one side of the aluminum lithographic printing plate. The oleophilic light-sensitive layer is capable of capturing an image that is transferred onto the plate by either light or heat. The image applied to an aluminum lithographic printing plate facilitates the production of newspapers, magazines, books, yearbooks, coupons, packaging, and other printed materials through an offset printing process, where an aluminum lithographic printing plate facilitates the transfer of an image onto the printed media. Aluminum lithographic printing plates within the scope of this investigation include all aluminum lithographic printing plates, irrespective of the dimensions or thickness of the underlying aluminum substrate, whether the plate requires processing after an image is applied to the plate, whether the plate is ready to be mounted to a press and used in printing operations immediately after an image is applied to the plate, or whether the plate has been exposed to light or heat to create an image on the plate or remains unexposed and is free of any image.

Subject merchandise also includes aluminum lithographic printing plates produced from an aluminum sheet coil that has been coated with a light-sensitive image-recording layer in a subject country and that is subsequently unwound and cut to the final dimensions to produce a finished plate in a third country (including the United States), or exposed to light or heat to create an image on the plate in a third country (including in a foreign trade zone within the United States).

Excluded from the scope of this investigation are lithographic printing plates manufactured using a substrate produced from a material other than aluminum, such as rubber or plastic.

Aluminum lithographic printing plates are currently classifiable under Harmonized Tariff of the United States (HTSUS) subheadings 3701.30.0000 and 3701.99.6060. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 3701.99.3000 and 8442.50.1000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–09456 Filed 4–30–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–139]

Certain Mobile Access Equipment and Subassemblies Thereof From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2022–2023

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Zhejiang Dingli Machinery Co., Ltd. (Dingli), the sole mandatory respondent in this review and an exporter of certain mobile access equipment and subassemblies thereof (MAE) from the People's Republic of China (China), sold subject merchandise in the United States at prices below normal value (NV) during the period of review April 13, 2022, through March 31, 2023. In addition, Commerce is rescinding this review with respect to Oshkosh JLG (Tianjin) Equipment Technology Co., Ltd. (Oshkosh), Lingong Group Jinan Heavy Machinery Co., Ltd. (Lingong), and Terex (Changzhou) Machinery Co., Ltd. (Terex). Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable May 1, 2024.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0665.

SUPPLEMENTARY INFORMATION:

Background

On April 14, 2022, Commerce published in the **Federal Register** the antidumping duty order on MAE from China.[1] On June 12, 2023, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated this administrative review of the *Order* with respect to four companies.[2] On December 11, 2023, we extended the deadline for the preliminary results of this review to April 26, 2024.[3] For a complete description of the events that occurred since the initiation of this review, *see* the Preliminary Decision Memorandum.[4] 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.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

Scope of the Order[5]

The merchandise covered by the *Order* is MAE from China. A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. On July 11, 2023, the petitioner[6] timely withdrew its request for an administrative review of Oshkosh.[7] On July 26, 2023, Lingong timely withdrew its request for an administrative review.[8] On August 8, 2023, the petitioner timely withdrew its request

[1] *See Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Antidumping Duty Order,* 87 FR 22190 (April 14, 2022) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 38021 (June 12, 2023).

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated December 11, 2023.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China; 2022–2023,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See Order,* 87 FR at 22190.

[6] The petitioner is the Coalition of American Manufacturers of Mobile Access Equipment.

[7] *See* Petitioner's Letter, ''Partial Withdrawal of Request for Administrative Review,'' dated July 11, 2023.

[8] *See* Lingong's Letter, ''Withdrawal of Request for Administrative Review,'' dated July 26, 2023.

for an administrative review of Terex.[9] Because there are no outstanding review requests for these companies, Commerce is rescinding the administrative review of Oshkosh, Lingong, and Terex, consistent with 19 CFR 351.213(d)(1).

Separate Rate

Commerce preliminary determines that Dingli is eligible to receive a separate rate in this administrative review. For additional information, *see* the Preliminary Decision Memorandum.

China-Wide Entity

Commerce's policy regarding the conditional review of the China-wide entity applies to this administrative review.[10] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the China-wide entity is not under review, and the China-wide entity's rate (*i.e.,* 165.14 percent) is not subject to change.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.[11]

Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margin exists for the period April 13, 2022, through March 31, 2023, for the mandatory respondent:

Exporter	Weighted-average dumping margin (percent)
Zhejiang Dingli Machinery Co., Ltd	9.33

Disclosure and Public Comment

Commerce intends to disclose its calculations performed in these preliminary results to interested parties within five days after the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[12] Interested parties who submit case briefs or rebuttal briefs in this administrative review must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[13] As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[14] Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in case and rebuttal briefs.

All submissions, including case and rebuttal briefs, as well as hearing requests, should be filed using ACCESS.[15] An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[16]

Final Results of Review

Unless the deadline is extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in written briefs, no later than 120 days after the date of publication of this notice in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon completion of the final results, Commerce shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries of subject merchandise covered by this review.

If an examined respondent's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we intend to calculate an importer-specific assessment rate for antidumping duties based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[17] If the weighted-average dumping margin for Dingli or an importer-specific assessment rate is zero or *de minimis* in the final results of this review, we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[18] The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[19]

For the companies for which we are rescinding this administrative review, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period of review, in accordance with 19 CFR 351.212(c)(1)(i).

Commerce intends to issue assessment instructions to CBP no

[9] *See* Petitioner's Letter, ''Partial Withdrawal of Request for Administrative Review,'' dated August 8, 2023.

[10] *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).

[11] *See* Preliminary Decision Memorandum.

[12] *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).

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

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

[15] *See* 19 CFR 351.303.

[16] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

[17] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[18] *Id.,* 77 FR at 8102–03; *see also* 19 CFR 351.106(c)(2).

[19] *See* section 751(a)(2)(C) of the Act.

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

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on, or after, the publication date of the final results of review, as provided in section 751(a)(2)(C) of the Act: (1) for the subject merchandise exported by the company listed above that has a separate rate, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this administrative review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed Chinese and non-Chinese exporters of subject merchandise not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity, *i.e.,* 165.14 percent; [20] and (4) for all non-Chinese exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results of this administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213(h)(2), and 19 CFR 351.221(b)(4).

Dated: April 25, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–09458 Filed 4–30–24; 8:45 am]

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[20] *See Order,* 87 FR at 22191, adjusted for export subsidies as outlined in *Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value,* 87 FR 9576, 9578 (February 22, 2022).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–104]

Alloy and Certain Carbon Steel Threaded Rod From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2022–2023

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Ningbo Dongxin High-Strength Nut Co., Ltd. (Ningbo Dongxin), the sole mandatory respondent in this review and an exporter of alloy and certain carbon steel threaded rod (threaded rod) from the People's Republic of China (China), sold subject merchandise in the United States at prices below normal value (NV) during the period of review April 1, 2022, through March 31, 2023. Additionally, Commerce is rescinding this review with respect to Ningbo Zhongjiang High Strength Bolts Co., Ltd. (Ningbo Zhongjiang). Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable May 1, 2024.

FOR FURTHER INFORMATION CONTACT: Claudia Cott, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4270.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 2020, Commerce published in the **Federal Register** the antidumping duty order on threaded rod from China.[1] On June 12, 2023, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the *Order* covering two companies: Ningbo Dongxin and Ningbo Zhongjiang.[2] On November 30, 2023, we extended the deadline for these preliminary results of this review to April 26, 2024.[3] For a complete description of the events that occurred since the initiation of this review, *see* the Preliminary Decision Memorandum.[4]

Scope of the Order [5]

The merchandise covered by the *Order* is alloy and certain carbon steel threaded rod from China. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. On June 16, 2023, Ningbo Zhongjiang timely withdrew its request for an

[1] *See Alloy and Certain Carbon Steel Threaded Rod from the People's Republic of China: Antidumping Duty Order,* 85 FR 19929 (April 9, 2020) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 38021 (June 12, 2023).

[3] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated November 30, 2023.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Alloy and Certain Carbon Steel Threaded Rod from the People's Republic of China; 2022–2023,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See Order.*

administrative review of itself within the 90-day deadline.[6] No other parties requested a review of Ningbo Zhongjiang. Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding the administrative review of Ningbo Zhongjiang.

Separate Rates

Commerce preliminarily determines that Ningbo Dongxin is eligible to receive a separate rate in this administrative review.[7] For additional information, *see* the Preliminary Decision Memorandum. 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.*

China-Wide Entity

Commerce's policy regarding the conditional review of the China-wide entity applies to this administrative review.[8] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the China-wide entity is not under review, and the China-wide entity's rate (*i.e.,* 48.91 percent) [9] is not subject to change.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margin exists for the period April 1, 2022, through March 31, 2023, for the mandatory respondent:

Exporter	Weighted-average dumping margin (percent)
Ningbo Dongxin High-Strength Nut Co., Ltd	35.10

Disclosure and Public Comment

Commerce intends to disclose its calculations and analysis performed in these preliminary results to interested parties within five days after the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[10] Interested parties who submit case or rebuttal briefs in this administrative review must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[11]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[12] Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in case and rebuttal briefs.

All submissions, including case and rebuttal briefs, as well as hearing requests, should be filed using ACCESS.[13] An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[14]

Final Results of Review

Unless the deadline is extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in written briefs, no later than 120 days after the date of publication of this notice in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon completion of the final results, Commerce shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries of subject merchandise covered by this review.

If an examined respondent's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we intend to calculate an importer-specific assessment rate for antidumping duties based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[15] If the weighted-average dumping margin for Ningbo Dongxin or an importer-specific assessment rate is zero or *de minimis* in the final results of this review, we intend to instruct CBP to liquidate the appropriate entries

[6] *See* Ningbo Zhongjiang's Letter, ''Zhongjiang Withdrawal of Request for Administrative Review,'' dated June 16, 2023.

[7] *See* Preliminary Decision Memorandum at 10–11.

[8] *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).

[9] *See Order,* 85 FR at 19930, adjusted for export subsidies as outlined in *Alloy and Certain Carbon Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2021–2022,* 88 FR 18117 (March 27, 2023) (*Threaded Rod from China 2021–2022*).

[10] *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*).

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

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

[13] *See* 19 CFR 351.303.

[14] *See APO and Service.*

[15] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

without regard to antidumping duties.[16] The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[17]

For Ningbo Zhongjiang, for which we are rescinding this administrative review, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period of review, in accordance with 19 CFR 351.212(c)(1)(i).

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

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided in section 751(a)(2)(C) of the Act: (1) for the subject merchandise exported by the company listed above that has a separate rate, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this administrative review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed Chinese and non-Chinese exporters of subject merchandise not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity, *i.e.,* 48.91 percent; [18] and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results of this administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213, and 19 CFR 351.221(b)(4).

Dated: April 25, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–09454 Filed 4–30–24; 8:45 am]

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[16] *Id.,* 77 FR at 8102–03; *see also* 19 CFR 351.106(c)(2).

[17] *See* section 751(a)(2)(C) of the Act.

[18] *See Order,* 85 FR at 19930, adjusted for export subsidies as outlined in *Threaded Rod from China 2021–2022.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–819]

Steel Concrete Reinforcing Bar From the Republic of Türkiye: 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 certain producers and exporters of steel concrete reinforcing bar (rebar) from the Republic of Türkiye (Türkiye) received countervailable subsidies during the period of review (POR) January 1, 2021, through December 31, 2021.

DATES: Applicable May 1, 2024.

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202)-482–1395.

Background

On December 7, 2023, Commerce published in the **Federal Register** the *Preliminary Results* of the 2021 administrative review of the countervailing duty order on rebar from the Republic of Türkiye and invited comments from interested parties.[1] On March 21, 2024, Commerce extended the deadline for issuing the final results until April 25, 2024.[2] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3] Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The product covered by the order is rebar from Türkiye. For a full

[1] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Administrative Review, in Part; 2021,* 88 FR 85234 (December 7, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Extension of Deadline for Final Results of the Countervailing Duty Administrative Review,'' dated March 21, 2024.

[3] *See* Memorandum, ''Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Steel Concrete Reinforcing Bar from the Republic of Türkiye; 2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

description of the scope of the order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by the interested parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum. The topics discussed and the issues raised by parties to which we responded in the Issues and Decision Memorandum are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duties 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 comments received from interested parties, we made certain changes regarding the attribution of subsidies to Kaptan Demir Celik Endustrisi ve Ticaret A.S., however, this did not result in a change to the calculation of subsidy benefits for Kaptan. 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 Act. For each of the subsidy programs found countervailable, we determine 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.[4] 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.

Final Results of the Administrative Review

We find the following net countervailable subsidy rates for the period January 1, 2021, through December 31, 2021:

Producer/exporter	Subsidy rate (percent *ad valorem*)
Kaptan Demir Celik Endustrisi ve Ticaret A.S., Kaptan Metal Dis Ticaret ve Nakliyat A.S., and their cross-owned affiliates[5].	5.54.
Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret A.S	0.03 (*de minimis*).

Disclosure

Normally, Commerce discloses to interested parties the calculations of the final results of an administrative 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). However, because we have made no changes to the calculations in the *Preliminary Results,* there are no calculations to disclose.

Assessment

In accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after 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)(1) of the Act, we also intend to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for the companies listed above for 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, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). 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 violation subject to sanction.

Notification to Interested Parties

The final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: April 24, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[4] *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.

[5] Commerce finds the following companies to be cross-owned with Kaptan: Kaptan Geri Donusum Teknolojileri Tic. A.S. and Nur Gemicilik ve Tic. A.S.

[FR Doc. 2024–09371 Filed 4–30–24; 8:45 am]

BILLING CODE 3510–DS–P

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 Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The International Trade Commission (the 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 May 1, 2024.

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 Reviews

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–570–910 ...	731–TA–1116	China	Circular Welded Carbon-Quality Steel Pipe (1st Review).	Thomas Martin, (202) 482–3936.
A–533–883 ...	731–TA–1413	India	Glycine (1st Review)	Mary Kolberg, (202) 482–1785.
A–588–878 ...	731–TA–1414	Japan	Glycine (1st Review)	Mary Kolberg, (202) 482–1785.
A–549–837 ...	731–TA–1415	Thailand	Glycine (1st Review)	Mary Kolberg, (202) 482–1785.
A–552–823 ...	731–TA–1411	Vietnam	Laminated Woven Sacks (1st Review)	Thomas Martin, (202) 482–3936.
A–533–823 ...	731–TA–929	India	Silicomanganese (4th Review)	J. Arrowsmith, (202) 482–5255.
A–834–807 ...	731–TA–930	Kazakhstan ..	Silicomanganese (4th Review)	J. Arrowsmith, (202) 482–5255.
C–307–820 ...	731–TA–931	Venezuela	Silicomanganese (4th Review)	J. Arrowsmith, (202) 482–5255.
C–570–911 ...	701–TA–447	China	Circular Welded Carbon-Quality Steel Pipe (1st Review).	Mary Kolberg, (202) 482–1785.
C–570–081 ...	701–TA–603	China	Glycine (1st Review)	J. Arrowsmith, (202) 482–5255.
C–533–884 ...	701–TA–604	India	Glycine (1st Review)	J. Arrowsmith, (202) 482–5255.
C–552–824 ...	701–TA–601	Vietnam	Laminated Woven Sacks (1st Review)	Thomas Martin, (202) 482–3936

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]

[1] *Administrative Protective Order, Service, and Other Procedures in Antidumping and*

Continued

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 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: April 22, 2024.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–09424 Filed 4–30–24; 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 Department of Commerce (Commerce) and the 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 June 2024

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in June 2024 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping duty proceedings	
Non-Malleable Cast Iron Pipe Fittings from China, A–570–875 (4th Review)	Thomas Martin, (202) 482–3936.
Quartz Surface Products from China, A–570–084 (1st Review)	Mary Kolberg, (202) 482–1785.
Raw Flexible Magnets from China, A–570–922 (3rd Review)	Mary Kolberg, (202) 482–1785.
Raw Flexible Magnets from Taiwan, A–583–842 (3rd Review)	Mary Kolberg, (202) 482–1785.
Countervailing Duty Proceedings	
Quartz Surface Products from China, C–570–085 (1st Review)	Thomas Martin, (202) 482–3936.
Raw Flexible Magnets from China, C–570–923 (3rd Review)	Mary Kolberg, (202) 482–1785.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in June 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.

Dated: April 22, 2024

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–09425 Filed 4–30–24; 8:45 am]

BILLING CODE 3510–DS–P

Countervailing Duty Proceedings; Final Rule, 88 FR 67069 (September 29, 2023).

[2] *See* 19 CFR 351.218(d)(1)(iii).

[1] *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: National Institute of Standards and Technology (NIST)'s Information Security and Privacy Advisory Board (ISPAB) will hold an open meeting on Tuesday, May 21, 2024, from 2:30 p.m. until 3:30 p.m., Eastern Time.

DATES: The ISPAB will meet on Tuesday, May 21, 2024, from 2:30 p.m. until 3:30 p.m., Eastern Time.

ADDRESSES: The meeting will be held virtually via webinar. Please note participation instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Jeff Brewer, ISPAB Designated Federal Official, National Institute of Standards and Technology, Telephone (301) 975–2489. Mr. Brewer's email address is *jeffrey.brewer@nist.gov.*

SUPPLEMENTARY INFORMATION:

Authority: The ISPAB was established to function solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. The Board reports to the Director of NIST, and reports annually to the Secretary of Commerce, the Secretary of Homeland Security, the Director of the Office of Management and Budget, the Director of the National Security Agency, and appropriate committees of Congress. The Board is authorized under 15 U.S.C. 278g–4 and tasked with identifying emerging managerial, technical, administrative, and physical safeguard issues relative to information security and privacy.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. 1001 *et seq.,* notice is hereby given that the ISPAB will hold an open meeting on the date and time in the **DATES** section and will be open to the public. The primary purpose of this meeting is to discuss and deliberate potential recommendations. The agenda may change to accommodate ISPAB business. The final agenda will be posted on the NIST website at *https://csrc.nist.gov/Events/2024/ispab-may-meeting.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Board's business are invited to request a place on the agenda. Approximately ten minutes will be reserved for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received but is likely to be about five minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to participate are invited to submit written statements by email to *jeffrey.brewer@nist.gov.*

All participants will be attending via webinar and are required to pre-register to be admitted to the meeting. To register and receive detailed instruction on how to join the meeting, please submit your first and last name, email address, and company name via the registration link at *https://csrc.nist.gov/Events/2024/ispab-may-meeting* by 5 p.m. Eastern Time, May 20, 2024.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2024–09418 Filed 4–30–24; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD921]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a webinar meeting of its Groundfish Management Team (GMT) and its Groundfish Advisory Subpanel (GAP). The GAP and the GMT will discuss items on the Pacific Council's June 2024 meeting agenda. These meetings are open to the public.

DATES: The GMT online meeting will be held on Wednesday, May 22, 2024, from 1 p.m. to 4 p.m., Pacific time. The GAP online meeting will be held on Thursday, May 23, 2024, from 9 a.m. to 1 p.m., Pacific time. The scheduled ending times for these meetings are an estimate. Each meeting will adjourn when business for the day is completed.

ADDRESSES: Both meetings will be held online. Specific meeting information, including directions on how to attend the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Todd Phillips, Staff Officer, Pacific Council; *todd.phillips@noaa.gov;* telephone: (503) 820–2426.

SUPPLEMENTARY INFORMATION: The primary purpose of the GAP and GMT webinars is to prepare for the Pacific Council's June 2024 meeting agenda items. The advisory bodies are expected to primarily discuss groundfish and administrative-related matters during this webinar.

Detailed agendas for the webinars will be available on the Pacific Council's website prior to the meetings. The GAP and GMT may also address other assignments relating to groundfish management. No management actions will be decided by the GMT and GAP.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document 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: April 26, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–09420 Filed 4–30–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD917]

Pacific Islands Pelagic Fisheries; American Samoa Longline Limited Entry Program

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

ACTION: Notice; availability of permits.

SUMMARY: NMFS announces that 34 American Samoa pelagic longline limited entry permits in two permit size classes are available for 2024. NMFS is accepting applications for these available permits.

DATES: NMFS must receive complete permit applications including payment by August 29, 2024.

ADDRESSES: Download a blank application from the NOAA Fisheries website: *https://www.fisheries.noaa.gov/permit/american-samoa-longline-limited-entry-permit.* Submit your application and pay the processing fee electronically per instructions at *https://www.fisheries.noaa.gov/pacific-islands/commercial-fishing/apply-pacific-islands-fishing-permit.*

FOR FURTHER INFORMATION CONTACT: Walter Ikehara, NMFS Pacific Islands Regional Office (PIRO), Sustainable Fisheries, tel 808–725–5175 or email *PIRO-permits@noaa.gov.*

SUPPLEMENTARY INFORMATION: Federal regulations at 50 CFR 665.816 allow NMFS to re-issue permits for the American Samoa pelagic longline limited entry program if the number of permits falls below the maximum allowed. At least 34 permits are available for issuance in the following permit size classes, as follows:

- 21 in Small (vessels up to 50 feet or 15.24 meters in overall length), and
- 13 in Large (vessels overall length 50 feet or 15.24 meters and longer).

Please note that the number of available permits may change before the application period closes. Applicants must specify the permit size class (one only) for which they are applying on the application form.

If there are more applications than available permits in a particular size class, the Regional Administrator shall issue permits to persons according to the following priority standard:

(i) Priority accrues to the person with the earliest documented participation in the pelagic longline fishery in the Exclusive Economic Zone (EEZ) around American Samoa from smallest to largest vessel; and

(ii) In the event of a tie in the priority ranking between two or more applicants, the applicant whose second documented participation in the pelagic longline fishery in the EEZ around American Samoa is first in time will be ranked first in priority. If there is still a tie between two or more applicants, the Regional Administrator will select the successful applicant by an impartial lottery.

NMFS will only consider complete applications, which must include the completed and signed application form, copy of current United States Coast Guard Certificate of Documentation or state or territory vessel registration, evidence of documented participation in the fishery if needed for prioritization, and non-refundable payment of the application processing fee. Incomplete applications may be abandoned 30 days after receipt if deficiencies are not addressed.

Documented participation means participation proved by, but not necessarily limited to, a properly submitted NMFS or American Samoa logbook, an American Samoa creel survey record, a delivery or payment record from an American Samoa-based cannery, retailer or wholesaler, an American Samoa tax record, an individual wage record, ownership title, vessel registration, or other official documents showing:

(i) Ownership of a vessel that was used to fish in the EEZ around American Samoa; or

(ii) Evidence of work on a fishing trip during which longline gear was used to harvest western Pacific pelagic management unit species in the EEZ around American Samoa. If the applicant does not possess the necessary documentation of evidence of work on a fishing trip based on records available only from NMFS or the Government of American Samoa (*e.g.,* creel survey record or logbook), the applicant may issue a request to PIRO to obtain such records from the appropriate agencies, if available. The applicant should provide sufficient information on the fishing trip to allow PIRO to retrieve the records.

If an applicant requests NMFS, in writing, to use NMFS longline logbook data as evidence of documented participation, the applicant must specify the qualifying vessel, official number, and month and year of the logbook records. NMFS will not conduct an unlimited search for records.

NMFS must receive applications by August 29, 2024 to be considered for a permit (see **ADDRESSES**). NMFS will not accept applications received after that date.

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

Dated: April 26, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–09388 Filed 4–30–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD863]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 87 Post Data Workshop webinar III for Gulf of Mexico white, pink, and brown shrimp.

SUMMARY: The SEDAR 87 assessment process of Gulf of Mexico white, pink, and brown shrimp will consist of a Data Workshop, and a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 87 Post Data Workshop webinar III will be held Tuesday, May 21, 2024, from 1 p.m. to 4 p.m., Eastern Time.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data

Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Post Data Workshop webinar III are as follows:

Participants will discuss and finalize any outstanding data issues remaining from the Data Workshop.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: April 26, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–09385 Filed 4–30–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD896]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 96 Recreational Landings Topical Working Group Scoping Webinar for Southeast (SE) yellowtail snapper.

SUMMARY: The SEDAR 96 assessment for SE yellowtail snapper will consist of a series of webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 96 Recreational Landings Topical Working Group Scoping Webinar will be held May 20, 2024, from 10 a.m. to 12 p.m., Eastern.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the webinar are as follows:

Participants will discuss what recreational landings streams, including the SRFS (State of Florida's State Reef Fish Survey) data may be available for use in the assessment of SE yellowtail snapper.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: April 26, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–09386 Filed 4–30–24; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Extend Information Collection 3038–0115, Reparations Complaint, CFTC Form 30

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the extension of information collection requirements regarding the CFTC Reparations Complaint Process, pursuant to part 12 of the Commission regulations under the Commodity Exchange Act (''CEA'').

DATES: Comments must be submitted on or before July 1, 2024.

ADDRESSES: You may submit comments, identified by ''OMB Control No. 3038–0115'' by any of the following methods:

- The Agency's website, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Eugene Smith, Director, Office of Proceedings, Commodity Futures Trading Commission, (202) 418–5371; email: *esmith@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing a proposed notice to extend the existing collection of information listed below. 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.[1]

Title: Reparations Complaint, CFTC Form 30 (OMB Control No. 3038–0115). This is a request for an extension of a currently approved information collection.

Abstract: Pursuant to Section 14 of the Commodity Exchange Act, members of the public may apply to the Commission to seek damages against Commission registrants for alleged violations of the Act and/or Commission regulations. The legislative intent of the Reparations program was to provide a low-cost, speedy, and effective forum for the resolution of customer complaints and to sanction individuals and firms found to have violated the Act and/or any regulations.

In 1984, the Commission promulgated Part 12 of the Commission regulations to administer Section 14. Rule 12.13 provides the standards and procedures for filing a Reparations complaint. Specifically, paragraph (b) describes the form and content requirements of a complaint. CFTC Form 30 mirrors the requirements set forth in paragraph (b).

The Commission began utilizing Form 30 in or about 1984. The form was created to assist customers, who are typically *pro se* and non-lawyers. It was also designed as a way to provide proper notice to respondents of the charges against them. This form is critical to fulfilling this policy goal. The Commission implemented a web-based version of Form 30 in 2021 as an additional option for the public to submit reparations complaints online.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The respondent burden for this collection is estimated to be as follows:

Respondents/Affected Entities: Commodity futures customers.

Estimated Number of Respondents: 15.

Estimated Average Burden Hours per Respondent: 1.5.

Estimated Total Annual Burden Hours: 23.[3]

Frequency of Collection: As applicable.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.)*

[1] 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8 (b)(3)(vi).

[2] 17 CFR 145.9.

[3] Total burden hours are 22.5 rounding to 23.

Dated: April 26, 2024.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2024–09433 Filed 4–30–24; 8:45 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, May 1, 2024–10:00 a.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, MD.

STATUS: Commission Meeting—Closed to the Public.

MATTERS TO BE CONSIDERED: *Meeting Matter:* Briefing Matters.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301–504–7479 (Office) or 240–863–8938 (Cell).

Dated: April 26, 2024.

Alberta Mills,

Commission Secretary.

[FR Doc. 2024–09504 Filed 4–29–24; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0026]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; PLUS Adverse Credit Reconsideration Loan Counseling

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 31, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: PLUS Adverse Credit Reconsideration Loan Counseling.

OMB Control Number: 1845–0129.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 142,824.

Total Estimated Number of Annual Burden Hours: 107,119.

Abstract: Section 428B(a)(1)(A) of the Higher Education Act of 1965, as amended (HEA), provides that to be eligible to receive a Federal PLUS Loan under the Federal Family Education Loan (FFEL) Program, the applicant must not have an adverse credit history, as determined pursuant to regulations promulgated by the Secretary. In accordance with section 455(a)(1) of the HEA, this same eligibility requirement applies to applicants for PLUS loans under the Direct Loan Program. Since July 1, 2010, there have been no new FFEL Program loans originated and the Direct Loan Program is the only Federal loan program that offers Federal PLUS Loans.

The adverse credit history section of the eligibility regulations in 34 CFR 685.200 (b) and (c) were updated in 2014 by the Department of Education (the Department) when a review of and a change to the regulations was made. Specifically, an applicant for a PLUS loan who is determined to have an adverse credit history must complete loan counseling offered by the Secretary before receiving the Federal PLUS loan.

The Department is requesting an extension to the information collection regarding the adverse credit history regulations in 34 CFR 685.200 (b) and (c) and the burden these changes create for Federal PLUS loan borrowers, both parent and graduate/professional students.

Dated: April 25, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–09331 Filed 4–30–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0064]

Agency Information Collection Activities; Comment Request; Office of Special Education and Rehabilitative Services Peer Reviewer Data Form

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

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

DATES: Interested persons are invited to submit comments on or before July 1, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2024–SCC–0064. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted

after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Justin Hampton, 202–245–6318.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Office of Special Education and Rehabilitative Services Peer Reviewer Data Form.

OMB Control Number: 1820–0583.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 350.

Total Estimated Number of Annual Burden Hours: 88.

Abstract: The OSERS Peer Reviewer Data Form (OPRDF) is used by OSERS staff to identify potential reviewers who would be qualified to review specific types of grant applications for funding. OSERS uses this form to collect background contact information for each potential reviewer; and to provide information on any reasonable accommodations that might be required by the individual. OSERS is requesting a revision with minor changes to the previous form regarding the gender response options. The previous version of the OPRDF, 1820–0583, will expire on July 31, 2024.

Dated: April 26, 2024.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–09395 Filed 4–30–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Student Support Services Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2025 for the Student Support Services (SSS) Program, Assistance Listing Number 84.042A. This notice relates to the approved information collection under OMB control number 1840–0017.

DATES:

Applications Available: May 1, 2024.

Deadline for Transmittal of Applications: July 15, 2024.

Deadline for Intergovernmental Review: September 13, 2024.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *www.federalregister.gov/d/2022-26554*.

FOR FURTHER INFORMATION CONTACT: Lavelle Wright, U.S. Department of Education, 400 Maryland Avenue SW, 5th Floor, Washington, DC 20202–4260. Telephone: (202) 987–1300. Email: *Lavelle.Wright@ed.gov*.

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the SSS Program is to increase the number of disadvantaged students, including low-income college students, first-generation college students, and college students with disabilities, who successfully complete a program of study at the postsecondary level. The support services that are provided should increase the retention and graduation rates for these categories of students and facilitate their transfer from two-year to four-year colleges and universities. The support services should also foster an institutional climate that supports the success of students who are limited English proficient, students from groups that are historically underrepresented in postsecondary education, students with disabilities, students who are homeless children and youths, students who are in foster care or are aging out of the foster care system, and other disconnected students. Student support services should also improve the financial and economic literacy of students.

Priorities: This notice contains two competitive preference priorities. Competitive Preference Priorities 1 and 2 are from the Secretary's Notice of Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

Note: Applicants must include, in the one-page abstract submitted with the application, a statement indicating which, if any, of the competitive preference priorities are addressed. If the applicant has addressed the competitive preference priorities, this information must also be listed on the SSS Program Profile Form.

Competitive Preference Priorities: For FY 2025 and any subsequent year for which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional eight points to an application, depending on how well the application meets these priorities.

These priorities are:

Competitive Preference Priority 1—Meeting Student Social, Emotional, and Academic Needs (up to 3 points).

Projects that are designed to improve students' social, emotional, academic, and career development needs, with a focus on underserved students, by creating education and work-based settings that are supportive, positive, identity-safe and inclusive, including with regard to race, ethnicity, culture, language, and disability status, through the following activity:

Supporting students to engage in high-quality, real-world, hands-on learning that is aligned with classroom instruction and takes place in community-based settings, such as apprenticeships, pre-apprenticeships, work-based learning, and service learning, and in civic activities, that allow students to apply their knowledge and skills, strengthen their employability skills, such as critical thinking, complex problem solving, and effective communication, and access career exploration opportunities.

Competitive Preference Priority 2—Increasing Postsecondary Education Access, Affordability, Completion, and Post-Enrollment Success (up to 5 points).

Projects that are designed to increase postsecondary access, affordability, completion, and success for underserved students by addressing one or both of the following priority areas:

(a) Increasing postsecondary education access and reducing the cost of college by creating clearer pathways for students between institutions and making transfer of course credits more seamless and transparent (up to 2 points).

(b) Establishing a system of high-quality data collection and analysis, such as data on enrollment, persistence, retention, completion, and post-college outcomes, for transparency, accountability, and institutional improvement (up to 3 points).

Definitions: The following definitions apply to this competition. The definitions of ''demonstrates a rationale,'' ''logic model,'' ''project component,'' and ''relevant outcomes'' are from 34 CFR 77.1. The definitions of ''children or students with disabilities,'' ''disconnected youth,'' ''English learner,'' ''military- or veteran-connected student,'' and ''underserved student'' are from the Supplemental Priorities.

Children or students with disabilities means children with disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401(3)) and 34 CFR 300.8, or students with disabilities, as defined in the Rehabilitation Act of 1973 (29 U.S.C. 705(37), 705(202)(B)).

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Disconnected youth means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution.

English learner means an individual who is an English learner as defined in section 8101(20) of the Elementary and Secondary Education Act of 1965, as amended, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Note: In developing logic models, applicants may want to use resources such as the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application, available at *https://ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp* to help design their logic models. Other sources include: *https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014025.pdf, https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf,* and *https://ies.ed.gov/ncee/edlabs/regions/northeast/pdf/REL_2015057.pdf.*

Military- or veteran-connected student means one or more of the following:

(a) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a member of the uniformed services (as defined by 37 U.S.C. 101), in the Army, Navy, Air Force, Marine Corps, Coast Guard, Space Force, National Guard, Reserves, National Oceanic and Atmospheric Administration, or Public Health Service or is a veteran of the uniformed services with an honorable discharge (as defined by 38 U.S.C. 3311).

(b) A student who is a member of the uniformed services, a veteran of the uniformed services, or the spouse of a service member or veteran.

(c) A child participating in an early learning program, a student enrolled in preschool through grade 12, or a student enrolled in career and technical education or postsecondary education who has a parent or guardian who is a veteran of the uniformed services (as defined by 37 U.S.C. 101).

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

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

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

(b) A student of color.

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

(d) An English learner.

(e) A child or student with a disability.

(f) A disconnected youth.

(g) A student experiencing homelessness or housing insecurity.

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

(i) A student who is in foster care.

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

(k) A student impacted by the justice system, including a formerly incarcerated student.

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

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

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

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

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

(q) A military- or veteran-connected student.

Program Authority: 20 U.S.C. 1070a–11 and 20 U.S.C. 1070a–14.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for 75.215 through 75.221), 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative

Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200 (Uniform Guidance), as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 646. (e) The Supplemental Priorities.

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

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

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $1,211,000,000 for the Federal TRIO Programs for FY 2025, of which we intend to use an estimated $381,883,715 for new SSS awards under this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for the Federal TRIO Programs.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $148,181–$1,659,366.

Estimated Average Size of Awards: $324,456.

Maximum Award: The maximum award varies based on whether the applicant is currently receiving an SSS grant, as well as the type of project and number of students served. For applicants not currently receiving an SSS Program grant, the maximum awards are as follows:

Type of proposal	Maximum amount *
Regular SSS Proposal Serving a Minimum of 140 Student Participants	$272,364
Regular SSS Proposal Serving a Minimum of 100 Student Participants who are Students with Disabilities	272,364
English as a Second Language (ESL) SSS Proposal Serving a Minimum of 140 Student Participants	272,364
Science, Technology, Engineering, and Mathematics (STEM) and Health Science SSS Proposal Serving a Minimum of 120 Student Participants	272,364
Teacher Preparation SSS Proposal Serving a Minimum of 140 Student Participants	272,364
Veterans SSS Proposal Serving a Minimum of 120 Student Participants	272,364

For applicants proposing to serve fewer than the minimum number of student participants specified in the above table, the maximum award is an amount equal to: $1,945 per student participant for Regular, ESL, and Teacher Preparation proposals; $2,724 per student participant for projects serving Students with Disabilities (SWD proposals); and $2,270 per student participant for STEM (including Health Science) and Veterans proposals.

For applicants currently receiving an SSS Program grant, the maximum award amount is the greater of (a) $272,364 or (b) 100 percent of the applicant's base award amount for FY 2024.

For any currently funded applicant that proposes to serve fewer students than it served in FY 2024, the maximum award is the amount that corresponds with the cost per participant previously established for the project in FY 2024.

Estimated Number of New Awards: 1,159.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs or combinations of IHEs.

Note: Combinations of IHEs under this competition must follow the procedures under 34 CFR 75.127–75.129 in developing a group application. This includes developing an agreement that details the activities that each member of the group plans to perform and binds each member of the group to every statement and assurance made by the applicant in the application. This agreement must be submitted with the application.

2.*a. Cost Sharing or Matching:* Section 402D(d)(4) of the HEA requires that all successful applicants that use SSS Program funds to provide grant aid to students pursuant to section 402D(d)(1) of the HEA must provide matching funds, in cash, from non-Federal funds, in an amount that is not less than 33 percent of the total amount of the SSS Program funds used for this aid. This matching requirement does not apply to a grant recipient that is an IHE eligible to receive funds under part A or part B of title III or under title V of the HEA.

b. *Supplement-Not-Supplant:* This competition involves supplement, not supplant funding requirements. Under section 404B(e) of the HEA (20 U.S.C. 1070a–22(e)), grant funds awarded under this program must be used to supplement, and not supplant, other Federal, State, and local funds that would otherwise be expended to carry out activities assisted under this program.

c. *Indirect Cost Rate Information:* For entities eligible to apply to this competition, the program regulations at 34 CFR 694.11 limit indirect cost reimbursement to the rate determined in the entity's negotiated indirect cost rate agreement, or 8 percent of a modified total direct cost base, whichever amount is less. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Other:* An applicant may submit multiple applications if each separate application describes a project that will serve a different campus or a different population (section 402A(c)(5) of the HEA).

Under section 402A(h)(1) of the HEA, the term ''different campus'' means a site of an IHE that—(a) is geographically apart from the main campus of the institution; (b) is permanent in nature; and (c) offers courses in educational programs leading to a degree, certificate, or other recognized educational credential.

Under section 402A(h)(2) of the HEA, the term ''different population'' means a group of individuals that an eligible entity desires to serve through an SSS grant that is separate and distinct from any other population that the entity has applied to serve using Federal TRIO Program funds, or, while sharing some of the same needs as another population that the eligible entity has applied to

serve using Federal TRIO Program funds, has distinct needs for specialized services. To implement the requirement in section 402A(h)(2) of the HEA for this competition, the Secretary is designating the populations to be served as: participants who meet the specific requirements for SSS services, participants who are students with disabilities, participants who need ESL services, participants receiving services in the STEM fields, participants receiving Teacher Preparation Services, and participants who have served in the armed forces. These different populations need different types of services. Accordingly, the Secretary has determined that projects serving these different populations should be subject to different standards for the minimum number of participants. An applicant may submit more than one application as long as each application proposes to serve a different population. For project types other than a regular SSS project, an applicant must propose to serve 100 percent of the students in the specific project type.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *www.federalregister.gov/d/2022-26554,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

3. *Funding Restrictions:* We specify unallowable costs in 34 CFR 646.31. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative, Part III of the application, is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative, which includes the budget narrative, to no more than 65 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, excluding titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point font or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended 65-page limit does not apply to Part I, the Application for Federal Assistance cover sheet (SF 424); Part II, the Budget Information Summary form (ED Form 524); Part III–A, the SSS Program Profile form; Part III–B, the one-page Project Abstract form; or Part IV, the assurances and certifications. The recommended page limit also does not apply to a table of contents, which you should include in the application narrative. You must include your complete response to the selection criteria in the application narrative.

We recommend that any application addressing the competitive preference priorities include no more than three additional pages each for priorities 1 and 2, if addressed. Applications that do not follow the page limit and formatting recommendations will not be penalized.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 646.21 and 75.210.

We will award up to 105 points to an application under the selection criteria and up to 8 additional points to an application under the competitive preference priorities, for a total score of up to 113 points. The maximum number of points available for each criterion is indicated in parentheses.

(a) *Need for the project.* (up to 24 points)

The Secretary evaluates the need for an SSS project proposed at the applicant institution on the basis of the extent to which the application contains clear evidence of—

(1) A high number or percentage, or both, of students enrolled or accepted for enrollment at the applicant institution who meet the eligibility requirements of 34 CFR 646.3 (up to 8 points);

(2) The academic and other problems that eligible students encounter at the applicant institution (up to 8 points); and

(3) The differences between eligible SSS students compared to an appropriate group, based on the following indicators:

(i) Retention and graduation rates.

(ii) Grade point averages.

(iii) Graduate and professional school enrollment rates (four-year colleges only).

(iv) Transfer rates from two-year to four-year institutions (two-year colleges only) (up to 8 points).

(b) *Objectives.* (up to 8 points) The Secretary evaluates the quality of the applicant's proposed objectives in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources.

(1) Retention in postsecondary education (3 points).

(2) In good academic standing at grantee institution (2 points).

(3) Two-year institutions only.

(i) Certificate or degree completion (1 point); and

(ii) Certificate or degree completion and transfer to a four-year institution (2 points).

(4) Four-year institutions only. Completion of a baccalaureate degree (3 points).

(c) *Plan of operation.* (up to 30 points) The Secretary evaluates the quality of the applicant's plan of operation on the basis of the following:

(1) The plan to inform the institutional community (students, faculty, and staff) of the goals, objectives, and services of the project and the eligibility requirements for participation in the project (up to 3 points).

(2) The plan to identify, select, and retain project participants with academic need (up to 3 points).

(3) The plan for assessing each individual participant's need for specific services and monitoring his or her academic progress at the institution to ensure satisfactory academic progress (up to 4 points).

(4) The plan to provide services that address the goals and objectives of the project (up to 10 points).

(5) The applicant's plan to ensure proper and efficient administration of the project, including the organizational placement of the project; the time commitment of key project staff; the specific plans for financial management, student records management, and personnel management; and, where appropriate, its plan for coordination with other programs for disadvantaged students (up to 10 points).

(d) *Institutional commitment.* (up to 16 points) The Secretary evaluates the institutional commitment to the proposed project on the basis of the extent to which the applicant has—

(1) Committed facilities, equipment, supplies, personnel, and other resources to supplement the grant and enhance project services (up to 6 points);

(2) Established administrative and academic policies that enhance participants' retention at the institution and improve their chances of graduating from the institution (up to 6 points);

(3) Demonstrated a commitment to minimize the dependence on student loans in developing financial aid packages for project participants by committing institutional resources to the extent possible (up to 2 points); and

(4) Assured the full cooperation and support of the Admissions, Student Aid, Registrar and data collection and analysis components of the institution (up to 2 points).

(e) *Quality of personnel.* (up to 9 points) To determine the quality of personnel the applicant plans to use, the Secretary looks for information that shows—

(1) The qualifications required of the project director, including formal education and training in fields related to the objectives of the project, and experience in designing, managing, or implementing SSS or similar projects (up to 3 points);

(2) The qualifications required of other personnel to be used in the project, including formal education, training, and work experience in fields related to the objectives of the project (up to 3 points); and

(3) The quality of the applicant's plan for employing personnel who have succeeded in overcoming barriers similar to those confronting the project's target population (up to 3 points).

(f) *Budget.* (up to 5 points) The Secretary evaluates the extent to which the project budget is reasonable, cost-effective, and adequate to support the project.

(g) *Evaluation plan.* (up to 8 points) The Secretary evaluates the quality of the evaluation plan for the project on the basis of the extent to which—

(1) The applicant's methods for evaluation—

(i) Are appropriate to the project and include both quantitative and qualitative evaluation measures (up to 2 points); and

(ii) Examine in specific and measurable ways, using appropriate baseline data, the success of the project in improving academic achievement, retention and graduation of project participants (up to 2 points); and

(2) The applicant intends to use the results of an evaluation to make programmatic changes based upon the results of project evaluation (up to 4 points).

(h) *Quality of the project design.* (up to 5 points)

In determining the quality of the design of the proposed project, the Secretary considers the extent to which the proposed project demonstrates a rationale (as defined in this notice).

Note: Under the ''Objectives'' selection criterion in paragraph (b) above, applicants must address the standardized objectives in 34 CFR 646.21(b)(1) through (4) related to the participants' academic achievements, including retention, good academic standing, graduation, and transfer rates. The graduation objective should be measured by cohorts of students who become SSS Program participants in each year of the project and should be compared to a relevant and valid comparison group. The graduation, certificate, and transfer rates for two-year institutions should be measured over a four-year period and that of four-year institutions should be measured over a six-year period.

Note: For the selection criterion ''Quality of personnel'' in paragraph (e), applicants are encouraged to include in their application that they are committed to paying their staff a living wage for the local area and providing benefits.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For this competition, a panel of non-Federal reviewers will review each application in accordance with the selection criteria in 34 CFR 646.21 and 75.210 and the competitive preference priorities. The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score received in the review process. Additionally, in accordance with 34 CFR 646.22, the Secretary will award up to 15 prior experience points to applicants that have conducted an SSS Program project within the last three Federal government fiscal years, based on their documented experience. Prior experience points, if any, will be added to the application's averaged reader score to determine the total score for each application.

If there are insufficient funds for all applications with the same total scores, the Secretary will choose among the tied applications so as to serve geographical areas that have been underserved by the SSS Program by first selecting applicants from institutions that are not already recommended for new awards on the SSS slates. If there are still insufficient funds for all applications with the same score, the Secretary will select applicants from institutions that are designated as eligible to apply under the HEA titles III and V programs according to the most recent version (at the time of publication of this notice) of the Eligibility Matrix.

Finally, if there are still tied applications after implementing both of these tiebreakers, the Secretary will select applications from institutions with the highest percentage of undergraduate students who are Pell Grant recipients.

3. *Risk Assessment and Specific Conditions:*

Consistent with 2 CFR 200.206, before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review

and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* The success of the SSS Program is measured by the percentage of SSS participants that complete a program of postsecondary education. The following performance measures have been developed to track progress toward achieving program success:

(a) The percentage of first-time, full-time first-year SSS Program participants who are still enrolled at the beginning of the next academic year or have earned a degree at a two-year grantee institution or transferred from a two-year to a four-year institution.

(b) The percentage of first-time, full-time first-year SSS Program participants at four-year institutions who received a bachelor's degree from the grantee institution within six years (Note: The Department will calculate this measure based both on 100 percent and 150 percent of normal completion time).

(c) The percentage of first-time, full-time SSS Program participants at two-year institutions who received an associate's degree and/or transferred to a four-year institution within three years (Note: The Department will calculate this measure based both on 100 percent and 150 percent of normal completion time).

(d) The cost per successful outcome. All SSS Program grantees are required to submit an annual performance report documenting the persistence and degree attainment of their participants. Since students take different amounts of time to complete their degrees, multiple years of performance report data are needed to determine the degree completion rates of SSS Program participants. The Department will aggregate the data provided in the annual performance reports from all grantees to determine the overall program accomplishment level.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the

application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

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

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

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2024–08328 Filed 4–30–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—The National Center for Systemic Improvement; Corrections

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice; corrections.

SUMMARY: On March 21, 2024, the Department published in the **Federal Register** a notice inviting applications (NIA) for the FY 2024 Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—The National Center for Systemic Improvement competition, Assistance Listing Number 84.326R. The Department is correcting the NIA by decreasing the estimated available funds and updating the maximum award amounts as well as extending the deadline date for transmittal of applications until May 22, 2024 and the deadline for intergovernmental review until July 22, 2024.

DATES: *Applicability date:* This correction is applicable May 1, 2024.

FOR FURTHER INFORMATION CONTACT: Perry Williams, U.S. Department of Education, 400 Maryland Avenue SW, Room 4A10, Washington, DC 20202. Telephone: (202) 987–0138. Email: *Perry.Williams@ed.gov.*

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 21, 2024, we published the NIA in the **Federal Register** (89 FR 20184). The NIA established a deadline date of May 20, 2024, for the transmittal of applications. We are extending the deadline date for transmittal of applications, because the *Grants.gov* platform will be closed for site maintenance from May 18–21, 2024. Since applicants will be unable to submit applications or work in the *Grants.gov* system during that time, we are extending the deadline to allow applicants additional time to complete and submit their applications. Following the publication of the NIA, the President signed the Further Consolidated Appropriations Act, 2024 (Pub. L. 118–47), on March 23, 2024. Title III of the Further Consolidated Appropriations Act decreased funding for the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program. Accordingly, we are correcting the NIA to reflect the updated estimated available funds maximum award amounts for this competition.

Applicants that have already submitted applications under this competition may resubmit applications but are not required to do so. If a new application is not submitted, the Department will use the application that was submitted by the original deadline. If a new application is submitted, the Department will consider the application that was last successfully submitted and received by 11:59:59 p.m., Eastern Time on the application deadline.

Note: All information in the NIA, including eligibility criteria, remains the same, except for the estimated funding amount and maximum award amounts.

Information about Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities is available on the Department's website at *https://www2.ed.gov/programs/oseptad/index.html.*

Program Authority: 20 U.S.C. 1463 and 1481.

Corrections

In FR Doc. 2024–05979, appearing on pages 20184–20193 of the **Federal Register** of March 21, 2024 (89 FR 20184), we make the following corrections:

1. On page 20190, in the first and second columns, In the section titled ''II. Award Information'', following the heading ''Estimated Available Funds:'' remove ''The Administration has requested $55,345,000 for the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program for FY 2024, of which we intend to use an estimated $6,250,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.'' and add, in its place, ''$5,400,000 in year one, $5,750,000 in years two through five.''

2. On page 20190, in the second column, following the heading ''Maximum Award:'' remove ''$6,250,000 for a single budget period of 12 months'' and add, in its place, ''$5,400,000 for a single budget period of 12 months in year one, $5,750,000 for a single budget period of 12 months in years two through five.''

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

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

your search to documents published by the Department.

Glenna Wright-Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2024–09507 Filed 4–29–24; 11:15 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 553–235]

Seattle City Light; Notice of Designation of Certain Commission Personnel as Non-Decisional

Commission staff members Haley McLoud (Office of the General Counsel; 202–502–8807; *haley.mcloud@ferc.gov*) and Paige Espy (Office of the General Counsel; 202–502–6698; *paige.espy@ferc.gov*) are assigned to assist with settlement negotiations for the Skagit River Hydroelectric Project No. 553.

As non-decisional staff, Ms. McLoud and Ms. Espy will not participate in an advisory capacity in the Commission's review of any offer of settlement or settlement agreement, or deliberations concerning the disposition of the relicense application.

Different Commission advisory staff will be assigned to review any offer of settlement or settlement agreement, and to process the relicense application, including providing advice to the Commission with respect to the agreement and the application. Non-decisional staff and advisory staff are prohibited from communicating with one another concerning the settlement and the relicense application.

Dated: April 25, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–09440 Filed 4–30–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2192–052]

Consolidated Water Power Company; Notice of Application for a Non-Capacity Amendment of License Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.

b. *Project No:* 2192–052.

c. *Date Filed:* December 7, 2023.

d. *Applicant:* Consolidated Water Power Company.

e. *Name of Project:* Biron Hydroelectric Project.

f. *Location:* The project is located on the Wisconsin River in Portage and Wood counties, Wisconsin. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mark E. Anderson, 610 High Street, Wisconsin Rapids, Wisconsin 55495, *MarkAnderson2@versoco.com,* (755) 422–4112.

i. *FERC Contact:* Jon Cofrancesco, (202) 502–8951, *jon.cofrancesco@ferc.gov.*

j. *Cooperating agencies:* With this notice, the Commission is inviting federal, state, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *Deadline for filing comments, motions to intervene, and protests:* May 27, 2024.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2192–052. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Request:* Consolidated Water Power Company (Consolidated) proposes to remove approximately 130 acres of land from the project boundary and establish a new project boundary to follow a metes and bounds survey line. The 130 acres is part of a larger 132.06 acre parcel. The land proposed for removal is generally lowland marsh with pockets of upland deciduous and conifer stands. The lower one-third of the parcel is bisected by a drainage ditch which is connected to a series of ditches serving area cranberry growers. The land also incorporates an old, abandoned landfill previously operated by Consolidated's parent paper company that was closed in 1982. The closed landfill would continue to be monitored by the parent company in accordance with the original closure requirements. Consolidated also seeks Commission approval to transfer its fee-title ownership of this parcel back to its parent company or another entity in order to relieve itself of any potential liability associated with the landfill. Consolidated would retain flowage easements over the land. Consolidated anticipates that the parcel would be left undeveloped in the future and states that the parcel is not needed for project operations or flood control. Consolidated states the parcel has limited recreational opportunities due to its location and topography and contains no historical or cultural sites; and that no environmental effects are expected.

m. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/*

esubscription.asp to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

q. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: April 25, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–09439 Filed 4–30–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2783–021; ER10–1616–020; ER10–1838–012; ER10–1847–010; ER10–1967–013; ER10–1968–012; ER10–1990–012; ER10–1993–012; ER10–2264–011; ER10–2756–012; ER10–2798–021; ER10–2799–021; ER10–2878–022; ER10–2879–021; ER10–2960–017; ER10–2969–021; ER18–1821–012; ER19–2231–009; ER19–2232–009; ER21–2423–009; ER21–2424–009; ER22–46–008; ER22–1402–005; ER22–1404–005; ER22–1449–005; ER22–1450–005; ER22–1662–004; ER22–2713–003.

Applicants: Parkway Generation Sewaren Urban Renewal Entity LLC, GB II New York LLC, GB II New Haven LLC, GB II Connecticut LLC, Parkway Generation Operating LLC, Parkway Generation Keys Energy Center LLC, Parkway Generation Essex, LLC, Generation Bridge M&M Holdings, LLC, Generation Bridge Connecticut Holdings, LLC, Chief Keystone Power II, LLC, Chief Conemaugh Power II, LLC, Walleye Power, LLC, Oswego Harbor Power LLC, Astoria Generating Company, L.P., Montville Power LLC, Middleton Power LLC, Devon Power LLC ,Connecticut Jet Power LLC, Griffith Energy LLC, Long Beach Generation LLC, Waymart Wind Farm, L.P., Somerset Windpower, LLC, Mill Run Windpower, LLC, Meyersdale Windpower LLC, Diablo Winds, LLC, Backbone Mountain Windpower, LLC, New Covert Generating Company, LLC, Arthur Kill Power LLC.

Description: Notice of Change in Status of Arthur Kill Power LLC, et al.

Filed Date: 4/25/24.

Accession Number: 20240425–5158.

Comment Date: 5 p.m. ET 5/16/24.

Docket Numbers: ER11–2335–020; ER10–2615–016; ER11–4634–012; ER15–748–009; ER15–1456–012; ER15–1457–012; ER19–464–005; ER19–967–005; ER19–968–006; ER20–464–003.

Applicants: Greenleaf Energy Unit 2 LLC, Manchester Street, L.L.C., Fairless Energy, L.L.C., Vermillion Power, L.L.C., Syracuse, L.L.C., Beaver Falls, L.L.C., Garrison Energy Center LLC, Hazleton Generation LLC, Plum Point Energy Associates, LLC, Dynegy Services Plum Point, LLC.

Description: Notice of Non-Material Change in Status of Plum Point Energy Associates, LLC, et al.

Filed Date: 4/22/24.

Accession Number: 20240422–5371.

Comment Date: 5 p.m. ET 5/13/24.

Docket Numbers: ER18–2511–008; ER23–2874–002.

Applicants: NorthWestern Energy Public Service Corporation, NorthWestern Corporation.

Description: Notice of Change in Status of NorthWestern Corporation, et al.

Filed Date: 4/25/24.

Accession Number: 20240425–5109.

Comment Date: 5 p.m. ET 5/16/24.

Docket Numbers: ER24–227–003.

Applicants: RPC Power, LLC.

Description: Tariff Amendment: Supplement to Application in Response to Deficiency Letter (ER24–227-) to be effective 4/26/2024.

Filed Date: 4/25/24.

Accession Number: 20240425–5124.

Comment Date: 5 p.m. ET 5/16/24.

Docket Numbers: ER24–1832–000.

Applicants: North Fork Solar Project, LLC.

Description: Baseline eTariff Filing: Application for Market Based Rate Authority to be effective 4/25/2024.

Filed Date: 4/24/24.

Accession Number: 20240424–5246.

Comment Date: 5 p.m. ET 5/15/24.

Docket Numbers: ER24–1833–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 205(d) Rate Filing: 2024–04–25_SA 4273 NSP-County of Hennepin GIA to be effective 6/25/2024.

Filed Date: 4/25/24.

Accession Number: 20240425–5055.

Comment Date: 5 p.m. ET 5/16/24.

Docket Numbers: ER24–1834–000.

Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.

Description: 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2024–04–25_SA 4278 ATC–WEPCo E&P to be effective 4/26/2024.

Filed Date: 4/25/24.

Accession Number: 20240425–5056.

Comment Date: 5 p.m. ET 5/16/24.

Docket Numbers: ER24–1835–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 4259 Mountrail-Williams Electric & Sheridan Electric Int Agr to be effective 12/31/9998.

Filed Date: 4/25/24.
Accession Number: 20240425–5067.
Comment Date: 5 p.m. ET 5/16/24.
Docket Numbers: ER24–1836–000.
Applicants: Public Service Company of New Mexico.
Description: Tariff Amendment: Notice of Cancellation to be effective 5/1/2024.
Filed Date: 4/25/24.
Accession Number: 20240425–5102.
Comment Date: 5 p.m. ET 5/16/24.
Docket Numbers: ER24–1837–000.
Applicants: California Independent System Operator Corporation
Description: 205(d) Rate Filing: 2024–04–25 Tariff Clarification—Non-Generator Resource Bidding Reqs in RUC to be effective 6/25/2024.
Filed Date: 4/25/24.
Accession Number: 20240425–5107.
Comment Date: 5 p.m. ET 5/16/24.
Docket Numbers: ER24–1838–000.
Applicants: Idaho Power Company.
Description: 205(d) Rate Filing: SA #492—Amended & Restated LGIA—IPC and Franklin to be effective 4/10/2024.
Filed Date: 4/25/24.
Accession Number: 20240425–5114.
Comment Date: 5 p.m. ET 5/16/24.
Docket Numbers: ER24–1839–000.
Applicants: PJM Interconnection, L.L.C.
Description: 205(d) Rate Filing: Amendment to ISA No. 6163, Queue No. AD1–155 (Amend) to be effective 6/25/2024.
Filed Date: 4/25/24.
Accession Number: 20240425–5150.
Comment Date: 5 p.m. ET 5/16/24.
Docket Numbers: ER24–1840–000.
Applicants: ISO New England Inc., New England Power Company.
Description: 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: ISO–NE & NEP; Original Service Agreement No. LGIA–ISONE/NEP–24–01 to be effective 3/26/2024.
Filed Date: 4/25/24.
Accession Number: 20240425–5198.
Comment Date: 5 p.m. ET 5/16/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: April 25, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–09443 Filed 4–30–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1785–000]

MPower Energy NJ LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of MPower Energy NJ LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 15, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: April 25, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–09441 Filed 4–30–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–691–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: Compliance filing: Penalty Crediting Report for 2023 to be effective N/A.

Filed Date: 4/25/24.

Accession Number: 20240425–5129.

Comment Date: 5 p.m. ET 5/7/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: April 25, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–09442 Filed 4–30–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2024–0145; FRL–11854–02–OGC]

Proposed Consent Decree, Clean Water Act Claim; Reopening of the Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; reopening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) provided notice of a proposed consent decree in *Sierra Club, et al.* v. *EPA, et al.,* No. 3:24–cv–00130 (S.D.W. Va. 2024) on March 29, 2024. The EPA is reopening the public comment period for this proposed consent decree.

DATES: The comment period for the proposed consent decree published on March 29, 2024, at 89 FR 22140, is re-opened. Written comments on the proposed consent decree must be received by May 31, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2024–0145 online at *https://www.regulations.gov* (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments, see the ''Additional Information About Commenting on the Proposed Consent Decree'' heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Elise O'Dea, Water Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone: (202) 564–4201; email address: *odea.elise@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

On March 18, 2024, Sierra Club, the West Virginia Highlands Conservancy, Inc., and the West Virginia Rivers Coalition, Inc. (collectively, ''Plaintiffs'') filed a complaint in Federal district court asserting that EPA failed to perform a mandatory duty under the Clean Water Act (CWA) to establish total maximum daily loads (TMDLs) for certain waters located in the Lower Guyandotte River Watershed in West Virginia that are biologically impaired due to ionic toxicity (Ionic Toxicity TMDLs). This complaint followed Plaintiffs' submission to EPA of a Notice of Intent to Sue (NOI) on March 21, 2023. Following submission of the NOI, Plaintiffs and EPA initiated settlement discussions, which resulted in the proposed consent decree. Under the consent decree, EPA would be obligated to establish Ionic Toxicity TMDLs for 11 waterbody segments in the Lower Guyandotte River Watershed by January 15, 2025. In exchange, Plaintiffs would permanently release any and all claims against EPA that the Agency must establish ionic toxicity TMDLs for any other waterbody segments within the Lower Guyandotte River Watershed except for six identified waterbody segments and any waterbody segments that are listed as biologically impaired for the first time after June 1, 2023. For those six waterbody segments and any waterbody segments listed as biologically impaired for the first time after June 1, 2023, Plaintiffs would refrain from bringing any such claims against EPA until January 15, 2039. Further, Plaintiffs would not bring such claims against EPA for any West Virginia waterbody segment outside the Lower Guyandotte River Watershed until after January 15, 2025.

In accordance with the EPA Administrator's March 18, 2022, memorandum regarding ''Consent Decrees and Settlement Agreements to resolve Environmental Claims Against the Agency,'' the EPA provided notice of the proposed consent decree in *Sierra Club, et al.* v. *EPA, et al.,* No. 3:24–cv–00130 (S.D.W. Va. 2024) on March 29, 2024. 89 FR 22140–41. The EPA is reopening the public comment period. Written comments on the proposed consent decree must now be received by May 31, 2024. EPA seeks public input prior to its final decision-making with regard to potential settlement of the litigation. EPA will accept written comments relating to the proposed consent decree from persons who are not parties to the litigation. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments received disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the CWA.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the proposed consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2024–0145) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

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

B. How and to whom do I submit comments?

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2024–0145 via *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

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

Use of the *https://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA does not plan to consider these late comments.

Steven M. Neugeboren,

Associate General Counsel.

[FR Doc. 2024–09435 Filed 4–30–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2024–0204; FRL–11940–01–OGC]

Proposed Settlement Agreement, Clean Air Act Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended (CAA or the Act), notice is given of a proposed settlement agreement in *Nevada Cement Co., LLC* v. *EPA et al.* On April 14, 2023, Plaintiff Nevada Cement Company, LLC filed a petition for review in the United States Court of Appeals for the Ninth Circuit in Case No. 23–682. On June 5, 2023, Plaintiff filed a petition for review in the same court in Case No. 23–1098. Plaintiff disputes the Environmental Protection Agency's (EPA) disapproval of a state implementation plan submitted by the State of Nevada and promulgation of the final rule entitled ''Federal 'Good Neighbor Plan' for the 2015 Ozone National Ambient Air Quality Standards.'' The proposed settlement agreement would establish a process and deadlines by which Plaintiff would apply to EPA for a Case-by-Case Emissions Limit Request for its Fernley, Nevada, facility, in exchange for agreeing to lift a judicial stay entered by the U.S. Court of Appeals for the Ninth Circuit.

DATES: Written comments on the proposed settlement agreement must be received by May 31, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2024–0204, online at *https://www.regulations.gov* (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Additional Information about Commenting on the Proposed Settlement Agreement'' heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kyle Durch, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone (202) 564–1809; email address *durch.kyle@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Settlement Agreement

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2024–0204) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202)

566–1744 and the telephone number for the OEI Docket is (202) 566–1752.

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

II. Additional Information About the Proposed Settlement Agreement

The Environmental Protection Agency (''EPA'' or ''Agency'') promulgated a final rule disapproving the State of Nevada's and 20 other states' ozone interstate transport state implementation plan submissions for the 2015 ozone NAAQS. ''Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards,'' 88 FR 9336 (February 13, 2023) (''SIP Disapproval''). In a subsequent rule, EPA established emissions-control requirements for various sources in 23 states, including in Nevada, of interstate ozone in the ''Federal 'Good Neighbor Plan' for the 2015 Ozone National Ambient Air Quality Standards,'' 88 FR 36654 (June 5, 2023) (''Good Neighbor Plan''). These actions were taken, in accordance with Clean Air Act (''CAA'') section 110(a)(2)(D)(i)(I). 42 U.S.C. 7410(a)(2)(D)(i)(I). Nevada Cement Company (''NCC'') filed petitions for review challenging each of these actions. *Nevada Cement Co. LLC* v. *EPA et al.,* No. 23–682 (9th Cir. filed Apr. 14, 2023) (challenging the SIP Disapproval as to Nevada); *Nevada Cement Co. LLC* v. *EPA et al.,* No. 23–1098 (9th Cir. filed June 5, 2023) (challenging the Good Neighbor Plan as to Nevada).

The proposed settlement agreement with Nevada Cement Company (''NCC'') would establish a process for NCC to apply to EPA for a Case-by-Case Emissions Limit Request (''CBCELR''), consistent with procedures outlined in 40 CFR 52.40(e)(2), which, if approved, would bring its Fernley, Nevada, facility into compliance with the Good Neighbor Plan. To do this, NCC would first submit to EPA, by June 27, 2024, an Engineering Study Report concerning the feasibility and emissions-reduction efficiency of Low-NO_X Burners (''LNB'') installed on each kiln at its Fernley facility, as operated in conjunction with the existing selective non-catalytic reduction (''SNCR'') at such kilns. NCC would determine, subject to EPA's review and dispute resolution procedures, whether that report supports installing LNB; if not, and EPA concurs, it would proceed to apply for a CBCELR based on existing technology at the facility. If LNB is selected, NCC would install LNB on the kilns and would submit a CBCELR no later than March 27, 2026, which would include a limit based on a 180-day demonstration period with LNB installed on the kilns at the Fernley facility, and operated in an optimized manner with the existing SNCR at such kilns. EPA would lift its administrative stay of the Good Neighbor Plan as to the Fernley facility no later than October 15, 2026.

Further, no later than ten business days after moving the court to hold these cases in abeyance—which would be filed no later than five business days after the Settlement Agreement is final—EPA and NCC would file a joint motion with the court in Case No. 23–682 to lift the court's stay of the State Implementation Plan (''SIP'') Disapproval as to the State of Nevada.[1] The proposed settlement agreement includes informal and formal dispute resolution procedures, and the sole remedy of either party under the proposed settlement agreement is to reinitiate the litigation.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed settlement agreement. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information About Commenting on the Proposed Settlement Agreement

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2024–0204, via *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

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

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

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be

[1] The process for EPA to lift its administrative stay of the Good Neighbor Plan as to NCC's Fernley facility would occur through approval of the alternate limit and in conjunction with approval of such alternate limit, EPA would take action to bring the Good Neighbor Plan into effect for NCC's Fernley facility.

marked ''late.'' EPA is not required to consider these late comments.

Gautam Srinivasan,

Associate General Counsel.

[FR Doc. 2024–09437 Filed 4–30–24; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meetings

Notice of an Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND DATE: Thursday, May 9, 2024, at 9:30 a.m.

PLACE: The meeting will be held via teleconference.

STATUS: The meeting will be open to public observation.

MATTERS TO BE CONSIDERED: 1. *Policy Analysis and International Relations,* Policy Modification to Allow 5-Percent Cash Payment, *Decision Required:* Approval, Condren/Deatherage.

CONTACT PERSON FOR MORE INFORMATION: Deidre Hodge (202–509–4195). Members of the public who wish to attend the meeting may do so via teleconference and must register using the link below by noon Wednesday May 8, 2024. After completing the registration, individuals will receive a confirmation email containing information about joining the webinar. *https://teams.microsoft.com/registration/PAFTuZHHMk2Zb1GDkIVFJw,6WNwVJPkak2bfbS-d7T7kg,AJWdGUqHzkqGwTJXL3Ze2Q,hbG19ccm2Uq-ha6evS8ufg,vBvvqucJEU-lya4oxAngTA,qZDDvfJADkOy5eiWJh-7uw?mode=read&tenantId=b953013c-c791-4d32-996f-518390854527.*

Deidre Hodge,

Assistant Corporate Secretary.

[FR Doc. 2024–09524 Filed 4–29–24; 11:15 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0854; FR ID 216732]

Information Collection 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 May 31, 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, and (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: 3060–0854.

Title: Section 64.2401, Truth-in-Billing Format, CC Docket No. 98–170 and CG Docket No. 04–208.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 4,165 respondents; 26,711 responses.

Estimated Time per Response: 2 to 230 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is found at section 201(b) of the Communications Act of 1934, as amended, 47 U.S.C. 201(b), and section 258, 47 U.S.C. 258, Public Law 104–104, 110 Stat. 56. The Commission's implementing rules are codified at 47 CFR 64.2400.

Total Annual Burden: 1,872,245 hours.

Total Annual Cost: $10,000,000.

Needs and Uses: In 1999, the Commission released the Truth-in-Billing and Billing Format, CC Docket No. 98–170, First Report and Order and Further Notice of Proposed Rulemaking, (1999 TIB Order); published at 64 FR 34488, June 25, 1999, which adopted principles and guidelines designed to reduce telecommunications fraud, such

as slamming and cramming, by making bills easier for consumers to read and understand, and thereby, making such fraud easier to detect and report. In 2000, Truth-in-Billing and Billing Format, CC Docket No. 98–170, Order on Reconsideration, (2000 Reconsideration Order); published at 65 FR 43251, July 13, 2000, the Commission, granted in part petitions for reconsideration of the requirements that bills highlight new service providers and prominently display inquiry contact numbers. On March 18, 2005, the Commission released Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, CC Docket No. 98–170, CG Docket No. 04–208, (2005 Second Report and Order and Second Further Notice); published at 70 FR 29979 and 70 FR 30044, May 25, 2005, which determined, inter alia, that Commercial Mobile Radio Service providers no longer should be exempted from 47 CFR 64.2401(b), which requires billing descriptions to be brief, clear, non-misleading and in plain language. The 2005 Second Further Notice proposed and sought comment on measures to enhance the ability of consumers to make informed choices among competitive telecommunications service providers. On April 27, 2012, the Commission released the Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (''Cramming''), Report and Order and Further Notice of Proposed Rulemaking, CG Docket No. 11–116, CG Docket No. 09–158, CC Docket No. 98–170, FCC 12–42 (Cramming Report and Order and Further Notice of Proposed Rulemaking); published at 77 FR 30972, May 24, 2012, which determined that additional rules are needed to help consumers prevent and detect the placement of unauthorized charges on their telephone bills, an unlawful and fraudulent practice commonly referred to as ''cramming.''

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–09461 Filed 4–30–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1095; FR ID 217096]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC 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.

DATES: Written comments should be submitted on or before July 1, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1095.

Title: Surrenders of Authorizations for International Carrier, Space Station and Earth Station Licensees.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 8 respondents; 8 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary. The statutory authority for this information collection is contained in Sections 4(i), 7(a), 11, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 154(i), 157(a), 161, 303(c), 303(f), 303(g), and 303(r).

Total Annual Burden: 8 hours.

Annual Cost Burden: No cost.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension after this 60-day comment period has ended in order to obtain the full three-year clearance from OMB. There are no changes in the number of respondents, responses, annual burden hours and total annual costs.

Licensees file surrenders of authorizations with the Commission on a voluntary basis. This information is used by Commission staff to issue Public Notices to announce the surrenders of authorization to the general public. The Commission's release of Public Notices is critical to keeping the general public abreast of the licensees' discontinuance of telecommunications services.

Without this collection of information, licensees would be required to submit surrenders of authorizations to the Commission by letter which is more time consuming than submitting such requests to the Commission electronically. In addition, Commission staff would spend an extensive amount of time processing surrenders of authorizations received by letter. The collection of information saves time for both licensees and Commission staff since they are received in IBFS electronically and include only the information that is essential to process the requests in a timely manner. Furthermore, the E-filing module expedites the Commission staff's announcement of surrenders of authorizations via Public Notice.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–09462 Filed 4–30–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0019]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below (OMB Control No. 3064–0019).

DATES: Comments must be submitted on or before July 1, 2024.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

1. *Title:* Interagency Notice of Change in Control.

OMB Number: 3064–0019.

Form Number: 6822/01.

Affected Public: Individuals, insured state nonmember banks, and insured state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB NO. 3064–0019)

Information collection (IC) (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Form 6822/01—Interagency Notice of Change in Control, 12 CFR 303.85 (Mandatory).	Reporting (On Occasion) ...	34	0.82	29:30	826
2. Interagency Notice of Change in Control Public Notice Requirement, 12 CFR 303.87 (Mandatory).	Disclosure (On Occasion) ..	34	0.82	01:00	28
Total Annual Burden (Hours)	.....	.....	.....	.....	854

Source: FDIC.

General Description of Collection: Section 7(j) of the FDIA (12 U.S.C. 1817(j)) and sections 303.80–88 of the FDIC Rules and Regulations (12 CFR 303.80 *et seq.*) require that any person proposing to acquire control of an insured depository institution and certain parent companies thereof provide 60 days prior written notice of the proposed acquisition to the appropriate federal banking agency. Such written notice which pertains to the acquisition of control of an FDIC supervised institution and certain parent companies thereof is filed with the regional director of the FDIC region in which the bank is located. The FDIC reviews the information reported in the Notice to assess, in part, any anticompetitive and monopolistic effects of the proposed acquisition, to determine if the financial condition of any acquiring person or the future prospects of the institution might jeopardize the financial stability of the institution or prejudice the interests of the depositors of the institution, and to determine whether the competence, experience, or integrity of any acquiring person, or of any of the proposed management personnel, indicates that it would not be in the interest of the depositors of the institution, or in the interest of the public, to permit such persons to control the bank. The FDIC must also make an independent determination of the accuracy and completeness of all of the information required to be filed in conjunction with a Notice.

The FDIC is increasing the total burden associated with this collection from 549 hours to 854 hours. This information collection contains a disclosure requirement, which was not recognized in the 2021 submission. The 305 increase in burden hours is due to the addition of the disclosure requirement and the use of a more accurate methodology to estimate the number of respondents and responses per respondent.

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, April 26, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–09374 Filed 4–30–24; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or

documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201392–001.

Agreement Name: Yang Ming Joint Service Agreement.

Parties: Yang Ming Marine Transport Corp.; Yang Ming (Singapore) Pte. Ltd.

Filing Party: Joshua Stein, Cozen O'Connor.

Synopsis: The Amendment deletes Yang Ming (UK) Limited as a party to the agreement.

Proposed Effective Date: 04/26/2024.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/68502.

Agreement No.: 201425.

Agreement Name: HMM/SML Slot Exchange Agreement.

Parties: HMM Co., Ltd.; SM Line Corporation.

Filing Party: Joshua Stein, Cozen O' Connor.

Synopsis: The Agreement authorizes HMM Co., Ltd., (''HMM'') and SM Line Corporation (''SML'') to exchange slots between all ports in the Republic of Korea and China on the one hand and ports on the U.S. Pacific Coast on the other hand.

Proposed Effective Date: 06/7/2024.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/86560.

Agreement No.: 201426.

Agreement Name: Cinco/Hyundai Glovis Space Charter.

Parties: Cinco International HongKong Limited; Hyundai Glovis Co. Ltd.

Filing Party: Wayne Rohde, Cozen O' Connor.

Synopsis: The Agreement authorizes Cinco to charter space to Hyundai Glovis in the trade between China and South Korea, on the one hand, and ports on the U.S. West Coast, on the other hand.

Proposed Effective Date: 04/26/2024.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/86562.

Dated: April 26, 2024.

Carl Savoy,

Federal Register Alternate Liaison Officer.

[FR Doc. 2024–09397 Filed 4–30–24; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

National Shipper Advisory Committee May 2024 Meeting

AGENCY: Federal Maritime Commission.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: Notice is hereby given of a meeting of the National Shipper Advisory Committee (NSAC), pursuant to the Federal Advisory Committee Act. The Committee advises the Federal Maritime Commission. The meeting will be held for the purpose of soliciting and discussing information, insight, and expertise pertaining to conditions in the ocean freight delivery system relevant to the Commission.

DATES: The Committee will meet in-person in Tacoma, WA, on May 20, 2024, from 1 p.m. until 3 p.m. Pacific time. Please note that this meeting may adjourn early if the Committee has completed its business.

ADDRESSES: The meeting will be held at the Fabulich Center located at 3600 Port of Tacoma Rd., Tacoma, WA 98424. This meeting will be open to the public. Requests to register should be submitted to *nsac@fmc.gov* and contain ''REGISTER FOR NSAC MEETING'' in the subject line. The deadline for members of the public to register to attend the meeting in-person is Thursday, May 16 at 5 p.m. eastern. The meeting will also stream virtually, and a link will be distributed in advance of the meeting to those who register in advance. Please note in the registration request if you would like to attend in person or virtually.

FOR FURTHER INFORMATION CONTACT: Mr. Dylan Richmond, Designated Federal Officer of the National Shipper Advisory Committee, phone: (202) 523–5810; email: *drichmond@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The National Shipper Advisory Committee is a Federal advisory committee. It operates under the provisions of the Federal Advisory Committee Act, 5 U.S.C. app., and 46 U.S.C. chapter 425. The Committee was established on January 1, 2021, when the National Defense Authorization Act for Fiscal Year 2021 became law. Public Law 116–283, section 8604, 134 Stat. 3388 (2021). The Committee provides information, insight, and expertise pertaining to conditions in the ocean freight delivery system to the Commission. Specifically, the Committee advises the Federal Maritime Commission on policies relating to the competitiveness, reliability, integrity, and fairness of the international ocean freight delivery system. 46 U.S.C. 42502(b).

The Committee will receive an update from each of its subcommittees. The Committee may receive proposals for recommendations to the Federal Maritime Commission and may vote on these recommendations. Any proposed recommendations will be available for the public to view in advance of the meeting on the NSAC's website, *https://www.fmc.gov/industry-oversight/national-shipper-advisory-committee/.* The Committee will also take public comment in the meeting.

Public Comments: The Committee will take public comment at its meeting and are particularly interested in receiving feedback regarding their objectives and ongoing discussions.

Members of the public may also submit written comments to NSAC at any time. Comments should be addressed to NSAC, c/o Dylan Richmond, Federal Maritime Commission, 800 North Capitol St. NW, Washington, DC 20573 or *nsac@fmc.gov.*

A copy of all meeting documentation, including meeting minutes, will be available at *www.fmc.gov* following the meeting.

By the Commission.

Dated: April 26, 2024.

David Eng,

Secretary.

[FR Doc. 2024–09415 Filed 4–30–24; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

[Docket No. 24–18]

ACCESS ONE TRANSPORT, INC., Complainant v. CMA CGM S.A., Respondent; Notice of Filing of Complaint and Assignment

Served: April 26, 2024.

Notice is given that a complaint has been filed with the Federal Maritime Commission (the ''Commission'') by Access One Transport, Inc. (the ''Complainant'') against CMA CGM S.A. (the ''Respondent''). Complainant states that the Commission has subject matter jurisdiction over the complaint pursuant to the Shipping Act of 1984, as amended, 46 U.S.C. 40101 *et seq.* and personal jurisdiction over the Respondent as an ocean common

carrier, as defined in 46 U.S.C. 40102(7) and (18).

Complainant is a corporation with a place of business in Gardena, California that operates as a licensed motor carrier.

Complainant identifies Respondent as a corporation organized under the laws of France with a corporate headquarters in Marseille, France who does business in the United States through CMA CGM (America) LLC, with its principal place of business in Norfolk, Virginia.

Complainant alleges that Respondent violated 46 U.S.C. 41102(c), 41104(a)(3) and 41104(a)(8). Complainant alleges these violations arose from acts or omissions of the Respondent that rendered Complainant unable to return empty containers within the allowable free time, including the imposition of dual transaction restrictions and return limits, and the unavailability of appointments. Complainant also alleges these violations caused various damages to the Complainant, including detention charges, chassis charges, storage costs, stop off charges, and re-delivery charges.

An answer to the complaint must be filed with the Commission within 25 days after the date of service.

The full text of the complaint can be found in the Commission's electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/24-18/.* This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by April 28, 2025, and the final decision of the Commission shall be issued by November 11, 2025.

David Eng,

Secretary.

[FR Doc. 2024–09416 Filed 4–30–24; 8:45 am]

BILLING CODE 6730–02–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–XXXX)

Docket No. 2024–0001; Sequence No. 2] Submission for OMB Review; Actual Place of Residence Determination (GSA Form 5047)

AGENCY: Office of Human Resource Management, Division of Human Capital Policy and Programs, General Services Administration (GSA).

ACTION: Notice of request for comments regarding a request for a new OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement.

DATES: Submit comments on or before May 31, 2024.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colin C. Bennett, Human Resources Specialist, Office of Human Resources Management, Division of Human Capital Policy and Programs, at telephone 240–418–6822 or via email to *colin.bennett@gsa.gov* for clarification of content.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) routinely hires, reassigns, promotes and transfers Federal employees to duty stations in foreign areas (*i.e.,* locations outside of the United States, its territories and possessions). For this staffing activity, GSA pays for the cost of relocation, known as ''permanent change of station'' relocation benefits (see further 5 U.S.C. 5722(a) and 5724(d)). Relocation benefits include the cost of travel and transportation, as well as the cost of shipment of household goods to a new post outside of the Continental United States. In addition, most overseas employees are eligible for ''renewal agreement travel,'' a travel reimbursement authority that allows agency to leverage funds to pay for periodic travel back to the United States between overseas tours of duty for paid time off, known as ''home leave'' (see further, 5 U.S.C. 5728(a) and 5 U.S.C. 6305(a)).

For an agency to calculate the costs of relocation as well as renewal agreement travel, both federal travel laws require that the employee (or appointee) designate an ''actual place of residence.'' When such residence cannot be easily determined by the job candidate, the agency must instead make an administrative residency determination on behalf of the employee. The new GSA Form 5047 will help agency representatives (*i.e.,* human resources specialists) make a determination of the actual place of residence based upon documents and input provided by the job candidates, considered members of the public.

Typically, agencies use the definition of ''residence'' from the Immigration and Naturalization Act of 1952, codified at 5 U.S.C. 1101(33), which defines ''residence'' as a ''place of general abode'' or the ''principal, actual dwelling place in fact, without regard to intent.'' While for most employees (or appointees) the determination of an actual place of residence in the U.S. is typically straightforward, residency may be unclear if the appointee is already overseas and has been overseas for a long period of time. Long-term posts overseas are often characterized by the lease (or even sale) of the employee's primary U.S. dwelling, changes in the declared U.S. voting registration location, and/or changes in the state and local income or property tax jurisdictions.

To more effectively administer permanent change of station relocation as well as renewal agreement travel, the General Services Administration (GSA) has created a new agency form, GSA Form 5047, *Actual Place of Residence Determination.* This form will allow employees, job candidates, and the agency's human resources specialists, to more easily determine the actual place of residence by working through a series of guided questions on the form's worksheet. Following completion of the form's worksheet, the employee, candidate, and human resources specialist can summarize the determination on the form's front cover sheet.

The questions on the worksheet portion of the form are drawn from governing administrative law authorities, primary Comptroller General decisions such as: *Rafael Arroyo,* decision B–197205 (May 16, 1980), decision B–157548 (Sept. 13, 1965), 45 Comp. Gen. 136, and decision B–140748 (Oct. 29, 1959), 39 Comp. Gen. 337. Under these administrative law authorities, the place of actual residence is established at the time of appointment or transfer (see also decision B–136029, June 24, 1958, 37 Comp. Gen. 846). Use of this form is therefore recommended for all overseas appointments, transfers or reassignments and, in particular, those personnel selections of job candidates via agency transfer employed by a different U.S. Government agency and already present overseas.

Use of this form will allow GSA to comply with the Federal Travel Regulations, which require the administrative determination and documentation of the actual place of residence for all overseas appointments or placements (see further 41 CFR 302–3.509). In addition, this form will also

allow the agency to leverage the renewal agreement travel authority (*i.e.,* the Home Leave Act of 1954, 68 Stat. 1008) only when appropriate and not in the rare cases of local foreign hires who have severed all jurisdictional nexuses with the U.S.

Significantly, this residency determination form can also be used to determine eligibility for the following other overseas allowance and benefit authorities: (a) the 45-day annual leave accrual authority (5 U.S.C. 6304(b)), (b) home leave (5 U.S.C. 6305(a)) and (c) living quarters allowance (5 U.S.C. 5923(a)(2)). Under each of these authorities, local hires who currently live in foreign areas are excluded from benefits eligibility unless they can demonstrate that foreign residence is temporary, is only pursuant to continuous employment overseas with the U.S. Government (or other U.S. interest), and finally, there exists a contractual transportation agreement that provides for the eventual return of the job candidate to a specifically-identified place of actual residence within the U.S.

B. Annual Reporting Burden

Respondents: 25 per year.
Responses per Respondent: 1.
Total Annual Responses: 25.
Hours per Response: 1.
Total Burden Hours: 25.

C. Public Comments

A 60-day notice was published in the **Federal Register** at 89 FR 13341 on February 22, 2024. No comments were received.

Obtaining copies of proposals: We have provided a copy of the proposed draft GSA Form 5047 at the end of this notice below the signature block. A copy of the proposed draft form can alternatively be obtained through GSA's Regulatory Secretariat Division by calling (202) 501–4755 or emailing *GSARegSec@gsa.gov*. Please cite OMB Control No. 3090–XXXX, *Actual Place of Residency Determination (GSA Form 5047),* in all correspondence.

Lois Mandell,

Director, Regulatory Secretariat Division, General Services Administration.

BILLING CODE 6820–FM–P

GSA Form 5047

ACTUAL PLACE OF RESIDENCE DETERMINATION
SECTION A - COVER SHEET

Name of Candidate

First _____ MI ____ Last _____

BACKGROUND. An employee's "actual place of residence in the U.S.," as determined by an appointing agency, is a statutory requirement that determines eligibility for "permanent change of station" (PCS) relocation costs (5 U.S.C. §§ 5722 and 5724(d)) under the Administrative Expenses Act of 1946 and home leave travel cost reimbursement (also known as "renewal agreement travel," 5 U.S.C. § 5728) under the Home Leave Act of 1954.

Note: This residency determination form can also be used to determine eligibility for: (a) the 45-day annual leave accrual authority (5 U.S.C. § 6304(b)), from the Annual and Sick Leave Act of 1951, (b) home leave (5 U.S.C. § 6305(a)) and (c) living quarters allowance (5 U.S.C. § 5923(a)(2)), both from the Overseas Allowances Act of 1960.

Under GSA Order 5730.1, usually the "actual place of residence" is the principal, actual dwelling place in fact, without regard to intent, at the time of selection for appointment or transfer. (See 8 U.S.C. § 1101(a)(33)). This rule is used for candidates who are selected while residing within the U.S.

For candidates residing in the U.S. at the time of appointment or transfer, the actual place of residence is [Worksheet Not Required]:

City _____ State (Postal Abbreviation) ____

For Department of Defense candidates residing in a foreign area at the time of selection by transfer, the actual place of residence determination is made as follows:

For employees selected from the Department of Defense, use the "Actual Residence at Time of Appointment," Line Item G, of DoD Form 1617, *Transfer of Civilian Employees Outside of CONUS*. Under GSA longstanding travel policy (i.e., former 41 C.F.R. § 302-1.12(c)(3)(iii), 1997 edition) this is considered a continuous designation unless this designation was in error or later circumstances entitle a different determination. The residence listed on the DoD Form 1617 is **[Worksheet Not Required]**:

City _____ State (Postal Abbreviation) ____

When Worksheet Required:

For candidates from DoD residing in a foreign area at the time of selection by transfer, who do not have the DoD Form 1617 available, as well as candidates from other federal agencies (e.g., Commerce Department, State Department, USAID), GSA must make an administrative determination of the actual place of residence. Use this form's worksheet to determine the most appropriate actual place of residence.

The generally recognized test for the "actual place of residence" test within GSA and other agencies is based upon the Comptroller General Opinions, *Rafael Arroyo*, B-197205, May 16, 1980, B-157548, 45 Comp. Gen. 136 (1965), and B-140748, 39 Comp. Gen. 337 (1959). These administrative law decisions require the employing office, at the time of appointment or transfer, to determine (and then document) the "actual place of residence" by consideration of the following categories of evidence:

(1) Physical residence (i.e., actual dwelling place of fact, regardless of intent, under 8 U.S.C. § 1101(a)(33)) discussed above) at the time of selection;
(2) Residence provided in agency records;
(3) Residence according to employment history;
(4) Individual or family association with an area;
(5) Exercising the privileges and duties of citizenship, such as: voting or paying state income or property taxes; and
(6) Place of birth, education, and marriage.

Based on evaluation of all the above facts and documents available, and following completion of the worksheet below, the employee's "actual place of residence" is:

Country (U.S. or Foreign)

City State (if U.S.)

Name of Human Resources Specialist

Signature (Human Resources Specialist)

Date

SECTION B
ACTUAL PLACE OF RESIDENCE WORKSHEET

Based on *Rafael Arroyo*, Comptroller General decision B-197205 (1980), and other administrative law sources. Consider the preponderance of the evidence (from below) if there are multiple possible places of residence.

Name of Candidate

First _____ MI _____ Last _____

Current Physical Residence at Time of Appointment or Transfer
August 24, 1955, B-124663, 35 Comp. Gen. 101; B-122796, November 4, 1955, 35 Comp. Gen. 270

Country (U.S. or Foreign) _____

City _____ State (if U.S.) _____

Can this residence be considered temporary and only incident to the performance of Government duties? If Yes, disregard this factor (45 Comp. Gen. 136):

Yes ☐ No ☐

Note: If the current location is a foreign county, be aware that the appointee may not be eligible for foreign allowances and benefits. The 45-day annual leave accrual, home leave, renewal agreement travel, and living quarters allowance authorities all require current residents of foreign countries to have that foreign residence only temporarily, pursuant only to continuous U.S. Government employment, and supported by a documented transportation agreement (such as DoD Form 1617) that stipulates eventual return transportation to an annotated place of actual residence in the U.S. While B-122796, November 4, 1955, 35 Comp. Gen. 270 permits GSA to provide reciprocity to job candidates appointed by transfer from other agencies, in certain circumstances, such appointees are instead foreign "local" hires, meaning, they lack sufficient jurisdictional connections to the United States and are unable to satisfy the eligibility requirements of those authorities (i.e. continuous U.S. employment overseas pursuant to a documented transportation agreement). In situations where a documented transportation agreement was known to exist, and has been subsequently lost, or cannot be located, the job candidate's resume can be used instead to support continuous employment overseas by the U.S. Government and the transportation agreement requirement can be supported by obtaining a copy of the original relocation package used to send the job candidate overseas by the losing agency under the Administrative Expenses Act of 1946.

Residence Provided in Agency Records
(e.g., Mailing Address for W-2 and Leave and Earnings Statements)
B-125293, October 28, 1955, 35 Comp. Gen. 244

Country (U.S. or Foreign)

City State (if U.S.)

Historical Residence While Employed
(i.e., residence during the prior 5 years)
B-125293, October 28, 1955, 35 Comp. Gen. 244

Country (U.S. or Foreign)

City State (if U.S.)

Family Connections
B-140748, 39 Comp. Gen. 337 (1959); B-125293, October 28, 1955, 35 Comp. Gen. 244

Does your family (e.g., parents, siblings) live in a particular location where you maintain a historical or affinity connection? (For example, where you own a family burial plot and/or where you plan to retire at the conclusion of Federal service.)

Yes No

If Yes: City State (if U.S.)

Voting and Paying Taxes
January 15, 1947, 26 Comp. Gen. 488 and B-125293, October 28, 1955, 35 Comp. Gen. 244

1. Are you currently a registered U.S. voter?
   Yes No I am not sure
2. If you have voted in the past in U.S. elections, either in person, or by mail (e.g., absentee ballot), what historically has been your voting jurisdiction?

County State

3. Do you currently pay U.S. income tax? Yes No
4. Do you currently pay U.S. State and/or local Income tax? Yes No
5. If you currently pay U.S. State tax and/or local tax, what state and/or local jurisdiction?

State

Local Jurisdiction (County, City, etc.)

6. Do you pay income tax to a foreign country? Yes ☐ No ☐
7. If you pay income tax to a foreign country, what country?

Long-standing connections through birth, where you spent your youth, education (i.e., secondary schooling and/or college), and/or marriage
B-157548, 45 Comp. Gen. 136 (1965)

Do you identify with a particular U.S. State or Territory due to a long-standing, historical connection, such as through birth, marriage and/or education?

Yes ☐ No ☐

If yes, what State or Territory:

Local Jurisdiction (County, Township, etc.)

Name of Human Resources Specialist

Signature (Human Resources Specialist)

Date

PRIVACY ACT STATEMENT

Information collected via this form is pursuant to federal law, in particular: 5 U.S.C. § 3301 [rules for admission to the Federal service] and 5 U.S.C.§ 3302 [rules for the competitive service]. The information collected also facilitates the correct benefits determination decisions for the accumulation of annual leave (5 U.S.C. § 6304(b)), home leave and related renewal agreement travel (5 U.S.C. § 6305(a) and 5 U.S.C. § 5728(a)), and permanent change of station (5 U.S.C. §§ 5722, 2724a, and 5724(d)). Disclosure of information related to the candidate and position is mandatory under these authorities so that the correct pay and benefits can be provided upon appointment, transfer, or reassignment to a foreign area. Use of this information is governed by Civil Service regulations found within 5 U.S.C. Part 630 and the Federal Travel Regulations under 41 C.F.R. Part 302. The information collected via this form will only be used by the GSA Office of Human Resources Management and the employee's new supervisor under the provisions of 5 U.S.C. § 552a(b)(3) [routine use]. Such information is not releasable to the public due to 5 U.S.C. § 552(b)(6) and will be stored within the Office of Personnel Management's Electronic Personnel Folder (eOPF) application, under System of Record Notice (SORN) "OPM/GOVT-1" at 77 FR 73694 (December 11, 2012). An employee's failure to provide the information requested on this form may lead to the erroneous payment of compensation and benefits, or the non-payment of eligible compensation and benefits.

Instructions for Human Resources Offices

1. Interview the candidate and collect the DoD Form 1617 (if applicable) and demographic information.
2. Complete the Section B Worksheet (if necessary).
3. Based upon the totality of the evidence collected and all available facts (B-157548, Sept. 13, 1965, 45 Comp. Gen. 136), document via the Worksheet and complete the Cover Sheet. The place constituting the actual place of residence must be determined upon the facts and circumstances of each individual case (B-124663, August 24, 1955, 35 Comp. Gen. 101 and September 21, 1955, B-124492).
4. Sign and date both theSection B Worksheet (if applicable) and the Section A Cover Sheet.
5. Submit to the Office of the Chief Financial Officer (OCFO), Travel and Relocation Office, for use in their determination and inclusion within GSA Forms 87A and 2255.

[FR Doc. 2024–09429 Filed 4–30–24; 8:45 am]
BILLING CODE 6820–FM–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3451–FN]

Medicare and Medicaid Programs: Application From the Joint Commission for Initial CMS-Approval of Its Rural Health Clinic (RHC) Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final notice.

SUMMARY: This final notice announces our decision to approve The Joint Commission (TJC) for initial recognition as a national accrediting organization (AO) for rural health clinics (RHCs) that wish to participate in the Medicare or Medicaid programs.

DATES: The decision announced in this notice is applicable June 1, 2024, to June 1, 2028.

FOR FURTHER INFORMATION CONTACT: Caecilia Andrews (410) 786–2190.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a rural health clinic (RHC) provided certain requirements are met by the RHC. Sections 1861(aa)(1) and (2) and 1905(l)(1) of the Social Security Act (the Act), establish distinct criteria for facilities seeking designation as an RHC. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488, subpart A. The regulations at 42 CFR part 491, subpart A, specify the conditions that an RHC must meet to participate in the Medicare program. The scope of covered services and the conditions for Medicare payment for RHCs are set forth at 42 CFR part 405, subpart X.

Generally, to enter into an agreement, an RHC must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 491 of CMS regulations. Thereafter, the RHC 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 survey agencies. Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization (AO) that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an AO is voluntary and is not required for Medicare participation.

If an AO is recognized by the Secretary of Health and Human Services as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national AO applying for CMS approval of their 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 conditions. Our regulations concerning the approval of AOs are set forth at § 488.5.

The Joint Commission (TJC) has requested initial approval by CMS for its RHC program. CMS has reviewed TJC's application as described later in this rule and is hereby announcing TJC's initial term of approval for a period of four years.

II. Approval of Deeming Organization

Section 1865(a)(2) of the Act and our regulations at § 488.5 require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide us with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

III. Provisions of the Proposed Notice

On December 7, 2023, CMS published a proposed notice in the **Federal Register** (88 FR 85290), announcing TJC's request for initial approval of its Medicare rural health clinic (RHC) accreditation program. In that proposed notice, we detailed our evaluation criteria.

Under section 1865(a)(2) of the Act and in our regulations at § 488.5 and § 488.8(h), we conducted a review of TJC's RHC application in accordance with the criteria specified by our regulations, which include, but are not limited to, the following:

- An administrative review of TJC's: (1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its RHC surveyors; (4) ability to investigate and respond appropriately to complaints against accredited RHCs; and (5) survey review and decision-making process for accreditation.
- A review of TJC's survey processes to confirm that a provider or supplier, under TJC's RHC deeming accreditation program, would meet or exceed the Medicare program requirements.
- A documentation review of TJC's survey process to do the following:

++ Determine the composition of the survey team, surveyor qualifications, and TJC's ability to provide continuing surveyor training.

++ Compare TJC's processes to those we require of State survey agencies (SA), including periodic resurvey and the ability to investigate and respond appropriately to complaints against TJC-accredited RHCs.

++ Evaluate TJC's procedures for monitoring an accredited RHC it has found to be out of compliance with TJC's program requirements. (This pertains only to monitoring procedures when TJC identifies non-compliance. If noncompliance is identified by a SA through a validation survey, the SA monitors corrections as specified at § 488.9(c)).

++ Assess TJC's ability to report deficiencies to the surveyed RHC and respond to the RHC's plan of correction in a timely manner.

++ Establish TJC'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 TJC's staff and other resources.

++ Confirm TJC's ability to provide adequate funding for performing required surveys.

++ Confirm TJC's policies with respect to surveys being unannounced.

++ Confirm TJC'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.

++ Obtain TJC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

IV. Analysis of and Responses to Public Comments on the Proposed Notice

In accordance with section 1865(a)(3)(A) of the Act, the December 7, 2023, proposed notice also solicited public comments regarding whether TJC's requirements met or exceeded the Medicare Conditions for Certification (CfCs) for RHCs. We did not receive any public comments.

V. Provisions of the Final Notice

A. Differences Between TJC's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements

We compared TJC's RHC accreditation requirements and survey process with the Medicare conditions set forth at 42 CFR part 491, subpart A, the survey and certification process requirements of parts 488 and 489, and survey process as outlined in the State Operations Manual (SOM). Our review and evaluation of TJC's RHC application, which was conducted as described in section III. of this final notice, yielded the following areas where, as of the date of this notice, TJC has completed revising its standards and certification processes to—

- Meet the Medicare CfC requirements for all of the following regulations:

++ Section 491.2, to clarify the definition of a rural health clinic, specifically that a rural health clinic is not a rehabilitation agency or a facility primarily for the care and treatment for mental diseases, and also to include the definition of the Secretary.

++ Section 491.4, to explicitly reference that an RHC must be in compliance with applicable Federal, State and local laws and regulations.

++ Section 491.4(a) and 491.4(b), to specify that an RHC must be licensed pursuant to applicable State and local law and that staff are licensed, certified or registered in accordance with applicable State and local laws.

++ Section 491.10(a)(2), to include the term ''designated member of the professional staff,'' who are responsible for maintaining the records and for insuring that they are completely and accurately documented, readily accessible, and systematically organized.

In addition to the standards review, CMS reviewed TJC's comparable survey processes, which were conducted as described in section III. of this final notice, and yielded the following areas where, as of the date of this notice, TJC has completed revising its survey processes to demonstrate that it uses survey processes that are comparable to State survey agency processes by:

++ Removing language suggesting survey activities could be completed virtually (as temporarily allowed during the COVID–19 Public Health Emergency (PHE)), since the conclusion of the PHE has occurred.

++ Clarifying that mid-level staffing waivers are only applicable to existing CMS-certified RHCs and that initial enrollment applications for CMS-certification must meet all staffing requirements at 42 CFR 491.8, in accordance with the State Operations Manual (SOM), Appendix G, and SOM Chapter 2.

++ Clarifying, in accordance with SOM, Appendix G, Task 1, that TJC's survey composition includes a Registered Nurse.

++ Ensuring survey procedures align with SOM, Appendix G, Interpretive guidelines at § 491.5(a)(3)(iii), which require that an RHC with additional locations must enroll each permanent unit separately, and each must independently and fully comply with the RHC CfCs.

++ To ensure survey processes align with SOM, Appendix G, Task 3-Observation Methods, related to patient and staff identifiers.

++ Clarifying instructions related to the selection of active patient records consistent with SOM, Appendix G, Task 3.

++ Revise survey documentation, including the survey report and evidence of standard compliance, to include the RHC's name and address, not that of the health system to which it might belong, consistent with regulations at § 413.65 and § 491.5(a)(1).

++ To provide additional surveyor training related to the evaluation of emergency preparedness at § 491.12, specifically related to review of the RHC's risk assessment to ensure that risk assessments account for the patient population served.

++ To provide a survey process for calculating the required time of mid-level staff based on the hours of operations to assess staffing in accordance with § 491.8(a)(6), specifically to ensure a nurse practitioner, physician assistant, or certified nurse-midwife (CNM) is available to furnish patient care services at least 50 percent of the time the RHC operates, even when a physician is also present in the clinic.

++ To provide additional surveyor training related to staffing requirements, including physicians providing medical direction within the RHC, consistent with § 491.8(b)(1).

++ To ensure surveyor guidance includes inspecting all areas within patient care rooms, comparable to SOM, Appendix G, to assess the RHC's physical plant and environment at § 491.6.

++ To update TJC's survey procedures to be comparable to SOM, Appendix G, survey protocol for § 491.9(a)(2) and § 491.9(c)(1) to adequately assess that the RHC is primarily engaged in providing outpatient health services and the RHC staff furnishes those diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at the entry point into the health care delivery system, which includes medical history, physical examination, assessment of health status, and treatment for a variety of medical conditions.

++ To reassess survey time and allocation of survey teams consistent with § 488.5(a)(5) and § 488.5(a)(6), especially for a new deeming program and initial surveys.

B. Term of Approval

Based on our review and observations described in section III. and section V. of this final notice, we approve TJC as a national accreditation organization for RHCs that request participation in the Medicare program. The decision announced in this final notice is effective June 3, 2024, to June 3, 2028 (4 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. chapter 35).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Trenesha Fultz-Mimms, who is the Federal Register Liaison, to electronically sign this document for

purposes of publication in the **Federal Register**.

Trenesha Fultz-Mimms,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2024–09426 Filed 4–30–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Publication of Common Agreement for Nationwide Health Information Interoperability (Common Agreement) Version 2.0

AGENCY: Office of the National Coordinator for Health Information Technology, Department of Health and Human Services.

ACTION: Notice.

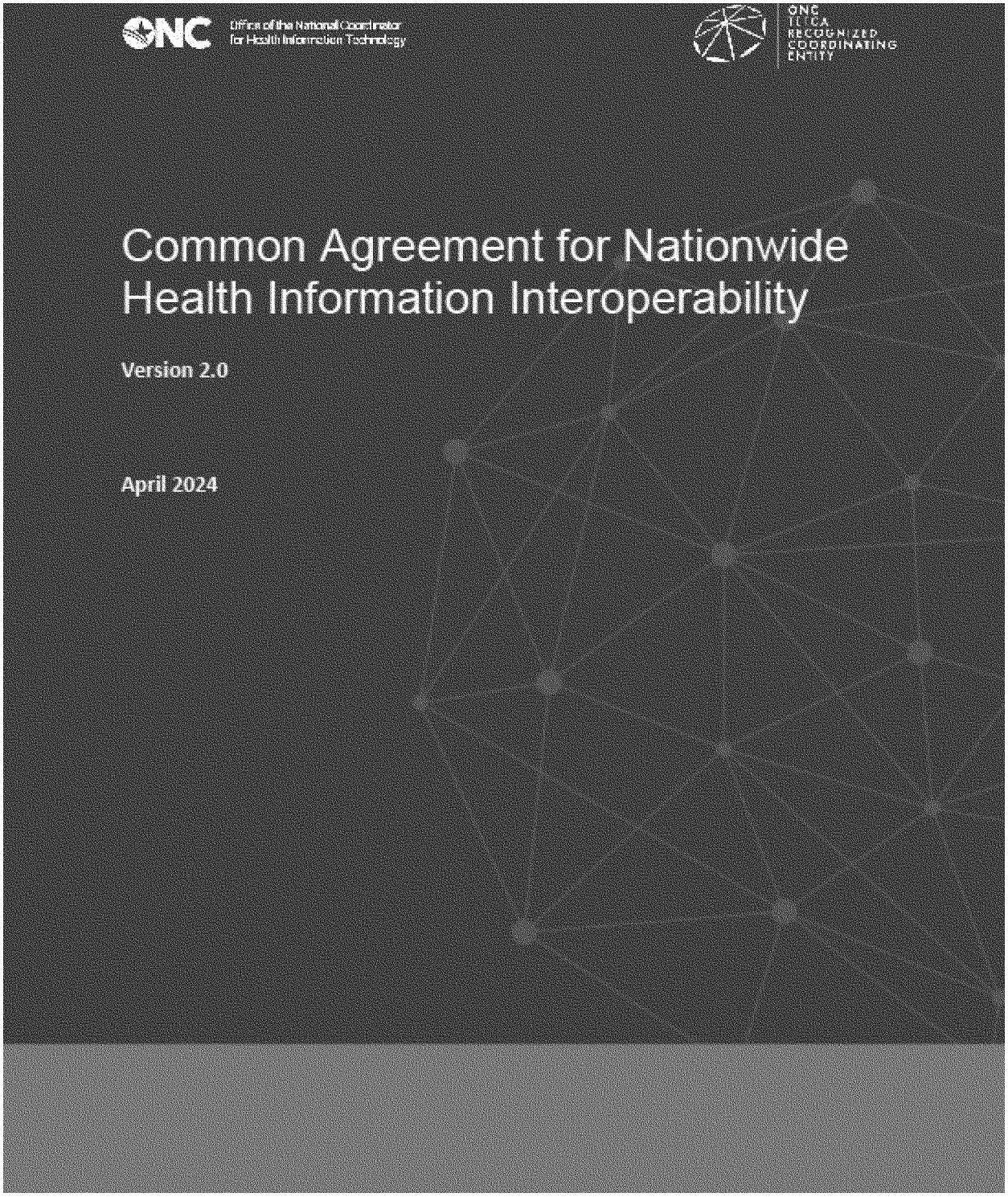
SUMMARY: This notice fulfills an obligation under the Public Health Service Act (PHSA) that requires the National Coordinator for Health Information Technology to publish on the Office of the National Coordinator for Health Information Technology's public internet website, and in the **Federal Register**, the trusted exchange framework and common agreement developed under the PHSA. This notice is for publishing an updated version of the Common Agreement (Version 2.0).

FOR FURTHER INFORMATION CONTACT: Mark Knee, Office of the National Coordinator for Health Information Technology, 202–664–2058.

SUPPLEMENTARY INFORMATION: This notice fulfills the obligation under section 3001(c)(9)(C) of the Public Health Service Act (PHSA) (42 U.S.C. 300jj–11(c)(9)(C)) to publish the trusted exchange framework and common agreement, developed under section 3001(c)(9)(B) of the PHSA (42 U.S.C. 300jj–11(c)(9)(B)), in the **Federal Register**. This publication consists of the following document:

BILLING CODE 4150–45–P

Common Agreement for Nationwide Health Information Interoperability (Common Agreement) Version 2.0


ONC
Office of the National Coordinator for Health Information Technology
ONC
RECOGNIZED
COORDINATING
ENTITY
Common Agreement for Nationwide Health Information Interoperability
Version 2.0
April 2024

COMMON AGREEMENT FOR NATIONWIDE HEALTH INFORMATION INTEROPERABILITY

Version 2.0

April 2024

This document was published by the U.S. Department of Health and Human Services, Office of the National Coordinator for Health Information Technology and was produced at U.S. taxpayer expense. This document meets the requirement in section 3001(c)(9)(C) of the Public Health Service Act for the National Coordinator for Health Information Technology to publish on the Office of the National Coordinator for Health Information Technology's public Internet website, and in the Federal Register, the common agreement (42 U.S.C. 300jj-11(c)(9)(C)).

The Common Agreement for Nationwide Health Information Interoperability

This Common Agreement for Nationwide Health Information Interoperability (the "Common Agreement") is entered into as of the CA Effective Date, by and between The Sequoia Project, Inc., a Virginia non-stock corporation, acting as the current Recognized Coordinating Entity© as defined below (the "RCE™") and _____, a _____ ("Signatory"). RCE and Signatory may also be referred to herein individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Section 4003 of the 21st Century Cures Act directed the U.S. Department of Health and Human Services ("**HHS**") National Coordinator for Health Information Technology to, "in collaboration with the National Institute of Standards and Technology and other relevant agencies within the Department of Health and Human Services, for the purpose of ensuring full network-to-network exchange of health information, convene public-private and public-public partnerships to build consensus and develop or support a trusted exchange framework, including a common agreement among health information networks nationally" (the "Trusted Exchange Framework and Common Agreement"℠ or TEFCA℠);

WHEREAS, this Common Agreement (including the documents incorporated herein by reference) is the common agreement developed pursuant to Section 4003 of the 21st Century Cures Act;

WHEREAS, The Sequoia Project has been selected by the Office of the National Coordinator for Health Information Technology ("ONC") to serve as the RCE for purposes of implementing, maintaining, and updating this Common Agreement, including the Qualified Health Information Network™ ("QHIN™") Technical Framework, as well as managing the activities associated with the designation of interested health information networks ("HINs") as QHINs (as defined and set forth in this Common Agreement);

WHEREAS, Signatory wishes to be Designated as a QHIN and has completed the application and testing process toward such Designation;

WHEREAS, Signatory must, among other conditions set forth in this Common Agreement, agree to be bound by the terms of this Common Agreement before Signatory may be designated as a QHIN and, upon signing this Common Agreement, Signatory agrees to be so bound as a Signatory and as a QHIN, if so Designated, as the case may be;

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, mutually agree as set forth below.

AGREEMENT

1. Definitions and Relevant Terminology.

1.1 Defined Terms. Capitalized terms used in this Common Agreement shall have the meaning set forth below. Where a definition includes one or more citations to a statute, regulation, or standard, the definition shall be interpreted to refer to such statute, regulation, or standard as may be amended from time-to-time.

Applicable Law: all federal, State, local, or tribal laws and regulations then in effect and applicable to the subject matter herein. For the avoidance of doubt, federal agencies are only subject to federal law.

Breach of Unencrypted Individually Identifiable Information: the acquisition, access, or Disclosure of unencrypted Individually Identifiable Information maintained by an IAS Provider that compromises the security or privacy of the unencrypted Individually Identifiable Information.

Business Associate: has the meaning assigned to such term at 45 CFR § 160.103.

Business Associate Agreement (BAA): a contract, agreement, or other arrangement that satisfies the implementation specifications described within 45 CFR § 164.314(a) and 164.504(e), as applicable.

Common Agreement: unless otherwise expressly indicated, the Common Agreement for Nationwide Health Information Interoperability, the QHIN Technical Framework (QTF), all Standard Operating Procedures (SOPs), and all other attachments, exhibits, and artifacts incorporated therein by reference.

Common Agreement (CA) Effective Date: if (i) Signatory was Designated as a QHIN prior to the Implementation Date, then the Implementation Date; or (ii) if Signatory was Designated as a QHIN after the Implementation Date, then the date that the RCE executes the Common Agreement to which Signatory is a Party.

Confidential Information: any information that is designated as Confidential Information by a CI Discloser, or that a reasonable person would understand to be of a confidential nature, and is disclosed to a CI Recipient pursuant to or in connection

with a Framework Agreement. For the avoidance of doubt, "Confidential Information" does not include electronic protected health information (ePHI), as defined in a Framework Agreement, that is subject to a Business Associate Agreement or other provisions of a Framework Agreement.

Notwithstanding any label to the contrary, "Confidential Information" does not include any information that: (i) is or becomes known publicly through no fault of the CI Recipient; or (ii) is learned by the CI Recipient from a third party that the CI Recipient reasonably believes is entitled to disclose it without restriction; or (iii) is already known to the CI Recipient before receipt from the CI Discloser, as shown by the CI Recipient's written records; or (iv) is independently developed by the CI Recipient without the use of or reference to the CI Discloser's Confidential Information, as shown by the CI Recipient's written records, and was not subject to confidentiality restrictions prior to receipt of such information from the CI Discloser.

Confidential Information (CI) Discloser: a person or entity that discloses Confidential Information.

Confidential Information (CI) Recipient: a person or entity that receives Confidential Information.

Connectivity Services: the technical services provided by a QHIN, Participant, or Subparticipant to its Participants and Subparticipants that facilitate TEFCA Exchange and are consistent with the requirements of the then-applicable QHIN Technical Framework.

Contract: the Contract by and between The Sequoia Project and HHS, or, if applicable, a successor agreement between The Sequoia Project and HHS or a successor agreement between a different RCE and HHS.

Covered Entity: has the meaning assigned to such term at 45 CFR § 160.103.

Cybersecurity Council: the council established by the RCE to enhance cybersecurity commensurate with the risks in TEFCA Exchange, as more fully set forth in an SOP.

Designated Network: the Health Information Network that Signatory uses to offer and provide the Designated Network Services.

Designated Network Governance Body: a representative and participatory group or groups that approve the processes for fulfilling the Governance Functions and participate in such Governance Functions for Signatory's Designated Network.

Designated Network Services: the Connectivity Services or Governance Services.

Designation (including its correlative meanings "Designate," "Designated," and "Designating"): the RCE's written confirmation to ONC and Signatory that Signatory has satisfied all the requirements of the Common Agreement, the QHIN Technical Framework, all applicable SOPs, and is now a QHIN.

Directory Entry(ies): listing of each Node controlled by a QHIN, Participant or Subparticipant, which includes the endpoint resource for such Node(s) and any other organizational or technical information required by the QTF or an applicable SOP.

Disclosure (including its correlative meanings "Disclose," "Disclosed," and "Disclosing"): the release, transfer, provision of access to, or divulging in any manner of TEFCA Information (TI) outside the entity holding the information.

Discover (including its correlative meanings "Discovery" and "Discovering"): the first day on which something is known to the QHIN, Participant, or Subparticipant, or by exercising reasonable diligence would have been known, to the QHIN, Participant or Subparticipant.

Discriminatory Manner: any act or omission that is inconsistently taken or not taken with respect to any similarly situated QHIN, Participant, Subparticipant, Individual, or group of them, whether it is a competitor, or whether it is affiliated with or has a contractual relationship with any other entity, or in response to an event.

Dispute: (i) a disagreement about any provision of this Common Agreement, including any SOP, the QTF, and all other attachments, exhibits, and artifacts incorporated by reference; or (ii) a concern or complaint about the actions, or any failure to act, of Signatory, the RCE, any other QHIN, or another QHIN's Participant(s) or Subparticipant(s).

Dispute Resolution Process: the non-binding Dispute resolution process set forth in an SOP.

Electronic Protected Health Information (ePHI): has the meaning assigned to such term at 45 CFR § 160.103.

Exchange Purpose(s) or XP(s): the reason, as authorized by a Framework Agreement, including the applicable SOP(s), for a transmission, Query, Use, Disclosure, or Response transacted through TEFCA Exchange.

Framework Agreement(s): with respect to QHINs, the Common Agreement; and with respect to a Participant or Subparticipant, the Participant/Subparticipant Terms of Participation (ToP).

FHIR Endpoint: has the meaning assigned to such term in the Health Level Seven International® (HL7®) Fast Healthcare Interoperability Resources (FHIR®) Specification available at https://hl7.org/fhir/r4/, as such specification may be amended, modified or replaced.

FTC Rule: the Health Breach Notification Rule promulgated by the Federal Trade Commission set forth at 16 CFR Part 318.

Governing Council: the permanent governing body for activities conducted under the Framework Agreements, as more fully described in the applicable SOP(s).

Government Benefits Determination: a determination made by any agency, instrumentality, or other unit of the federal, State, local, or tribal government as to whether an Individual qualifies for government benefits for any purpose other than health care (e.g., Social Security disability benefits) to the extent permitted by Applicable Law. Disclosure of TI for this purpose may require an authorization that complies with Applicable Law.

Government Health Care Entity: any agency, instrumentality, or other unit of the federal, State, local, or tribal government to the extent that it provides health care services (e.g., treatment) to Individuals but only to the extent that it is not acting as a Covered Entity.

Governance Functions: the functions, activities, and responsibilities of the Designated Network Governance Body as set forth in an applicable SOP.

Governance Services: the governance functions described in applicable SOP(s), which are performed by a QHIN's Designated Network Governance Body for its Participants and Subparticipants to facilitate TEFCA Exchange in compliance with the then-applicable requirements of the Framework Agreements.

Health Care Provider: meets the definition of such term in either 45 CFR § 171.102 or in the HIPAA Rules at 45 CFR § 160.103.

Health Information Network (HIN): has the meaning assigned to the term "Health Information Network or Health Information Exchange" in the information blocking regulations at 45 CFR § 171.102.

HIPAA: the Health Insurance Portability and Accountability Act of 1996, Pub. Law 104-191, and the Health Information Technology for Economic and Clinical Health Act of 2009, Pub. Law 111-5.

HIPAA Rules: the regulations set forth at 45 CFR Parts 160, 162, and 164.

HIPAA Privacy Rule: the regulations set forth at 45 CFR Parts 160 and 164, Subparts A and E.

HIPAA Security Rule: the regulations set forth at 45 CFR Part 160 and Part 164, Subpart C.

Implementation Date: the date sixty (60) calendar days after publication of version 2 of the Common Agreement in the Federal Register.

Individual: has the meaning assigned to such term at 45 CFR § 171.202(a)(2).

Individual Access Services Incident (IAS Incident): a TEFCA Security Incident or a Breach of Unencrypted Individually Identifiable Information maintained by an IAS Provider.

Individual Access Services Provider (IAS Provider): each QHIN, Participant, and Subparticipant that offers Individual Access Services (IAS).

Individual Access Services (IAS): the services provided to an Individual by a QHIN, Participant, or Subparticipant that has a direct contractual relationship with such Individual in which the QHIN, Participant, or Subparticipant, as applicable, agrees to satisfy that Individual's ability to use TEFCA Exchange to access, inspect, obtain, or transmit a copy of that Individual's Required Information.

IAS Consent: an IAS Provider's own supplied form for obtaining express written consent from the Individual in connection with the IAS.

Individually Identifiable Information: information that identifies an Individual or with respect to which there is a reasonable basis to believe that the information could be used to identify an Individual.

Initiating Node: a Node through which a QHIN, Participant, or Subparticipant initiates transactions for TEFCA Exchange.

Node: a technical system that is controlled directly or indirectly by a QHIN, Participant, or Subparticipant and that is listed in the RCE Directory Service.

Non-HIPAA Entity (NHE): a QHIN, Participant, or Subparticipant that is neither a Covered Entity nor a Business Associate as defined under the HIPAA Rules with regard to activities under a Framework Agreement. To the extent a QHIN, Participant, or Subparticipant is a Hybrid entity, as defined in 45 CFR § 164.103, such QHIN, Participant, or Subparticipant shall be considered a Non-HIPAA Entity with respect to TEFCA Exchange activities related to such QHIN, Participant, or Subparticipant's non-covered components.

ONC: the U.S. Department of Health and Human Services Office of the National Coordinator for Health Information Technology.

Participant: to the extent permitted by applicable SOP(s), a U.S. Entity that has entered into the ToP in a legally binding contract with a QHIN to use the QHIN's Designated Network Services to participate in TEFCA Exchange in compliance with the ToP.

Participant/Subparticipant Caucus: a forum established pursuant to an applicable SOP(s), the purpose of which is for the Participants and Subparticipants to meet and discuss issues of interest directly related to TEFCA Exchange and related activities under the Framework Agreements.

Participant/Subparticipant Terms of Participation (ToP): the requirements set forth in Exhibit 1 to the Common Agreement to which: QHINs must contractually obligate their Participants to agree; to which QHINs must contractually obligate their Participants to contractually obligate their Subparticipants and Subparticipants of the Subparticipants to agree, in order to participate in TEFCA Exchange including the QHIN Technical Framework (QTF), all applicable Standard Operating Procedures (SOPs), and all other attachments, exhibits, and artifacts incorporated therein by reference.

Passthrough Node: a Node that is neither an Initiating nor Responding Node and through which a QHIN, Participant, or Subparticipant transmits transactions to and from Initiating and Responding Nodes, including any other services it provides.

Privacy and Security Notice: an IAS Provider's own supplied written privacy and security notice that contains the information required by the applicable SOP(s).

Protected Health Information (PHI): has the meaning assigned to such term at 45 CFR § 160.103.

Public Health Authority: has the meaning assigned to such term at 45 CFR § 164.501.

QHIN Technical Framework (QTF): the most recent effective version of the document that contains the technical, functional, privacy, and security requirements for TEFCA Exchange.

Qualified Health Information Network (QHIN): to the extent permitted by applicable SOP(s), a Health Information Network that is a U.S. Entity that has been Designated by the RCE and is a Party to the Common Agreement countersigned by the RCE.

QHIN Caucus: a forum established pursuant to an applicable SOP(s), the purpose of which is for the QHINs to meet and discuss issues of interest directly related to TEFCA Exchange and related activities under the Framework Agreements.

Query(ies) (including its correlative uses/tenses "Queried" and "Querying"): the act of asking for information through TEFCA Exchange.

RCE Directory Service: a technical service provided by the RCE that enables QHINs to identify their Nodes to enable TEFCA Exchange. The requirements for use of, inclusion in, and maintenance of the RCE Directory Service are set forth in the Framework Agreements, QTF, and applicable SOPs.

Recognized Coordinating Entity (RCE): the entity selected by ONC that enters into the Common Agreement with QHINs in order to impose, at a minimum, the requirements of the Common Agreement, including the SOPs and the QTF, on the QHINs and administer such requirements on an ongoing basis. The RCE is a Party to the Common Agreement.

Required Information: the Electronic Health Information, as defined in 45 CFR § 171.102, that is (i) maintained in a Responding Node by any QHIN, Participant, or Subparticipant prior to or during the term of the applicable Framework Agreement and (ii) relevant for a required XP Code, as set forth in the QTF or an applicable SOP(s).

Responding Node: a Node through which the QHIN, Participant, or Subparticipant Responds to a received transaction for TEFCA Exchange.

Response(s) (including its correlative uses/tenses "Responds," "Responded" and "Responding"): the act of providing the information that is the subject of a Query or otherwise transmitting a message in response to a Query through TEFCA Exchange.

Security Posture: the security status of an entity's networks, information, and systems based on information assurance resources including, without limitation, people, hardware, software, and policies, and capabilities in place to manage the defense of the entity's networks, information, and systems and to react as the situation changes (derived from NIST Definition 800-30r1).

Signatory: the entity that has satisfied Section 4.1 and is a Party to the Common Agreement.

Standard Operating Procedure(s) or SOP(s): a written procedure or other provision that is adopted pursuant to the Common Agreement and incorporated by reference into a Framework Agreement to provide detailed information or requirements related to TEFCA Exchange, including all amendments thereto. Each SOP identifies the relevant group(s) to which the SOP applies, including whether Participants or Subparticipants are required to comply with a given SOP.

State: any of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

Subparticipant: to the extent permitted by applicable SOP(s), a U.S. Entity that has entered into the ToP in a legally binding contract with a Participant or another Subparticipant to use the Participant's or Subparticipant's Connectivity Services to participate in TEFCA Exchange in compliance with the ToP.

TEFCA Exchange: the transaction of information between Nodes using an XP Code.

TEFCA Information (TI): any information that is transacted through TEFCA Exchange except to the extent that such information is received by a QHIN, Participant, or Subparticipant that is a Covered Entity, Business Associate, or NHE that is exempt from compliance with the Privacy section of the applicable Framework Agreement and is incorporated into such recipient's system of record, at which point the information is no longer TI with respect to such recipient and is governed by the HIPAA Rules and other Applicable Law.

TEFCA Security Incident(s):

(i) An unauthorized acquisition, access, Disclosure, or Use of unencrypted TI using TEFCA Exchange, but NOT including any of the following:

(a) Any unintentional acquisition, access, Use, or Disclosure of TI by a Workforce Member or person acting under the authority of a QHIN, Participant, or Subparticipant, if such acquisition, access, Use, or Disclosure (i) was made in good faith, (ii) was made by a

person acting within their scope of authority, (iii) was made to another Workforce Member or person acting under the authority of any QHIN, Participant, or Subparticipant, and (iv) does not result in further acquisition, access, Use, or Disclosure in a manner not permitted under Applicable Law and the Framework Agreements.

(b) A Disclosure of TI where a QHIN, Participant, or Subparticipant has a good faith belief that an unauthorized person to whom the Disclosure was made would not reasonably have been able to retain such information.

(c) A Disclosure of TI that has been de-identified in accordance with the standard at 45 CFR § 164.514(b).

(ii) Other security events (e.g., ransomware attacks), as set forth in an SOP, that adversely affect a QHIN's, Participant's, or Subparticipant's participation in TEFCA Exchange.

Threat Condition: (i) a breach of a material provision of a Framework Agreement that has not been cured within fifteen (15) days of receiving notice of the material breach (or such other period of time to which the Parties have agreed), which notice shall include such specific information about the breach that the RCE has available at the time of the notice; or (ii) a TEFCA Security Incident; or (iii) an event that RCE, a QHIN, its Participant, or their Subparticipant has reason to believe will disrupt normal TEFCA Exchange, either due to actual compromise of or the need to mitigate demonstrated vulnerabilities in systems or data of the QHIN, Participant, or Subparticipant, as applicable, or could be replicated in the systems, networks, applications, or data of another QHIN, Participant, or Subparticipant; or (iv) any event that could pose a risk to the interests of national security as directed by an agency of the United States government.

Transitional Council: the interim governing body for activities conducted under Framework Agreements, as more fully described in the applicable SOP(s).

United States: the fifty (50) States, the District of Columbia, and the territories and possessions of the United States including, without limitation, all military bases or other military installations, embassies, and consulates operated by the United States government.

U.S. Entity/Entities: any corporation, limited liability company, partnership, or other legal entity that meets all of the following requirements:

(i) The entity is organized under the laws of a State or commonwealth of the United States or the federal law of the United States and is subject to the jurisdiction of the United States and the State or commonwealth under which it was formed;

(ii) The entity's principal place of business, as determined under federal common law, is in the United States; and

(iii) None of the entity's directors, officers, or executives, and none of the owners with a five percent (5%) or greater interest in the entity, are listed on the *Specially Designated Nationals and Blocked Persons List* published by the United States Department of the Treasury's Office of Foreign Asset Control or on the United States Department of Health and Human Services, Office of Inspector General's *List of Excluded Individuals/Entities*.

Use(s) (including correlative uses/tenses, such as "Uses," "Used," and "Using"): with respect to TI, means the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

U.S. Qualified Person means those individuals who are U.S. nationals and citizens at birth as defined in 8 USC 1401, U.S. nationals but not citizens of the United States at birth as defined in 8 USC 1408, lawful permanent residents of the United States as defined in the Immigration and Nationality Act, and non-immigrant aliens who are hired by a U.S. Entity as an employee in a specialty occupation pursuant to an H-1B Visa.

Workforce Member(s): any employees, volunteers, trainees, and other persons whose conduct, in the performance of work for an entity, is under the direct control of such entity, whether or not they are paid by the entity.

XP Code: the code used to identify the XP in any given transaction, as set forth in the applicable SOP(s).

1.2 Common Agreement Terminology.

1.2.1 References to Signatory and QHINs. As set forth in its definition and in the introductory paragraph of this Common Agreement, the term "Signatory" is used to refer to the specific entity that is a Party to this Common Agreement with the RCE. Any and all rights and obligations of a QHIN stated herein are binding upon Signatory as of the CA Effective Date and are also binding upon all other QHINs. References herein to "other QHINs," "another QHIN," and similar such terms are used to refer to any and all other organizations that have signed the Common Agreement with the RCE.

1.2.2 Intentionally Omitted.

1.2.3 General Rule of Construction. For the avoidance of doubt, a reference to a specific section of the Common Agreement in a particular section does not mean that other sections of this Common Agreement that expressly apply to a QHIN are inapplicable. A reference in this Common Agreement to any law, any regulation, or to Applicable Law includes any amendment, modification or replacement to such law, regulation, or Applicable Law.

1.2.4 Terms of Participation. Signatory shall contractually obligate its Participants to comply with the ToP. Notwithstanding the foregoing, for any entity that became a Participant of Signatory prior to the Implementation Date, Signatory shall (i) contractually obligate such entity to comply with the ToP within one-hundred eighty (180) days of the Implementation Date, provided that such Participant is and remains a party to the Participant-QHIN Agreement, as defined in and required by Common Agreement Version 1.1, during such period; or (ii) terminate such Participant's ability to engage in TEFCA Exchange upon the earlier of the date of termination of the existing Participant-QHIN Agreement or one-hundred eighty (180) days after the Implementation Date.

2. **Incorporation of Recitals.** The Recitals set forth above are incorporated into this Common Agreement in their entirety and shall be given full force and effect as if set forth in the body of this Common Agreement.

3. **Governing Approach.**

3.1 Role of the RCE and ONC. ONC was directed by Congress in the 21st Century Cures Act to, "in collaboration with the National Institute of Standards and Technology and other relevant agencies within the Department of Health and Human Services, for the purpose of ensuring full network-to-network exchange of health information, convene public-private and public-public partnerships to build consensus and develop or support a trusted exchange framework, including a common agreement among health information networks nationally." ONC entered into the Contract with the RCE to implement, maintain, and update the Common Agreement.

Under the Contract, the RCE is responsible for matters related to the development and operation of the exchange of TI and related activities.

ONC provides oversight of the RCE's work under the Contract. Under the Contract, ONC has the right to review the RCE's conduct, including Designation, corrective action, and termination decisions regarding QHINs, the proper execution of nondiscrimination and conflict of interest policies that demonstrate a commitment to transparent, fair, and nondiscriminatory treatment by the RCE of

QHINs, and whether the RCE has adhered to the requirements imposed upon it by this Common Agreement. ONC may also address complaints made by a QHIN against the RCE as set forth in Section 15.6. QHINs have the right to appeal RCE decisions as set forth in Section 16 of this Common Agreement.

3.2 Participation in Governance. QHINs, Participants, and Subparticipants shall have the opportunity to engage in governance under the Common Agreement. The RCE shall establish a Transitional Council and then a Governing Council which will be responsible for serving as a resource to the RCE and a forum for orderly and civil discussion of any issues affecting TEFCA Exchange or other issues that may arise under the Common Agreement. The formation, composition, responsibilities, and duration of the Transitional Council and Governing Council shall be set forth in an SOP(s).

3.3 Advisory Groups. The RCE, in consultation with the Transitional or Governing Council (as applicable) and ONC, may establish Advisory Groups for purposes of seeking input from distinct groups of stakeholders that are parties to or affected by TEFCA Exchange activities to better inform the governance process, provide input on certain topics, and promote inclusivity. The process for establishing Advisory Groups and selecting members is set forth in the applicable SOP.

4. QHIN Designation.

4.1 Eligibility to be Designated. Signatory affirms and warrants that as of the CA Effective Date and throughout the term of this Common Agreement, it meets and will continue to meet the eligibility criteria listed below and any additional requirements set forth in the applicable SOP(s).

(i) Signatory is a U.S. Entity and is not controlled by any person or entity that is not a U.S. Qualified Person(s) or U.S. Entity(ies). The specific, required means to demonstrate this are set forth in an SOP.

(ii) Signatory is a Health Information Network.

(iii) Signatory has the ability to perform all of the Designated Network Services and other required functions of a QHIN in the manner required by this Common Agreement, the SOPs, the QTF, and all other applicable guidance from the RCE. The specific, required means to demonstrate this are set forth in an SOP(s).

(iv) Signatory has in place the organizational infrastructure and legal authority to comply with the obligations of the Common Agreement and

to provide Governance Services for its Designated Network. In addition, Signatory has the resources and infrastructure to support a reliable and trusted network. The specific, required means to demonstrate this are set forth in an SOP(s).

If, at any time during the term of this Common Agreement, Signatory Discovers that it fails to meet the foregoing eligibility criteria or any additional requirements set forth in the applicable SOP(s), Signatory shall immediately notify the RCE.

4.2 Affirmation of Application. Signatory represents and warrants that the information in its application for Designation was at the time of the application submission, and continues to be as of the CA Effective Date, accurate and complete, to the best of its knowledge. Signatory acknowledges that the RCE relied upon the information in its application to evaluate whether Signatory meets the criteria to be Designated and that violation of this representation and warranty is a material breach of this Common Agreement. If the RCE determines that information in the application that was material to the RCE's decision to Designate Signatory is or was not accurate or complete, the RCE may terminate Signatory's Designation and this Common Agreement and will provide notice of such termination to Signatory.

5. Change Management.

5.1 Change Management Framework. The RCE shall coordinate all changes to the Common Agreement, the QTF, and the SOPs in conjunction with ONC. In addition to the activities described below, ONC shall be available in a consultative role throughout the change management process to review any proposed amendments to the Common Agreement, the QTF, and the SOPs as well as the adoption of any new SOP and the repeal of any existing SOP. The RCE will work with ONC, the Governing Council, and the QHIN and Participant/Subparticipant Caucuses, as outlined below, to consider amendments to the Common Agreement, the QTF, or the SOPs and the adoption of any new SOP or the repeal of any existing SOP. Provided, however, that the actions described in Sections 5.1 through 5.3 of this Common Agreement by or with respect to the Governing Council, the QHIN Caucus, and the Participant/Subparticipant Caucus, as applicable, shall not be required until the respective body has been established as described in Section 3 and the applicable SOP(s). Signatory acknowledges that it and the RCE do not have the sole legal authority to agree to changes to this Common Agreement, the QTF, or the SOPs. ONC must approve all changes, additions, and deletions. The Common Agreement must be the same for all QHINs.

5.2 Amending the Common Agreement or the QTF. The RCE is tasked, under its Contract with ONC, with updating the Common Agreement and QTF. Proposed

amendments to the Common Agreement or QTF may originate from multiple sources, including, but not limited to, ONC, the RCE, the Governing Council, the QHIN Caucus, or the Participant/Subparticipant Caucus. The RCE may consult with the Governing Council, the QHIN Caucus, or the Participant/Subparticipant Caucus prior to submitting the proposed amendment(s) to ONC for consideration. The RCE shall collect all proposed amendments and submit them to ONC, who shall determine whether further action on a proposed amendment is warranted.

5.2.1 If ONC determines that a proposed amendment warrants further consideration, then the RCE will present the proposed amendment to the Governing Council for its feedback. The Governing Council will evaluate the proposed amendment and determine whether it will seek feedback from the QHIN Caucus, the Participant/Subparticipant Caucus, or both, as deemed necessary and appropriate. The Governing Council will provide the RCE with written feedback on the proposed amendment in a timely manner, which will include feedback from the QHIN and Participant/Subparticipant Caucuses as applicable and appropriate.

5.2.2 The RCE shall consult with ONC about the Governing Council feedback. ONC shall, after considering the feedback, determine whether the proposed amendment should proceed after making any changes to the amendment. If ONC decides to proceed with the amendment, it will advance the proposed amendment to the QHIN Caucus for approval by a written vote. An amendment will be approved if at least two-thirds (2/3) of the votes cast by the QHIN Caucus members within the timeframe established by ONC for the voting period are in favor of the proposed amendment. The requirement to consult with the Governing Council in this provision shall be satisfied by ONC's approval of the proposed amendment if, at the time of such approval, the Governing Council and the QHIN Caucus have not yet been established.

5.2.3 The time period for ONC to decide whether to proceed or not with proposed amendment to the Common Agreement pursuant to Section 5.2.2 above shall initially be three (3) months after ONC receives from the RCE feedback from the Governing Council pursuant to Section 5.2.2 above; provided, however, that ONC may, in its discretion, extend this time for an unlimited number of additional three- (3-) month time periods.

5.2.4 The time period for ONC to decide whether to proceed or not with a proposed amendment to the QTF pursuant to Section 5.2.2 above shall initially be three (3) months after ONC receives from the RCE feedback from the Governing Council pursuant to Section 5.2.2 above; provided, however, that ONC may, in its discretion, extend this time for one (1) additional three-

(3-) month time period.

5.2.5 If an amendment to the Common Agreement or QTF is approved as described above, the amendment shall become effective on the effective date identified by ONC as part of the amendment process and shall be binding on Signatory without any further action by Signatory or the RCE. If Signatory is not willing or able to comply with the amendment, then Signatory shall, within fifteen (15) business days of being notified by the RCE that the amendment has been approved, provide the RCE written notice of termination of this Common Agreement effective no later than the expiration of thirty (30) days from approval of the amendment.

5.2.6 Notwithstanding the foregoing, if the RCE determines that an amendment to the Common Agreement or QTF is required in order for the RCE to remain in compliance with Applicable Law, the RCE is not required to provide QHINs with an opportunity to vote on the amendment. However, the RCE shall still be required to provide sixty (60) days' advance written notice of the amendment and legal analysis of the need to use this expedited process, unless the RCE would be materially harmed by being out of compliance with Applicable Law if it provided the sixty (60) days' written notice, in which case it will provide as much notice as practicable under the circumstances. Any such amendment to this Common Agreement or the QTF shall be subject to ONC review and modification prior to the RCE providing advance written notice of the amendment to Signatory. Only those amendments that are approved by ONC will be enacted.

5.3 Amending, Adopting, or Repealing an SOP. The RCE is tasked, under its Contract with ONC, with developing an initial set of SOPs that were considered adopted when initially made publicly available prior to the initial QHIN application period (i.e., prior to *anyone* signing the Common Agreement). The amendment process set forth below shall also apply to amending the initial set of SOPs through adopting one or more new SOPs, repealing an SOP in its entirety, or amending one of the initial SOPs.

5.3.1 Proposed amendments to the SOPs may originate from multiple sources including, but not limited to, ONC, the RCE, the Governing Council, the QHIN Caucus, or the Participant/Subparticipant Caucus. The RCE may consult with the Governing Council, the QHIN Caucus, or the Participant/Subparticipant Caucus prior to submitting the proposed amendment(s) to ONC for consideration. The RCE shall collect all proposed amendments and submit them to ONC, who shall determine whether further action on a proposed amendment is warranted.

5.3.2 If ONC determines that a proposed amendment warrants further consideration, then the RCE will present the proposed amendment to the Governing Council for its feedback. The Governing Council will evaluate the proposed amendment and determine whether it will seek feedback from the QHIN Caucus, the Participant/Subparticipant Caucus, or both, as deemed necessary and appropriate. The Governing Council will evaluate proposed amendments in a timely manner and provide the RCE with written feedback on the proposed amendment.

5.3.3 The RCE shall consult with ONC about the Governing Council feedback. ONC shall, after considering the feedback, determine whether the proposed amendment should proceed after making any changes to the amendment. If ONC decides to proceed with the amendment, it will advance the proposed amendment to the QHIN Caucus and the Participant/Subparticipant Caucus for approval by a written vote. An amendment will be approved if at least two-thirds (2/3) of the votes cast by the QHIN Caucus and at least two-thirds (2/3) of the votes cast by the Participant/Subparticipant Caucus within the timeframe established by ONC for the voting period are in favor of the proposed amendment. The requirement to consult with the Governing Council in this provision shall be satisfied by ONC's approval of the proposed amendment if, at the time of such approval, the QHIN Caucus and the Participant/Subparticipant Caucus have not yet been established.

5.3.4 The time period for ONC to decide whether to proceed or not with a proposed amendment to an SOP pursuant to Section 5.3.3 above shall initially be three (3) months after ONC receives from the RCE feedback from the Governing Council; provided, however, that: (a) ONC may, in its discretion, extend this time for one (1) additional three- (3-) month time period; and (b) if ONC, in addition, determines in its reasonable discretion that the amendment affects or may be contrary to an ONC policy or another policy of the Department of Health and Human Services or any Applicable Law, ONC may extend this time for an unlimited number of additional three- (3-) month time periods.

5.3.5 Notwithstanding the requirement for a Participant/Subparticipant vote set forth in Section 5.3.3, if the proposed amendment will not have a material impact on any Participants or Subparticipants, ONC may advance the proposed amendment to the QHIN Caucus only, whereby the amendment will be approved if at least two-thirds (2/3) of the votes cast by the QHIN Caucus within the timeframe established by ONC for the voting period are in favor of the proposed amendment. The requirement to consult with the QHIN Caucus in this provision shall be satisfied by ONC's approval of the

proposed amendment if, at the time of such approval, the QHIN Caucus has not yet been established. The RCE will determine an effective date for the approved amendment subject to approval of ONC.

5.3.6 Notwithstanding the foregoing, if the RCE determines that an amendment to an SOP is required in order for the RCE to remain in compliance with Applicable Law, the RCE is not required to provide the QHIN Caucus or the Participant/Subparticipant Caucus with an opportunity to vote on the amendment. However, the RCE shall still be required to provide sixty (60) days' advance written notice of the amendment and the legal analysis of the need to use this expedited process, unless the RCE would be materially harmed by being out of compliance with Applicable Law if it provided the sixty (60) days' written notice, in which case the RCE will provide as much notice as practicable under the circumstances. Any such amendment to an SOP shall be subject to ONC review and modification prior to enactment. Only those amendments that are approved by ONC will be enacted.

5.4 Voting Method. For purposes of the voting process set forth in this Section 5, the phrase "written vote" includes any process by which there is a voting record, which may include voting by electronic means.

6. Cooperation and Non-Discrimination.

6.1 Cooperation. Signatory understands and acknowledges that numerous activities with respect to this Common Agreement will likely involve other QHINs and their respective Participants and Subparticipants, as well as employees, agents, third-party contractors, vendors, or consultants of each of them. Signatory shall reasonably cooperate with the RCE, ONC, other QHINs, and their respective Participants and Subparticipants in all matters related to TEFCA Exchange. Requirements for reasonable cooperation are set forth in an SOP. The costs of cooperation to Signatory shall be borne by Signatory and shall not be charged to the RCE or other QHINs. Nothing in this Section 6.1 shall modify or replace the TEFCA Security Incident notification obligations under Section 12.3 and, if applicable, the IAS Incident notification obligations under Section 10.5.2 of this Common Agreement.

6.2 Non-Discrimination.

6.2.1 Prohibition Against Exclusivity. Neither Signatory nor the RCE shall prohibit or attempt to prohibit any QHIN, Participant, or Subparticipant from joining, exchanging with, conducting other transactions with, or supporting any other networks or exchange frameworks that use services *other than* the

Signatory's Designated Network Services, concurrently with the QHIN's, Participant's, or Subparticipant's participation in TEFCA Exchange.

6.2.2 No Discriminatory Limits on Exchange of TI. Signatory shall not engage in TEFCA Exchange, refrain from engaging in TEFCA Exchange, or limit TEFCA Exchange with any other QHIN, Participant, Subparticipant, or Individual, in a Discriminatory Manner. Notwithstanding the foregoing, if Signatory refrains from engaging in TEFCA Exchange or limits interoperability with any other QHIN, Participant, or Subparticipant under the following circumstances, Signatory's actions or inactions shall not be deemed discriminatory: (i) Signatory's Connectivity Services require load balancing of network traffic or similar activities provided such activities are implemented in a consistent and non-discriminatory manner for a period of time no longer than necessary to address the network traffic issue; (ii) Signatory has a reasonable and good-faith belief that the other QHIN, Participant, or Subparticipant has not satisfied or will not be able to satisfy the applicable terms hereof (including compliance with Applicable Law) in any material respect; or (iii) Signatory's actions or inactions are consistent with or permitted by an applicable SOP. One QHIN suspending its exchange activities with another QHIN, Participant, or Subparticipant in accordance with Section 17.4.2 shall not be deemed discriminatory.

6.2.3 Updates to Connectivity Services. In revising and updating its Connectivity Services from time to time, Signatory will use commercially reasonable efforts to do so in accordance with generally accepted industry practices and to implement any changes in a non-discriminatory manner; provided, however, this provision shall not apply to limit modifications or updates to the extent that such revisions or updates are required by Applicable Law or implemented to respond promptly to newly discovered privacy or security threats.

6.2.4 Notice of Updates to Connectivity Services. Signatory shall implement a reporting protocol to provide reasonable prior written notice of all modifications or updates of its Connectivity Services to all other QHINs if such revisions or updates are expected to adversely affect TEFCA Exchange between QHINs or require changes in the Connectivity Services of any other QHIN, regardless whether they are necessary due to Applicable Law or newly discovered privacy or security threats.

6.3 Non-Interference. Signatory shall not prevent a Participant or Subparticipant from changing the QHIN through which the Participant or Subparticipant engages in

TEFCA Exchange. Notwithstanding the foregoing, this subsection does not preclude Signatory from including and enforcing reasonable term limits in its contracts with its Participants related to a Participant's use of Signatory's Designated Network Services.

7. Confidentiality and Accountability.

7.1 Confidential Information. Signatory and RCE each agree to use and disclose all Confidential Information received pursuant to this Common Agreement only as authorized in this Common Agreement and any applicable SOP(s) and solely for the purposes of performing its obligations under this Common Agreement or the proper exchange of information under the Common Agreement and for no other purpose. Each Party may act as a CI Discloser and a CI Recipient, accordingly. A CI Recipient may disclose the Confidential Information it receives only to its Workforce Members who require such knowledge and use in the ordinary course and scope of their employment or retention and are obligated to protect the confidentiality of the CI Discloser's Confidential Information in a manner substantially equivalent to the terms required herein for the treatment of Confidential Information. If a CI Recipient must disclose a CI Discloser's Confidential Information under operation of law, the CI Recipient may do so provided that, to the extent permitted by Applicable Law, the CI Recipient gives the CI Discloser reasonable notice to allow the CI Discloser to object to such redisclosure, and such redisclosure is made to the minimum extent necessary to comply with Applicable Law.

7.2 Disclosure of Confidential Information. Nothing herein shall be interpreted to prohibit the RCE from disclosing any Confidential Information to ONC. Signatory acknowledges that ONC, as a Federal government agency, is subject to the Freedom of Information Act. Any disclosure of Signatory's Confidential Information to ONC or any ONC contractor will be subject to Applicable Law, as well as the limitations, procedures, and other relevant provisions of any applicable SOP(s).

7.3 ONC's and the RCE's Approach when Requesting Confidential Information. As a matter of general policy, ONC will request only the limited set of Confidential Information that ONC believes is necessary to inform the specific facts and circumstances of a matter. The RCE will request only the limited set of Confidential Information that the RCE believes is necessary to inform the specific facts and circumstances of a matter.

7.4 QHIN Accountability.

7.4.1 Statement of General Principle. To the extent not prohibited by Applicable Law, Signatory shall be responsible for its acts and omissions, and the acts or

omissions of its Participants and their Subparticipants, but not for the acts or omissions of any other QHINs or their Participants or Subparticipants. For the avoidance of doubt, a Signatory that is also a governmental agency or instrumentality shall not be liable to the extent that the Applicable Law that governs Signatory does not expressly waive Signatory's sovereign immunity. Notwithstanding any provision in this Common Agreement to the contrary, Signatory shall not be liable for any act or omission if a cause of action for such act or omission is otherwise prohibited by Applicable Law. This Section 7.4.1 shall not be construed as a hold-harmless or indemnification provision.

7.4.2 Harm to RCE. Subject to Sections 7.4 and 7.6 of this Common Agreement that exclude certain types of damages or limit overall damages, Signatory shall be responsible for harm suffered by the RCE to the extent that the harm was caused by Signatory's breach of this Common Agreement, the QTF, or any applicable SOP.

7.4.3 Harm to Other QHINs. Subject to Section 7.6 of this Common Agreement, which excludes certain types of damages or limits overall damages, Signatory shall be responsible for harm suffered by another QHIN to the extent that the harm was caused by Signatory's breach of this Common Agreement, the QTF, or any applicable SOP.

7.5 RCE Accountability. Signatory will not hold the RCE, or anyone acting on its behalf, including but not limited to members of the Governing Council, Transitional Council, Caucuses, Cybersecurity Council, any Advisory Group, any work group, or any subcommittee, its contractors, employees, or agents liable for any damages, losses, liabilities, or injuries arising from or related to this Common Agreement, except to the extent that such damages, losses, liabilities, or injuries are the direct result of the RCE's breach of this Common Agreement. This Section 7.5 shall not be construed as a hold-harmless or indemnification provision.

7.6 **LIMITATION ON LIABILITY. NOTWITHSTANDING ANYTHING IN THIS COMMON AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER THE RCE'S OR SIGNATORY'S TOTAL LIABILITY TO EACH OTHER AND ALL OTHER QHINS ARISING FROM OR RELATING TO THIS COMMON AGREEMENT EXCEED AMOUNTS EQUAL TO TWO MILLION DOLLARS ($2,000,000) PER INCIDENT AND FIVE MILLION DOLLARS ($5,000,000) AGGREGATE PER ANNUM OR SUCH OTHER AMOUNTS AS STATED IN A THEN-IN-EFFECT SOP, IN ORDER TO ALLOW FOR THE PERIODIC ADJUSTMENT OF THIS LIABILITY LIMIT OVER TIME WITHOUT THE NEED TO AMEND THIS COMMON AGREEMENT. THIS AND ANY SUCH ADJUSTED LIMITATION ON LIABILITY SHALL APPLY REGARDLESS OF WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES**

IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. IF SIGNATORY IS A GOVERNMENT AGENCY OR A GOVERNMENT INSTRUMENTALITY UNDER FEDERAL LAW, STATE LAW, LOCAL LAW, OR TRIBAL LAW AND IT IS PROHIBITED FROM LIMITING ITS RECOVERY OF DAMAGES FROM A THIRD PARTY UNDER APPLICABLE LAW, THEN THIS SECTION 7.6 SHALL NOT APPLY TO EITHER SIGNATORY OR THE RCE. NOTHING IN THIS SECTION 7.6 OF THIS COMMON AGREEMENT SHALL BE CONSTRUED TO CREATE LIABILITY FOR A GOVERNMENTAL AGENCY OR INSTRUMENTALITY OR OTHERWISE WAIVE SOVEREIGN IMMUNITY.

8. RCE Directory Service.

8.1. Access to and Use of the RCE Directory Service. During the term of this Common Agreement and provided that Signatory is not suspended, the RCE shall provide Signatory with access to the RCE Directory Service. The timeframes and requirements for access to, publishing Directory Entries in, and use of the RCE Directory Service are set out in the QTF and the applicable SOP(s).

8.2. Utilization of the RCE Directory Service. The RCE Directory Service and Directory Entries contained therein shall be used by Signatory solely as necessary to create and maintain operational connectivity under the Common Agreement to enable TEFCA Exchange. Signatory shall not use or disclose Directory Entries except to its Workforce Members, to the Workforce Members of its Participants or Subparticipants, or to the Workforce Members of health information technology vendors who are engaged in assisting Signatory, the Participant or Subparticipant with engaging in TEFCA Exchange. Further, Signatory shall not use another QHIN's Directory Entries or information derived therefrom for marketing or any form of promotion of its own products and services, unless otherwise permitted pursuant to an SOP. In no event shall Signatory use or disclose the information contained in the RCE Directory Service in a manner that should be reasonably expected to have a detrimental effect on ONC, the RCE, other QHINs or their Participants or Subparticipants, or any other individual or organization. For the avoidance of doubt, Directory Entries are Confidential Information of the Discloser except to the extent such information meets one of the exceptions to the definition of Confidential Information. Nothing herein shall be interpreted to prohibit a QHIN from publicly disclosing the identity of its Participants or Subparticipants.

8.3. QHIN Directory Entries. Signatory must have at least one Node listed in the RCE Directory Service. Signatory is responsible for entering its Participant and Subparticipant Nodes in the RCE Directory Service and maintaining the accuracy of

such entries. Signatory shall immediately remove from the RCE Directory Service any Node(s) associated with a Participant or Subparticipant that is suspended from engaging in TEFCA Exchange or whose agreement to participate in TEFCA Exchange in connection with Signatory has expired or been terminated.

8.4. Framework Agreement Record.

8.4.1. QHINs must maintain a record of all ToPs into which Signatory enters with its Participants, regardless of whether such Participants are listed in the RCE Directory Service. Such record must be provided to the RCE within five (5) business days following the RCE's written request unless such other timeframe is agreed to by the RCE.

8.4.2. Records of all ToPs into which Signatory's Participants or Subparticipants enter with their respective Subparticipants must be maintained by Signatory's Participants and Subparticipants in accordance with their respective obligations pursuant to the ToP. Upon request from the RCE, Signatory must provide such record to the RCE within two (2) business days of receiving such record(s) from its Participant(s).

9. TEFCA Exchange Activities.

9.1 Utilization of TEFCA Exchange. Signatory may only utilize Designated Network Services for purposes of facilitating TEFCA Exchange. TEFCA Exchange may only be utilized for an XP. To the extent there are limitations on what types of Participants or Subparticipants may transact TEFCA Information for a specific XP, such limitations will be set forth in the applicable SOP(s). All TEFCA Exchange is governed by and must comply with the Framework Agreements governing the QHINs, Participants, and Subparticipants.

9.2 Uses. Signatory may Use TI in any manner that: (i) is not prohibited by Applicable Law; (ii) is consistent with Signatory's Privacy and Security Notice, if applicable; and (iii) is in accordance with Sections 11 and 12 of this Common Agreement, if applicable.

9.3 Disclosures. Signatory may Disclose TI provided such Disclosure: (i) is not prohibited by Applicable Law; (ii) is consistent with Signatory's Privacy and Security Notice, if applicable; and (iii) is in accordance with Sections 11 and 12 of this Common Agreement, if applicable.

9.4 Responses. Except as otherwise set forth in an applicable SOP, Responding Nodes must Respond to Queries for all XP Codes that are identified as "required" in the

applicable SOP(s). Such Response must include all Required Information. Notwithstanding the foregoing, Signatory may withhold some or all of the Required Information to the extent necessary to comply with Applicable Law.

9.5 Special Legal Requirements. If and to the extent Applicable Law requires that an Individual either consent to, approve, or provide an authorization for the Use or Disclosure of that Individual's information to Signatory, such as a more stringent federal or State law relating to sensitive health information, then Signatory shall refrain from the Use or Disclosure of such information in connection with this Common Agreement unless such Individual's consent, approval, or authorization has been obtained consistent with the requirements of Applicable Law and Section 11 of this Common Agreement including without limitation communicated pursuant to the access consent policy(ies) described in the QTF or applicable SOP(s). Copies of such consent, approval, or authorization shall be maintained and transmitted pursuant to the process described in the QTF by whichever party is required to obtain it under Applicable Law, and Signatory may make such copies of the consent, approval, or authorization available electronically to any QHIN, Participant, or Subparticipant in accordance with the QTF and to the extent permitted by Applicable Law. Signatory shall maintain written policies and procedures to allow an Individual to revoke such consent, approval, or authorization on a prospective basis. If Signatory is an IAS Provider, the foregoing shall not be interpreted to modify, replace, or diminish the requirements set forth in Section 10 of this Common Agreement and any applicable SOP(s) for obtaining an Individual's express written consent.

10. Individual Access Services.

10.1 Individual Access Services (IAS) Offering(s). Signatory may elect to be an IAS Provider by offering IAS to any Individual in accordance with the requirements of this Section 10 and in accordance with all other provisions of this Common Agreement. Nothing in this Section 10 shall modify, terminate, or in any way affect an Individual's right of access under the HIPAA Privacy Rule at 45 CFR § 164.524 with respect to any QHIN, Participant, or Subparticipant that is a Covered Entity or a Business Associate. Nothing in this Section 10 of this Common Agreement shall be construed as modifying or taking precedence over any provision codified in 45 CFR Part 171. An IAS Provider shall not prohibit or attempt to prohibit any Individual using the IAS of any other IAS Provider or from joining, exchanging with, conducting other transactions with any other networks or exchange frameworks, using services

other than the IAS Providers' Designated Network Services, concurrently with the QHIN's, Participant's, or Subparticipant's participation in TEFCA Exchange.

10.2 Individual Consent. This Section 10.2 shall apply to Signatory if Signatory is an IAS Provider. The Individual requesting IAS shall be responsible for completing the IAS Consent. The IAS Consent shall include, at a minimum: (i) consent to use the Individual Access Service; (ii) the Individual's acknowledgement and agreement to the IAS Provider's Privacy and Security Notice; and (iii) a description of the Individual's rights to access, delete, and export such Individual's Individually Identifiable Information. An IAS Provider may implement secure electronic means (e.g., secure e-mail, secure web portal) by which an Individual may submit the IAS Consent. An IAS Provider shall collect the IAS Consent prior to the Individual's first use of the IAS and prior to any subsequent use if there is any material change in the applicable IAS Consent, including the version of the Privacy and Security Notice referenced therein. Nothing in the IAS Consent may contradict or be inconsistent with any applicable provision of this Common Agreement or the SOP(s). If the IAS Provider is a Covered Entity and has a Notice of Privacy Practices that meets the requirements of 45 CFR § 164.520, the IAS Provider is not required to have a Privacy and Security Notice that meets the requirements of the applicable SOP. Nothing in Section 10 reduces a Covered Entity's obligations under the HIPAA Rules.

10.3 Intentionally Omitted.

10.4 Intentionally Omitted.

10.5 Additional Security Requirements for IAS Providers. This Section 10.5 shall apply to Signatory if Signatory is an IAS Provider.

10.5.1 Scope of Security Requirements. An IAS Provider must meet the applicable security requirements set forth in Section 12 for all Individually Identifiable Information it maintains as an IAS Provider, regardless of whether such information is TI.

10.5.2 IAS Incident Notice to Affected Individuals. If an IAS Provider reasonably believes that an Individual has been affected by an IAS Incident, it must provide such Individual with notification without unreasonable delay and in no case later than sixty (60) days following Discovery of the IAS Incident. The notification required under this Section 10.5.2 must be written in plain language and shall include, to the extent possible, the information set forth in the applicable SOP(s). To the extent Signatory is already required by Applicable Law to notify an Individual of an incident that would also be an

IAS Incident, this Section 10.5.2 does not require duplicative notification to that Individual.

10.6 Survival for IAS Providers. This Section 10.6 shall apply to Signatory if Signatory is an IAS Provider. As between Signatory as an IAS Provider and an Individual, the IAS Provider's obligations in the IAS Consent, including the IAS Provider's requirement to comply with the Privacy and Security Notice and provide Individuals with rights, shall survive for so long as the IAS Provider maintains such Individual's Individually Identifiable Information. If Signatory was an IAS Provider, the requirements of Section 10.5 shall survive termination of this Common Agreement for so long as Signatory maintains Individually Identifiable Information acquired during the term of this Common Agreement as an IAS Provider regardless of whether such information is or was TI.

11. Privacy.

11.1 Compliance with the HIPAA Privacy Rule. If Signatory is a NHE (but not to the extent that it is acting as an entity entitled to make a Government Benefits Determination under Applicable Law, a Public Health Authority, or a Government Health Care Entity or any other type of entity exempted from compliance with this Section 11.1 in an applicable SOP), then it shall comply with the provisions of the HIPAA Privacy Rule listed below with respect to all Individually Identifiable Information as if such information is Protected Health Information and Signatory is a Covered Entity.

11.1.1 From 45 CFR § 164.502, General Rules:

- Subsection (a)(1) – Dealing with permitted Uses and Disclosures, **but only to the extent Signatory is authorized to engage in the activities described in this subsection of the HIPAA Privacy Rule for the applicable XP.**
- Subsection (a)(2)(i) – Requiring Disclosures to Individuals
- Subsection (a)(5) – Dealing with prohibited Uses and Disclosures
- Subsection (b) – Dealing with the minimum necessary standard
- Subsection (c) – Dealing with agreed-upon restrictions
- Subsection (d) – Dealing with deidentification and re-identification of information
- Subsection (e) – Dealing with Business Associate contracts
- Subsection (f) – Dealing with deceased persons' information
- Subsection (g) – Dealing with personal representatives
- Subsection (h) – Dealing with confidential communications

- Subsection (i) – Dealing with Uses and Disclosures consistent with notice
- Subsection (j) – Dealing with Disclosures by whistleblowers

11.1.2 45 CFR § 164.504(e), Organizational Requirements.

11.1.3 45 CFR § 164.508, Authorization Required. Notwithstanding the foregoing, the provisions of Sections 10.2 shall control and this Section 11.1.3 shall not apply with respect to an IAS Provider that is a NHE.

11.1.4 45 CFR § 164.510, Uses and Disclosures Requiring Opportunity to Agree or Object. Notwithstanding the foregoing, an IAS Provider that is a NHE but is not a Health Care Provider shall not have the right to make the permissive Disclosures described in § 164.510(a)(3) - Emergency circumstances; provided, however, that an IAS Provider is not prohibited from making such a Disclosure if the Individual has consented to the Disclosure pursuant to Section 10 of this Common Agreement.

11.1.5 45 CFR § 164.512, Authorization or Opportunity to Object Not Required. Notwithstanding the foregoing, an IAS Provider that is a NHE but is not a Health Care Provider shall not have the right to make the permissive Disclosures described in § 164.512(c) - Standard: Disclosures about victims of abuse, neglect or domestic violence; § 164.512 Subsection (d) - Standard: Uses and Disclosures for health oversight activities; and § 164.512 Subsection (j) - Standard: Uses and Disclosures to avert a serious threat to health or safety; provided, however, that an IAS Provider is not prohibited from making such a Disclosure(s) if the Individual has consented to the Disclosure(s) pursuant to Section 10 of this Common Agreement.

11.1.6 From 45 CFR § 164.514, Other Requirements Relating to Uses and Disclosures:

- Subsections (a)-(c) – Dealing with de-identification requirements that render information not Individually Identifiable Information for purposes of this Section 11 and TEFCA Security Incidents
- Subsection (d) – Dealing with minimum necessary requirements
- Subsection (e) – Dealing with Limited Data Sets

11.1.7 45 CFR § 164.522, Rights to Request Privacy Protections.

11.1.8 45 CFR § 164.524, Access of Individuals, except that an IAS Provider that is a NHE shall be subject to the requirements of Section 10 with respect to access by Individuals for purposes of IAS and not this Section 11.1.8.

11.1.9 45 CFR § 164.528, Accounting of Disclosures.

11.1.10 From 45 CFR § 164.530, Administrative Requirements:

- Subsection (a) – Dealing with personnel designations
- Subsection (b) – Dealing with training
- Subsection (c) – Dealing with safeguards
- Subsection (d) – Dealing with complaints
- Subsection (e) – Dealing with sanctions
- Subsection (f) – Dealing with mitigation
- Subsection (g) – Dealing with refraining from intimidating or retaliatory acts
- Subsection (h) – Dealing with waiver of rights
- Subsection (i) – Dealing with policies and procedures
- Subsection (j) – Dealing with documentation

11.2 Written Privacy Policy. Signatory must develop, implement, make publicly available, and act in accordance with a written privacy policy describing its privacy practices with respect to Individually Identifiable Information that is Used or Disclosed pursuant to this Common Agreement and any SOPs. Signatory can satisfy the written privacy policy requirement by including applicable content consistent with the HIPAA Rules in its existing privacy policy, except as otherwise stated herein with respect to IAS Providers. This written privacy policy requirement does not supplant the HIPAA Privacy Rule obligations of a QHIN, Participant, or a Subparticipant that is a Covered Entity to post and distribute a Notice of Privacy Practices that meets the requirements of 45 CFR § 164.520. If Signatory is a Covered Entity, then this written privacy policy requirement can be satisfied by its Notice of Privacy Practices. If Signatory is an IAS Provider, then the written privacy policy requirement must be in the form of a Privacy and Security Notice that meets the requirements of Section 10.2 of this Common Agreement. Notwithstanding Section 11.1, to the extent the Signatory's written privacy policy is "more stringent" than the HIPAA Privacy Rule provisions listed below, the written privacy policy shall govern. "More stringent" shall have the meaning assigned to it in 45 CFR § 160.202 except the written privacy policy shall be substituted for references to State law and the reference to

"standards, requirements or implementation specifications adopted under subpart E of part 164 of this subchapter" shall be limited to those listed below.

12. Security.

12.1 General Security Requirements. Signatory shall comply with the HIPAA Security Rule as if the HIPAA Security Rule applied to Individually Identifiable Information that is TI regardless of whether Signatory is a Covered Entity or a Business Associate. Signatory shall also comply with the security requirements stated in Section 12 of this Common Agreement and specific additional requirements as described in the QTF and applicable SOPs. With the exception of Section 12.1.5, none of these requirements in Section 12.1 shall apply to any federal agency or any other type of entity exempted from compliance with this Section 12.1 in an applicable SOP.

12.1.1 Cybersecurity Coverage. In accordance with the applicable SOP(s), Signatory shall maintain, throughout the term of this Common Agreement: (i) a policy or policies of insurance for cyber risk and errors and omissions; (ii) internal financial reserves to self-insure against a cyber-incident; or (iii) some combination of (i) and (ii).

12.1.2 Cybersecurity Certification. Signatory shall achieve and maintain third-party certification to an industry-recognized cybersecurity framework demonstrating compliance with all relevant security controls, as set forth in the applicable SOP.

12.1.3 Annual Security Assessments. Signatory must obtain a third-party security assessment and technical audit no less often than annually and as further described in the applicable SOP. Within thirty (30) days of completing such annual security assessment or technical audit, Signatory must provide evidence of completion and mitigation as specified in the applicable SOP.

12.1.4 Intentionally Omitted.

12.1.5 Security Resource Support to Participants. Signatory shall make available to its Participants: (i) security resources and guidance regarding the protection of TI applicable to the Participants' participation in the QHIN under the applicable Framework Agreement; and (ii) information and resources that the RCE or Cybersecurity Council makes available to Signatory related to promotion and enhancement of the security of TI under the Framework Agreements.

12.1.6 Chief Information Security Officer.

i. The RCE shall designate a person to serve as the Chief Information Security Officer (CISO) for activities conducted under the Framework Agreements. This may be either an employee or independent contractor of the RCE. The RCE's CISO will be responsible for monitoring and maintaining the overall Security Posture of activities conducted under the Framework Agreements and making recommendations to all QHINs regarding changes to baseline security practices required to address changes to the threat landscape.

ii. Signatory agrees that it, and not the RCE, is ultimately responsible for the Security Posture related to Signatory's participation in TEFCA. Signatory shall also designate a person to serve as its CISO for purposes of Signatory's participation in TEFCA Exchange. Signatory's CISO shall have responsibility for Signatory's Security Posture 'with respect to its participation in TEFCA Exchange and as set forth in an SOP. The RCE shall establish a Cybersecurity Council to enhance cybersecurity commensurate with the risks of the activities conducted under the Framework Agreements as set forth in an SOP.

12.2 TI Outside the United States. Signatory shall only Use TI outside the United States or Disclose TI to any person or entity outside the United States to the extent such Use or Disclosure is permitted or required by Applicable Law and the Use or Disclosure is conducted in conformance with the HIPAA Security Rule, regardless of whether Signatory is a Covered Entity or Business Associate.

12.3 TEFCA Security Incident Reporting. Signatory shall report to the RCE and to all QHINs that are likely impacted, whether directly or by nature of one of the other QHIN's Participants or Subparticipants, any TEFCA Security Incident, as set forth in the applicable SOP(s). Such report must include sufficient information for the RCE and others affected to understand the nature and likely scope of the TEFCA Security Incident. Signatory shall supplement the information contained in the report as additional relevant information becomes available and cooperate with the RCE, and with other QHINs, Participants, and Subparticipants that are likely impacted by the TEFCA Security Incident.

12.3.1 Receiving TEFCA Security Incident Report. Signatory shall implement a reporting protocol by which other QHINs can provide Signatory with a report of a TEFCA Security Incident.

12.3.2 Vertical Reporting of TEFCA Security Incident(s). Signatory shall report a TEFCA Security Incident to its Participants and Subparticipants as required by an applicable SOP.

12.3.3 Compliance with Notification Under Applicable Law. Nothing in this Section 12.3 shall be deemed to modify or replace any breach notification requirements that Signatory may have under the HIPAA Rules, the FTC Rule, or other Applicable Law. To the extent Signatory is already required by Applicable Law to notify a Participant, Subparticipant, or another QHIN of an incident that would also be a TEFCA Security Incident, this Section 12.3 does not require duplicative notification.

12.4 Encryption. If Signatory is a NHE (but not to the extent that it is a federal agency or any other type of entity exempted from compliance with this Section 12.4 in an applicable SOP), Signatory must encrypt all Individually Identifiable Information it maintains, both in transit and at rest, regardless of whether such information is TI. Requirements for encryption may be set forth in an SOP.

13. General Obligations.

13.1 Compliance with Applicable Law and the Framework Agreements. Signatory shall comply with all Applicable Law and shall implement and act in accordance with any provision required by this Common Agreement, including all applicable SOPs and provisions of the QTF, when providing Designated Network Services or otherwise engaging in or facilitating TEFCA Exchange.

13.2 Compliance with Specific Obligations.

13.2.1 Responsibility of the RCE. To the extent required by the Contract, the RCE shall take reasonable steps to confirm that Signatory is abiding by the obligations under this Common Agreement, the QTF, and all applicable SOPs. In the event that the RCE becomes aware of a material non-compliance with any of the obligations stated in a Framework Agreement or any of the applicable SOPs by Signatory or its Participants or Subparticipants, then the RCE shall promptly notify Signatory in writing. Such notice shall notify Signatory that its failure to correct any such deficiencies within the timeframe established by the RCE shall constitute a material breach of this Common Agreement, which may result in termination of this Common Agreement in accordance with Section 17.3.2.

13.2.2 Responsibility of Signatory. Signatory shall be responsible for taking reasonable steps to confirm that all of its Participants and Subparticipants are abiding by the ToP and all applicable SOPs. In the event that Signatory becomes aware of a material non-compliance by one of its Participants or Subparticipants, then Signatory shall promptly notify the Participant or

Subparticipant in writing. Such notice shall inform the Participant or Subparticipant that its failure to correct any such deficiencies within the timeframe established by Signatory shall constitute a material breach of the ToP, which may result in suspension or termination of Participant's or Subparticipant's ability to engage in TEFCA Exchange. Except as set forth in Section 17.4.5, Signatory is responsible for determining when suspension or termination of its Participants' or Subparticipants' ability to engage in TEFCA Exchange is warranted. Nothing in this Section 13.2.2 shall be deemed to limit Signatory's responsibility for the acts or omissions of its Participants and Subparticipants as set forth in Section 7.4.

13.2.3 Responsibility for Third-Party Technology Vendors of Signatory. To the extent that Signatory uses a third-party technology vendor(s) that will have access to TEFCA Information in connection with Designated Network Services, it shall include in a written agreement with each such subcontractor or agent a requirement to comply with all applicable provisions of this Common Agreement and a prohibition on engaging in any act or omission that would cause Signatory to violate the terms of this Common Agreement if Signatory had engaged in such act or omission itself.

13.3 Intentionally Omitted.

13.4 Intentionally Omitted.

14. Specific QHIN Obligations.

14.1 Transparency – Access to Participant/Subparticipant Information. If either ONC or the RCE has a reasonable basis to believe that one or more of the following situations exist with respect to Signatory, then Signatory shall make available, upon written request, evidence of the applicable Participant/Subparticipant Terms of Participation and information relating to the exchange of TI and the circumstances giving rise to the basis for such request. The foregoing shall be subject to Signatory's right to restrict or condition its cooperation or disclosure of information in the interest of preserving privileges but only to the extent that such information is material to the defense of a substantiated claim asserted by a third party. Such situations include: (i) an alleged violation of this Common Agreement or Applicable Law; or (ii) a threat to the security of TEFCA Exchange or information that the RCE or ONC reasonably believes is TI. The right of Signatory to restrict or condition its cooperation or disclosure of information pursuant to this Section 14.1 in the interest of preserving privileges shall not apply to a disclosure that is requested in the interest of national security.

14.2 Compliance with Standard Operating Procedures. The RCE shall adopt Standard Operating Procedures (SOPs) to provide detailed guidance on specific aspects of the exchange activities under this Common Agreement that are binding on the RCE, Signatory and, as applicable, Participants and Subparticipants. The SOPs are incorporated by reference into this Common Agreement, and Signatory shall comply with all SOPs that are applicable to it. In the ToP, Participants and Subparticipants will agree to comply with all applicable SOPs. If Signatory or its Participants or Subparticipants fail to comply with any applicable SOP, the RCE may take corrective action to bring the organization into compliance with the SOP, which may include: (i) requiring Signatory to suspend the ability of a Participant or Subparticipant to exchange information under the Framework Agreement(s) until the non-compliance is corrected to the satisfaction of the RCE; (ii) requiring Signatory to terminate the ability of a Participant or Subparticipant to exchange information under the Framework Agreement(s); (iii) suspending Signatory's ability to exchange information under the Common Agreement; or (iv) terminating Signatory's ability to exchange information under the Common Agreement. RCE shall adopt an SOP that provides detailed information about sanctions for non-compliance with an SOP. Nothing in this Section 14.2 of this Common Agreement limits the RCE's rights to terminate this Common Agreement under Section 17.3.2 or 17.3.3 of this Common Agreement.

14.3 Intentionally Omitted.

14.4 Intentionally Omitted.

15. Dispute Resolution.

15.1 Acknowledgement and Consent to Dispute Resolution Process. Signatory acknowledges that it may be in its best interest to resolve Disputes related to the Common Agreement through a collaborative, collegial process rather than through civil litigation. Signatory has reached this conclusion based upon the fact that the legal and factual issues related to the exchange and related activities under the Common Agreement are unique, novel, and complex, and limited case law exists that addresses the legal issues that could arise in connection with this Common Agreement. Therefore, Signatory agrees to participate in the Dispute Resolution Process with respect to any Dispute. Notwithstanding, Signatory understands that the Dispute Resolution Process does not supersede or replace any oversight, investigatory, enforcement, or other administrative actions or processes that may be taken by the relevant authority, whether or not arising out of or related to the circumstances giving rise to the Dispute. RCE and Signatory are committed to promptly and fairly resolving Disputes.

To that end, Signatory shall use its best efforts to resolve Disputes that may arise with other QHINs, their respective Participants and Subparticipants, or the RCE through informal discussions before seeking to invoke the Dispute Resolution Process. Likewise, Signatory, on its own behalf and on behalf of its Participant(s) or Subparticipant(s), will seek to resolve Disputes involving the RCE through good-faith informal discussions with the RCE prior to invoking the Dispute Resolution Process. If the Dispute cannot be resolved through cooperation between Signatory and the other QHIN(s) or the RCE, then the RCE may, or Signatory may on its own behalf or on behalf of its Participant(s) or Subparticipant(s), choose to submit the Dispute to the Dispute Resolution Process.

Under no circumstances will the Dispute Resolution Process give the RCE any power to assess monetary damages against any party to the Dispute Resolution Process including, without limitation, Signatory or its Participants or Subparticipants or any other QHIN or its Participants or Subparticipants. Except in accordance with Section 15.2, if Signatory refuses to participate in the Dispute Resolution Process, such refusal shall constitute a material breach of this Common Agreement and may be grounds for suspension or termination of Signatory's participation in TEFCA Exchange.

15.2 Injunctive Relief.

15.2.1 Notwithstanding Section 15.1, Signatory shall be relieved of its obligation to participate in the Dispute Resolution Process if Signatory: (i) makes a good faith determination that is based upon available information or other evidence that another QHIN's or its Participants' or Subparticipants' acts or omissions will violate Section 7.1 or cause irreparable harm to Signatory or another organization or person (e.g., another QHIN or its Participant or an Individual); and (ii) pursues immediate injunctive relief against such QHIN or its Participant or Subparticipant in a court of competent jurisdiction in accordance with Section 19.3. Signatory must notify RCE of such action within two (2) business days of filing for the injunctive relief and of the result of the action within twenty-four (24) hours of a court of competent jurisdiction granting or denying injunctive relief.

15.2.2 If the injunctive relief sought in Section 15.2.1 is not granted and Signatory chooses to pursue the Dispute, the Dispute must be submitted to the Dispute Resolution Process in accordance with Section 15.1.

15.3 Activities during Dispute Resolution Process. The pendency of a Dispute under this Common Agreement has no effect on either Party's obligations herein, unless

Signatory terminates its rights in accordance with Section 17.3.1 or is suspended in accordance with Section 17.4.2.

15.4 Implementation of Agreed Upon Resolution. If, at any point during the Dispute Resolution Process, Signatory and all other parties to the Dispute accept a proposed resolution of the Dispute, Signatory and RCE each agree to implement the terms of the resolution within the timeframe agreed to in the resolution of the Dispute, to the extent applicable to each of them.

15.5 Reservation of Rights. If, following the completion of the Dispute Resolution Process, in the opinion of either Party, the Dispute Resolution Process failed to adequately resolve the Dispute, a Party may pursue any remedies available to it in a court of competent jurisdiction in accordance with Section 19.3.

15.6 Escalation of Certain Disputes to ONC. Except for RCE suspension or termination decisions subject to Section 16 of this Common Agreement, if Signatory has reason to believe that: (i) the RCE is acting in a Discriminatory Manner or in violation of the RCE's conflict of interest policies; or (ii) the RCE has not acted in accordance with its obligations stated in this Common Agreement, then Signatory shall have the right, on its own behalf and on behalf of its Participants and Subparticipants, to make a complaint to ONC. The complaint shall identify the parties to the Dispute, a description of the Dispute, a summary of each party's position on the issues included in the Dispute, the final disposition of the Dispute, and the basis for the RCE's alleged misconduct. The RCE and Signatory shall each also promptly provide such additional information as may be reasonably requested by ONC in order to consider and resolve the issues raised for review. Since this complaint may include PHI and may include Confidential Information, the RCE will work with ONC to develop mechanisms to protect the confidentiality of this information. Such protective mechanisms and the process for escalating a complaint to ONC are set forth in an SOP.

15.7 Reporting of Anonymized Dispute Information to ONC. As part of the RCE's communications with ONC, within fifteen (15) business days after the end of each calendar quarter, the RCE reports the following information relating to each Dispute that has been submitted through the Dispute Resolution Process in an anonymized format to ONC: (i) identification of whether the parties to the Dispute are QHIN(s) only, or whether the Dispute also involves Participant(s) or Subparticipant(s); (ii) a description of the Dispute with reasonable specificity; and (iii) the final disposition of the Dispute.

16. Appeals to ONC.

16.1 Signatory may appeal the following decisions of the RCE to ONC:

16.1.1 Suspension of a Signatory or Suspension of a Signatory's Participant or Subparticipant; and

16.1.2 Termination of a Signatory's Common Agreement by the RCE.

16.2 ONC anticipates publishing regulations to address the appeals of any of the RCE's decisions listed in Section 16.1. ONC anticipates issuing sub-regulatory guidance to address those appeals while formulating regulations. Until ONC's regulations governing those appeals are finalized and effective, the sub-regulatory guidance ONC issues shall be binding under this Common Agreement.

17. Term, Termination and Suspension.

17.1 Term. This Common Agreement shall commence on the CA Effective Date and shall remain in effect until it is terminated by either Party in accordance with the terms of this Common Agreement.

17.2 Intentionally Omitted.

17.3 Termination.

17.3.1 Termination by Signatory. Signatory may terminate this Common Agreement at any time without cause by providing ninety (90) days' prior written notice to RCE. Signatory may also terminate for cause if the RCE commits a material breach of the Common Agreement, and the RCE fails to cure its material breach within thirty (30) days of Signatory providing written notice to RCE of the material breach; provided, however, that if RCE is diligently working to cure its material breach at the end of this thirty (30) day period, then Signatory must provide the RCE with up to another thirty (30) days to complete its cure.

17.3.2 Termination by the RCE. RCE may not terminate this Common Agreement except as provided by Section 4.2, this Section 17.3.2, or Section 17.3.3 of this Common Agreement. RCE may terminate this Common Agreement with immediate effect by giving notice to Signatory if: (i) Signatory is in material breach of any of the terms and conditions of this Common Agreement and fails to remedy such breach within thirty (30) days after receiving notice of such breach; provided, however, that if Signatory is diligently working to cure its material breach at the end of this thirty- (30-) day period, then RCE must provide Signatory with up to another thirty (30) days to complete its cure; or

(ii) Signatory breaches a material provision of this Common Agreement where such breach is not capable of remedy.

17.3.3 Termination by RCE if the RCE Ceases to be Funded. The Parties acknowledge that the RCE's activities under this Common Agreement are supported by ONC funding. If this funding ceases, there are no guarantees that the RCE will continue unless a financial sustainability model has been put in place. If federal funding ceases, or if the available funding is not sufficient to provide the necessary funding to support operation of the RCE and there is no successor RCE, then the RCE may terminate this Common Agreement by providing one hundred and eighty (180) days' prior written notice to Signatory.

17.3.4 Termination by Mutual Agreement. The Parties may terminate this Common Agreement at any time and for any reason by mutual, written agreement.

17.3.5 Effect of Termination of the Common Agreement.

(i) Upon termination of this Common Agreement for any reason, RCE shall promptly remove Signatory and its Participants and Subparticipants from the RCE Directory Service and any other lists of QHINs that RCE maintains. Signatory shall implement the technical mechanism(s) necessary to ensure that its Participants' and Subparticipants' ability to participate in TEFCA Exchange is terminated upon termination of this Common Agreement.

(ii) Upon termination of this Common Agreement for any reason, Signatory shall, without undue delay, (a) remove all references that identify it as a QHIN from all media, and (b) cease all use of any material, including but not limited to product manuals, marketing literature, and web content that identifies it as a QHIN. Within twenty (20) business days of termination of this Common Agreement, Signatory shall confirm to RCE, in writing, that it has complied with this Subsection 17.3.5(ii).

(iii) To the extent Signatory stores TI, such TI may not be distinguishable from other information maintained by Signatory. When the TI is not distinguishable from other information, it is not possible for Signatory to return or destroy TI it maintains upon termination or expiration of this Common Agreement. Upon termination or expiration of this Common Agreement, if Signatory is subject to Section 11 of this Common Agreement, such sections

shall continue to apply so long as the information would be ePHI if maintained by a Covered Entity or Business Associate. The protections required under the HIPAA Security Rule shall also continue to apply to all TI that is ePHI, regardless of whether Signatory is a Covered Entity or Business Associate.

(iv) In no event shall Signatory be entitled to any refund of any fees that it has paid the RCE prior to termination.

(v) The provisions set forth in this Section 17.3.5 are in addition to those survival provisions set forth in Section 19.16.

17.4 Suspension.

17.4.1 Suspension by RCE. RCE may suspend Signatory's ability to engage in TEFCA Exchange if RCE determines, following completion of a preliminary investigation, that Signatory is responsible for a Threat Condition or in accordance with Section 17.4. RCE will make a reasonable effort to notify Signatory in advance of RCE's intent to suspend Signatory, including notice of the Threat Condition giving rise to such suspension. If advance notice is not reasonably practicable under the circumstances, the RCE will notify Signatory of the suspension, and the Threat Condition giving rise thereto, as soon as practicable following the suspension. Upon suspension of Signatory, RCE will work collaboratively with Signatory to resolve the issue leading to the suspension. RCE shall adopt an SOP to address specific requirements and timelines related to suspension.

17.4.2 Selective Suspension by Signatory. Signatory may, in good faith and to the extent permitted by Applicable Law, determine that it must suspend exchanging with another QHIN, Participant, or Subparticipant with which it is otherwise required to exchange in accordance with an SOP because of reasonable and legitimate concerns related to the privacy, security, accuracy, or quality of information that is exchanged. If Signatory makes this determination, it is required to promptly notify the RCE and the QHIN that Signatory is suspending of its decision and the reason(s) for making the decision. If Signatory makes the decision to suspend, it is required, within thirty (30) days, to initiate the Dispute Resolution Process in order to resolve whatever issues led to the decision to suspend, or end its suspension and resume exchanging with the other QHIN. Provided that Signatory selectively suspends exchanging with another QHIN in accordance with this Section 17.4.2 and in accordance with Applicable Law, such selective suspension shall not be deemed a violation of Sections 6.2.2 or 9.4.

17.4.3 Additional Suspension Rights of RCE. Notwithstanding anything to the contrary set forth herein, the RCE retains the right to suspend any TEFCA Exchange activity (i) upon ten (10) days' prior notice if the RCE determines that Signatory has created a situation in which the RCE may suffer material harm and suspension is the only reasonable step that the RCE can take to protect itself; or (ii) immediately if the RCE determines that the safety or security of any person or the privacy or security of TI or Confidential Information is threatened. In the case of an immediate suspension under this Section 17.4.3, the RCE will provide notice as soon as practicable following the suspension.

17.4.4 Effect of Suspension. The suspension of Signatory's ability to participate in TEFCA Exchange pursuant to this Section 17.4 has no effect on Signatory's other obligations hereunder, including, without limitation, obligations with respect to privacy and security. During any suspension pursuant to this Section 17.4, Signatory's inability to exchange information under this Common Agreement or comply with those terms of this Common Agreement that require information exchange shall not be deemed a breach of this Common Agreement. In the event of suspension of Signatory's ability to participate in TEFCA Exchange, Signatory shall communicate to its Participants, and require that they communicate to their Subparticipants, that all TEFCA Exchange by or on behalf of Signatory's Participants and Subparticipants will also be suspended during any period of Signatory's suspension. Signatory is responsible for having and implementing the technical mechanism(s) necessary to ensure that its Participants' and Subparticipants' ability to participate in TEFCA Exchange is suspended during the period of Signatory's suspension from TEFCA Exchange.

17.4.5 RCE Suspension of Participant or Subparticipants. To the extent that RCE determines that one of Signatory's Participants or Subparticipants has done something or failed to do something that results in a Threat Condition, RCE may suspend, or the RCE may direct that Signatory suspend, that Participant's or Subparticipant's ability to engage in TEFCA Exchange. In the event that the RCE directs Signatory to suspend a Participant or Subparticipant based on (a) the RCE's determination that suspension or termination is warranted based on (i) an alleged violation of such Framework Agreement or of Applicable Law by the party/parties; (ii) a cognizable threat to the security of TEFCA Exchange or the information that the RCE reasonably believes is TI; or (iii) such suspension is in the interests of national security as directed by an agency of the United States government, then Signatory must effectuate such suspension as soon as practicable and not longer than within

twenty-four (24) hours of the RCE having directed the suspension, unless the RCE specifies a longer period of time is permitted to effectuate the suspension; and (b) any reason other than those in subsection (a), then Signatory must effectuate suspension as soon as practicable.

17.5 Successor RCE and Transition. Signatory agrees that ONC has the right to select any successor RCE or to act as an interim RCE until such successor RCE has been selected. Signatory further agrees to work cooperatively with the RCE and any interim or successor RCE selected by ONC. Additionally, Signatory shall continue to abide by the provisions of this Common Agreement during the transition to any interim or successor RCE.

18. Fees.

18.1 Fees Paid by QHINs to the RCE. Signatory shall pay the fees set forth on Schedule 1 attached hereto (the "QHIN Fees"). RCE shall invoice Signatory for all Fees in accordance with Schedule 1. Unless otherwise set forth in Schedule 1, invoices shall be due and payable by Signatory within sixty (60) days after receipt thereof unless Signatory notifies RCE in writing that it is contesting the accuracy of the invoice and identifies the specific inaccuracies that it asserts. QHIN Fees contested under this Section 18.1 shall be resolved between Signatory and RCE as stated in the applicable SOP. Other than with regard to invoiced amounts that are contested in good faith, any collection costs, attorneys' fees or other expenses reasonably incurred by RCE in collecting amounts due under this Common Agreement are the responsibility of Signatory. If Signatory fails to pay any undisputed QHIN Fees when due hereunder, RCE has the right to suspend or terminate Signatory's ability to participate in any exchange activity under this Common Agreement. Prior to taking any action against Signatory for non-payment, including suspension, RCE shall provide Signatory ten (10) days' prior written notice. If Signatory makes payment within ten (10) days of receiving written notice, RCE will not suspend Signatory's ability to participate in any exchange activity under this Common Agreement. If Signatory fails to make payment within ten (10) days of receiving notice, then the RCE may implement the suspension or may terminate Signatory's ability to participate in any exchange activity under this Common Agreement.

18.1.1 Changes to QHIN Fees. Schedule 1 may be updated by the RCE from time-to-time in relation to operational costs, availability of ONC funding, and other market factors in order to ensure the sustainability of the activities conducted under the Framework Agreements. In light of the foregoing, changes to Schedule 1 are not subject to the change management process set forth in Section 5. The RCE shall provide Signatory not less than ninety

(90) days' advance written notice of any adjustments to the QHIN Fees set forth in Schedule 1.

18.2 Fees Charged by QHINs to Other QHINs. Signatory is prohibited from charging fees to other QHINs for any exchange of information using the Designated Network Services.

18.3 Fees Charged by QHINs, Participants or Subparticipants. QHINs, Participants, and Subparticipants that operate a Responding Node may charge fees to an Initiating Node when Responding to Queries through TEFCA Exchange as defined in an applicable SOP. The foregoing shall not prohibit Signatory from charging its Participants or Subparticipants fees for use of its Designated Network Services.

19. Contract Administration.

19.1 Authority to Execute. Signatory warrants and represents that it has the full power and authority to execute this Common Agreement and that any representative of Signatory who executes this Common Agreement has full power and authority to do so on behalf of Signatory.

19.2 Notices. All notices to be made under this Common Agreement shall be given in writing to Signatory at the address for legal notice specified in its QHIN Application and to the RCE at The Sequoia Project 8300 Boone Blvd., Suite 500, Vienna, Virginia 22182 or rce@sequoiaproject.org, and shall be deemed given: (i) upon delivery, if personally delivered; (ii) upon delivery by overnight delivery service such as UPS or FEDEX or another recognized commercial carrier; (iii) upon the date indicated on the return receipt, when sent by the United States Postal Service Certified Mail, return receipt requested; or (iv) if by facsimile telecommunication or other form of electronic transmission, upon receipt when the sending facsimile machine or electronic mail address receives confirmation of receipt by the receiving facsimile machine or electronic mail address. Either Party may update its address for notice by providing notice to the other Party in accordance with this Section 19.2.

19.3 Governing Law, Forum, and Jurisdiction.

19.3.1 Conflicts of Law and Governing Law. In the event of a Dispute between Signatory and the RCE, the applicable federal and State conflicts of law provisions that govern the operations of the Parties shall determine governing law.

19.3.2 Jurisdiction and Venue. The RCE, currently a Virginia non-profit corporation, and Signatory each hereby submits to the exclusive jurisdiction of any State

or federal court sitting in the Commonwealth of Virginia within twenty-five (25) miles of Alexandria, Virginia in any legal proceeding arising out of or relating to this Common Agreement unless otherwise required by Applicable Law. The RCE and Signatory each agrees that all claims and matters arising out of this Common Agreement may be heard and determined in such court, and each Party hereby waives any right to object to such filing on grounds of improper venue, *forum non-conveniens*, or other venue-related grounds.

19.3.3 Intentionally Omitted.

19.3.4 Sovereign Immunity. No provision within this Common Agreement in any way constitutes a waiver by the United States Department of Health and Human Services or any other part of the federal government of sovereign immunity or any other applicable immunity from suit or from liability that the United States Department of Health and Human Services or other part of the federal government may have by operation of law.

19.4 Assignment. None of this Common Agreement, including but not limited to any of the rights created by this Common Agreement, can be transferred by either Party, whether by assignment, merger, other operation of law, change of control of the Party or otherwise, without the prior written approval of the other Party. Notwithstanding the foregoing, if ONC selects another organization to serve as the RCE, then RCE shall assign this Common Agreement to the successor RCE or an interim RCE as directed by ONC and consent of Signatory to such assignment shall not be required. Signatory understands and agrees that no interim or successor RCE shall have any obligation or liability for any act or omission of The Sequoia Project in connection with this Common Agreement or any of the other Framework Agreements prior to the termination of The Sequoia Project's status as the RCE.

19.5 Force Majeure. Neither Party shall be responsible for any delays or failures in performance caused by the occurrence of events or other circumstances that are beyond its reasonable control after the exercise of commercially reasonable efforts to either prevent or mitigate the effect of any such occurrence or event.

19.6 Severability. If any provision of this Common Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be struck from the Common Agreement, and the remaining provisions of this Common Agreement shall remain in full force and effect and enforceable.

19.7 Counterparts. This Common Agreement may be executed in one or more counterparts, each of which shall be considered an original counterpart, and shall become a binding agreement when each Party shall have executed one counterpart.

19.8 Captions. Captions appearing in this Common Agreement are for convenience only and shall not be deemed to explain, limit, or amplify the provisions of this Common Agreement.

19.9 Independent Parties. Nothing contained in this Common Agreement shall be deemed or construed as creating a joint venture or partnership between Signatory and RCE.

19.10 Acts of Contractors and Agents. To the extent that the acts or omissions of a Party's agent(s) or contractor(s), or their subcontractor(s), result in that Party's breach of and liability under this Common Agreement, said breach shall be deemed to be a breach by that Party.

19.11 Entire Agreement; Waiver. This Common Agreement, together with the QTF, SOPs, and all other attachments, exhibits, and artifacts incorporated by reference, contains the entire understanding of the Parties with regard to the subject matter contained herein. The failure of either Party to enforce, at any time, any provision of this Common Agreement shall not be construed to be a waiver of such provision, nor shall it in any way affect the validity of this Common Agreement or any part hereof or the right of such Party thereafter to enforce each and every such provision. No waiver of any breach of this Common Agreement shall be held to constitute a waiver of any other or subsequent breach, nor shall any delay by either Party to exercise any right under this Common Agreement operate as a waiver of any such right.

19.12 Effect of Agreement. Except as provided in Sections 7.4 and Section 15, nothing in this Common Agreement shall be construed to restrict either Party's right to pursue all remedies available under law for damages or other relief arising from acts or omissions of the RCE or other QHINs or their Participants or Subparticipants related to the Common Agreement, or to limit any rights, immunities, or defenses to which Signatory may be entitled under Applicable Law.

19.13 Priority. In the event of any conflict or inconsistency between Applicable Law, a provision of this Common Agreement, the QTF, an SOP, or any implementation plans, guidance documents, or other materials or documentation the RCE makes available to QHINs, Participants, or Subparticipants regarding the operations or activities conducted under the Framework Agreements, the following shall be the order of precedence for this Common Agreement to the extent of such conflict or inconsistency: (i) Applicable Law; (ii) the Common Agreement; (iii) the ToP; (iv) the QTF; (v) the Dispute Resolution Process, as set forth herein and further detailed in an SOP; (vi) all other SOPs; (vii) all other attachments, exhibits, and artifacts

incorporated herein by reference; and (viii) other RCE plans, documents, or materials made available regarding activities conducted under the Framework Agreements.

19.14 QHIN Time Periods. Any of the time periods relating to the Parties hereto that are specified in this Common Agreement may be changed on a case-by-case basis pursuant to the mutual written consent of the Parties, provided that these changes are not undertaken to adversely affect another QHIN and provided that these changes would not unfairly benefit either Party to the detriment of others participating in activities under the Framework Agreements. Time periods that pertain to ONC may not be changed, except by ONC, including the time periods for ONC review of proposed changes to the Common Agreement, the QTF, or SOPs that are set forth in Section 5.

19.15 Remedies Cumulative. The rights and remedies of the Parties provided in this Common Agreement are cumulative and are in addition to any other rights and remedies provided by Applicable Law.

19.16 Survival of Rights and Obligations. The respective rights, obligations, and liabilities of the Parties with respect to acts or omissions that occur by either Party prior to the date of expiration or termination of this Common Agreement shall survive such expiration or termination. Following any expiration or termination of this Common Agreement, the Parties shall thereafter cooperate fully and work diligently in good faith to achieve an orderly resolution of all matters resulting from such expiration or termination.

19.16.1 The following sections shall survive expiration or termination of this Common Agreement as more specifically provided below:

(i) The following sections shall survive in perpetuity following the expiration or termination of this Common Agreement: Sections 7.6 Limitation of Liability; 19.2 Notices; 19.3 Governing Law, Forum, and Jurisdiction; 19.6 Severability; 19.9 Independent Parties; 19.10 Acts of Contractors and Agents; 19.11 Entire Agreement; Waiver; 19.12 Effect of Agreement; 19.13 Priority; and 19.15 Remedies Cumulative.

(ii) The following sections shall survive for a period of six (6) years following the expiration or termination of this Common Agreement: Sections 7.1 Confidential Information; 7.2 Disclosure of Confidential Information; 7.4.1 Statement of General Principle;

12.3 TEFCA Security Incident Notification; and 14.1 Transparency - Access to Participant/Subparticipant Information.

(iii) The following section shall survive for the period specifically stated in such section following the expiration or termination of this Common Agreement: Section 17.3.5 Effect of Termination of Common Agreement.

(iv) To the extent that Signatory is an IAS Provider, the provisions set forth in Section 10.6 shall survive following the termination or expiration of this Common Agreement for the respective periods set forth therein.

IN WITNESS WHEREOF, the Parties hereto, intending legally to be bound hereby, have executed and delivered this Common Agreement as of the date first above written.

RCE: THE SEQUOIA PROJECT, INC.	**Signatory:** _____
_____	_____
Signature	Signature
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

Exhibit 1 to the Common Agreement for Nationwide Health Information Interoperability

Participant/Subparticipant Terms of Participation

Version 1.0

April 2024

Participant/Subparticipant Terms of Participation

Introduction:

Section 4003 of the 21st Century Cures Act directed the U.S. Department of Health and Human Services ("HHS") National Coordinator for Health Information Technology to, "in collaboration with the National Institute of Standards and Technology and other relevant agencies within the Department of Health and Human Services, for the purpose of ensuring full network-to-network exchange of health information, convene public-private and public-public partnerships to build consensus and develop or support a trusted exchange framework, including a common agreement among health information networks nationally" (the "Trusted Exchange Framework and Common Agreement"℠ or TEFCA℠). The common agreement referenced in the foregoing sentence is the Common Agreement for Nationwide Health Information Interoperability entered into by each Qualified Health Information Network™ ("QHIN™") that has been Designated to participate in TEFCA. The Common Agreement requires that every QHIN contractually obligate their TEFCA Participants, who in turn are required to contractually obligate their Subparticipants to comply with the Participant/Subparticipant Terms of Participation ("ToP").

Upstream QHIN, Participant, or Subparticipant ("QPS"), as defined below, must ensure that these ToP are included, directly or by reference, in a legally enforceable contract in which the Upstream QPS binds its Participants and Subparticipants. **These ToP must be presented and entered into WITHOUT modification,** ***except*** that Upstream QPS should insert its name in the highlighted field(s) below and the name of the QHIN if Upstream QPS is not a QHIN and *may*, but is not required to, add signature lines to the end of these ToP. For the avoidance of doubt, the foregoing is not intended to prohibit Upstream QPS from imposing additional terms upon its Participants and/or Subparticipants, provided any such terms do not conflict with the ToP with respect to TEFCA Exchange.

Participant/Subparticipant Terms of Participation:

[NAME OF UPSTREAM QPS] ("Upstream QPS") participates in TEFCA by providing technical and/or governance services to its Participants and/or Subparticipants to facilitate their ability to engage in TEFCA Exchange consistent with all applicable legal and contractual requirements. [Upstream QPS is a QHIN OR Upstream QPS is a Participant or Subparticipant of [QHIN].] Your organization ("You") wishes to become a Participant or Subparticipant, as applicable, of Upstream QPS so that You may participate in TEFCA Exchange.

As a Participant or Subparticipant, You agree to abide by these Participant/Subparticipant Terms of Participation ("ToP").

1. Definitions and Relevant Terminology.

1.1 Defined Terms. Capitalized terms used in these ToP shall have the meaning set forth below. Where a definition includes one or more citations to a statute, regulation, or standard, the definition shall be interpreted to refer to such statute, regulation, or standard as may be amended from time-to-time.

Applicable Law: all federal, State, local, or tribal laws and regulations then in effect and applicable to the subject matter herein. For the avoidance of doubt, federal agencies are only subject to federal law.

Breach of Unencrypted Individually Identifiable Information: the acquisition, access, or Disclosure of unencrypted Individually Identifiable Information maintained by an IAS Provider that compromises the security or privacy of the unencrypted Individually Identifiable Information.

Business Associate: has the meaning assigned to such term at 45 CFR § 160.103.

Business Associate Agreement (BAA): a contract, agreement, or other arrangement that satisfies the implementation specifications described within 45 CFR § 164.314(a) and 164.504(e), as applicable.

Common Agreement: unless otherwise expressly indicated, the Common Agreement for Nationwide Health Information Interoperability, the QHIN Technical Framework (QTF), all Standard Operating Procedures (SOPs), and all other attachments, exhibits, and artifacts incorporated therein by reference.

Confidential Information: any information that is designated as Confidential Information by the CI Discloser, or that a reasonable person would understand to be of a confidential nature, and is disclosed to a CI Recipient pursuant to a Framework Agreement. For the avoidance of doubt, "Confidential Information" does not include electronic protected health information (ePHI), as defined herein, that is subject to a Business Associate Agreement and/or other provisions of a Framework Agreement.

Notwithstanding any label to the contrary, "Confidential Information" does not include any information that: (i) is or becomes known publicly through no fault of the CI Recipient; or (ii) is learned by the CI Recipient from a third party that the CI Recipient reasonably believes is entitled to disclose it without restriction; or (iii) is already known to the CI Recipient before receipt from the CI Discloser, as shown by the CI Recipient's written records; or (iv) is independently developed by CI Recipient without the use of or reference to the CI Discloser's Confidential Information, as shown by the CI Recipient's written records, and was not subject to confidentiality restrictions prior to receipt of such information from the CI Discloser.

Confidential Information (CI) Discloser: a person or entity that discloses Confidential Information.

Confidential Information (CI) Recipient: a person or entity that receives Confidential Information.

Connectivity Services: the technical services provided by a QHIN, Participant, or Subparticipant to its Participants and Subparticipants that facilitate TEFCA Exchange and are consistent with the requirements of the then-applicable QHIN Technical Framework.

Covered Entity: has the meaning assigned to such term at 45 CFR § 160.103.

Designated Network: the Health Information Network that a QHIN uses to offer and provide the Designated Network Services.

Designated Network Governance Body: a representative and participatory group or groups that approve the processes for fulfilling the Governance Functions and participate in such Governance Functions for Signatory's Designated Network.

Designated Network Services: the Connectivity Services and/or Governance Services.

Directory Entry(ies): listing of each Node controlled by a QHIN, Participant or Subparticipant, which includes the endpoint resource for such Node(s) and any other organizational or technical information required by the QTF or an applicable SOP.

Disclosure (including its correlative meanings "Disclose," "Disclosed," and "Disclosing"): the release, transfer, provision of access to, or divulging in any manner of TEFCA Information (TI) outside the entity holding the information.

Discover (including its correlative meanings "Discovery" and "Discovering"): the first day on which something is known to the QHIN, Participant, or Subparticipant, or by exercising reasonable diligence would have been known, to the QHIN, Participant, Subparticipant.

Discriminatory Manner: an act or omission that is inconsistently taken or not taken with respect to any similarly situated QHIN, Participant, Subparticipant, Individual, or group of them, whether it is a competitor, or whether it is affiliated with or has a contractual relationship with any other entity, or in response to an event.

Electronic Protected Health Information (ePHI): has the meaning assigned to such term at 45 CFR § 160.103.

Exchange Purpose or XP: means the reason, as authorized by a Framework Agreement, including the applicable SOP(s), for a transmission, Query, Use, Disclosure, or Response transacted through TEFCA Exchange.

Framework Agreement(s): with respect to QHINs, the Common Agreement; and with respect to a Participant or Subparticipant, the ToP.

FTC Rule: the Health Breach Notification Rule promulgated by the Federal Trade Commission set forth at 16 CFR Part 318.

Government Benefits Determination: a determination made by any agency, instrumentality, or other unit of the federal, State, local, or tribal government as to whether an Individual qualifies for government benefits for any purpose other than health care (e.g., Social Security disability benefits) to the extent permitted by Applicable Law. Disclosure of TI for this purpose may require an authorization that complies with Applicable Law.

Government Health Care Entity: any agency, instrumentality, or other unit of the federal, State, local, or tribal government to the extent that it provides health care services (e.g., treatment) to Individuals but only to the extent that it is not acting as a Covered Entity.

Governance Functions: the functions, activities, and responsibilities of the Designated Network Governance Body as set forth in an applicable SOP.

Governance Services: the governance functions described in an applicable SOP, which are performed by a QHIN's Designated Network Governance Body for its Participants and Subparticipants to facilitate TEFCA Exchange in compliance with the then-applicable requirements of the Framework Agreements.

Health Care Provider: meets the definition of such term in either 45 CFR § 171.102 or in the HIPAA Rules at 45 CFR § 160.103.

Health Information Network (HIN): has the meaning assigned to the term "Health Information Network or Health Information Exchange" in the information blocking regulations at 45 CFR § 171.102.

HIPAA: the Health Insurance Portability and Accountability Act of 1996, Pub. Law 104-191and the Health Information Technology for Economic and Clinical Health Act of 2009, Pub. Law 111-5.

HIPAA Rules: the regulations set forth at 45 CFR Parts 160, 162, and 164.

HIPAA Privacy Rule: the regulations set forth at 45 CFR Parts 160 and 164, Subparts A and E.

HIPAA Security Rule: the regulations set forth at 45 CFR Part 160 and Part 164, Subpart C.

Implementation Date: the date sixty (60) calendar days after publication of version 2 of the Common Agreement in the Federal Register.

Individual: has the meaning assigned to such term at 45 CFR § 171.202(a)(2).

Individual Access Services Incident (IAS Incident): a TEFCA Security Incident or a Breach of Unencrypted Individually Identifiable Information maintained by an IAS Provider.

Individual Access Service Consent (IAS Consent): an IAS Provider's own supplied form for obtaining express written consent from the Individual in connection with the IAS.

Individual Access Services Provider (IAS Provider): each QHIN, Participant, and Subparticipant that offers Individual Access Services (IAS).

Individual Access Services (IAS): the services provided to an Individual by a QHIN, Participant, or Subparticipant that has a direct contractual relationship with such Individual in which the QHIN, Participant, or Subparticipant, as applicable, agrees to satisfy that Individual's ability to use TEFCA Exchange to access, inspect, obtain, or transmit a copy of that Individual's Required Information.

Individually Identifiable Information: information that identifies an Individual or with respect to which there is a reasonable basis to believe that the information could be used to identify an Individual.

Initiating Node: a Node through which a QHIN, Participant, or Subparticipant initiates transactions for TEFCA Exchange and, to the extent such transaction is a Query, receives a Response to such Query.

Node: a technical system that is controlled directly or indirectly by a QHIN, Participant, or Subparticipant and that is listed in the RCE Directory Service.

Non-HIPAA Entity (NHE): a QHIN, Participant, or Subparticipant that is neither a Covered Entity nor a Business Associate as defined under the HIPAA Rules with regard to activities under a Framework Agreement. To the extent a QHIN, Participant, or Subparticipant is a Hybrid entity, as defined in 45 CFR § 164.103, such QHIN, Participant, or Subparticipant shall be considered a Non-HIPAA Entity with respect to TEFCA Exchange activities related to such QHIN, Participant, or Subparticipant's non-covered components.

ONC: the U.S. Department of Health and Human Services Office of the National Coordinator for Health Information Technology.

Participant: to the extent permitted by applicable SOP(s), a U.S. Entity that has entered into the ToP in a legally binding contract with a QHIN to use the QHIN's Designated Network Services to participate in TEFCA Exchange in compliance with the ToP.

Participant/Subparticipant Terms of Participation (ToP): the requirements set forth in Exhibit 1 to the Common Agreement, as reflected herein, to which: QHINs must contractually obligate their Participants to agree; to which QHINs must contractually obligate their Participants to contractually obligate their Subparticipants and Subparticipants of the Subparticipants to agree, in order to participate in TEFCA Exchange including the QHIN Technical Framework (QTF), all applicable Standard Operating Procedures (SOPs), and all other attachments, exhibits, and artifacts incorporated therein by reference.

Privacy and Security Notice: an IAS Provider's own supplied written privacy and security notice that contains the information required by the applicable SOP(s).

Protected Health Information (PHI): has the meaning assigned to such term at 45 CFR § 160.103.

Public Health Authority: has the meaning assigned to such term at 45 CFR § 164.501.

QHIN Technical Framework (QTF): the most recent effective version of the document that contains the technical, functional, privacy, and security requirements for TEFCA Exchange.

Qualified Health Information Network (QHIN): to the extent permitted by applicable SOP(s), a Health Information Network that is a U.S. Entity that has been Designated by the RCE and is a party to the Common Agreement countersigned by the RCE.

Query(ies) (including its correlative uses/tenses "Queried" and "Querying"): the act of asking for information through TEFCA Exchange.

RCE Directory Service: a technical service provided by the RCE that enables QHINs to identify their Nodes to enable TEFCA Exchange. The requirements for use of, inclusion in, and maintenance of the RCE Directory Service are set forth in the Framework Agreements, QTF, and applicable SOPs.

Recognized Coordinating Entity® (RCE™): the entity selected by ONC that enters into the Common Agreement with QHINs in order to impose, at a minimum, the requirements of the Common Agreement, including the SOPs and the QTF, on the QHINs and administer such requirements on an ongoing basis.

Required Information: the Electronic Health Information, as defined in 45 CFR § 171.102, that is (i) maintained in a Responding Node by any QHIN, Participant, or Subparticipant prior to or during the term of the applicable Framework Agreement and (ii) relevant for a required XP Code, as set forth in the QTF or an applicable SOP(s).

Responding Node: a Node through which the QHIN, Participant, or Subparticipant Responds to a received transaction for TEFCA Exchange.

Response(s) (including its correlative uses/tenses "Responds," "Responded" and "Responding"): the act of providing the information that is the subject of a Query or otherwise transmitting a message in response to a Query through TEFCA Exchange.

Standard Operating Procedure(s) or SOP(s): a written procedure or other provision that is adopted pursuant to the Common Agreement and incorporated by reference into the Framework Agreements to provide detailed information or requirements related to TEFCA Exchange, including all amendments thereto. Each SOP identifies the relevant group(s) to which the SOP applies, including whether Participants or Subparticipants are required to comply with a given SOP.

State: any of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

Subparticipant: to the extent permitted by applicable SOP(s), a U.S. Entity that has entered into the ToP in a legally binding contract with a Participant or another Subparticipant to use the Participant's or Subparticipant's Connectivity Services to participate in TEFCA Exchange in compliance with the ToP.

TEFCA Exchange: the transaction of information between Nodes using an XP Code.

TEFCA Information (TI): any information that is transacted through TEFCA Exchange except to the extent that such information is received by a QHIN, Participant, or Subparticipant that is a Covered Entity, Business Associate, or NHE that is exempt from compliance with the Privacy section of the applicable Framework Agreement and is incorporated into such recipient's system of records, at which point the information is no longer TI with respect to such recipient and is governed by the HIPAA Rules and other Applicable Law.

TEFCA Security Incident(s):

(i) An unauthorized acquisition, access, Disclosure, or Use of unencrypted TI using TEFCA Exchange, but NOT including any of the following:
  (a) Any unintentional acquisition, access, Use, or Disclosure of TI by a Workforce Member or person acting under the authority of a QHIN, Participant, or Subparticipant, if such acquisition, access, Use, or Disclosure (i) was made in good faith, (ii) was made by a person acting within their scope of authority, (iii) was made to another Workforce Member or person acting under the authority of any QHIN, Participant, or Subparticipant, and (iv) does not result in further acquisition, access, Use, or Disclosure in a manner not permitted under Applicable Law and the Framework Agreements.
  (b) A Disclosure of TI where a QHIN, Participant, or Subparticipant has a good faith belief that an unauthorized person to whom the Disclosure was made would not reasonably have been able to retain such information.
  (c) A Disclosure of TI that has been de-identified in accordance with the standard at 45 CFR § 164.514(b).

(ii) Other security events (e.g., ransomware attacks), as set forth in an SOP, that adversely affect a QHIN's, Participant's, or Subparticipant's participation in TEFCA Exchange.

Threat Condition: (i) a breach of a material provision of a Framework Agreement that has not been cured within fifteen (15) days of receiving notice of the material breach (or such other period of time to which the Parties have agreed), which notice shall include such specific information about the breach that the RCE has available at

the time of the notice; or (ii) a TEFCA Security Incident; or (iii) an event that RCE, a QHIN, its Participant, or their Subparticipant has reason to believe will disrupt normal TEFCA Exchange, either due to actual compromise of or the need to mitigate demonstrated vulnerabilities in systems or data of the QHIN, Participant, or Subparticipant, as applicable, or could be replicated in the systems, networks, applications, or data of another QHIN, Participant, or Subparticipant; or (iv) any event that could pose a risk to the interests of national security as directed by an agency of the United States government.

United States: the fifty (50) States, the District of Columbia, and the territories and possessions of the United States including, without limitation, all military bases or other military installations, embassies, and consulates operated by the United States government.

U.S. Entity/Entities: any corporation, limited liability company, partnership, or other legal entity that meets all of the following requirements:

(i) The entity is organized under the laws of a State or commonwealth of the United States or the federal law of the United States and is subject to the jurisdiction of the United States and the State or commonwealth under which it was formed;
(ii) The entity's principal place of business, as determined under federal common law, is in the United States; and
(iii) None of the entity's directors, officers, or executives, and none of the owners with a five percent (5%) or greater interest in the entity, are listed on the *Specially Designated Nationals and Blocked Persons List* published by the United States Department of the Treasury's Office of Foreign Asset Control or on the United States Department of Health and Human Services, Office of Inspector General's *List of Excluded Individuals/Entities*.

Use(s) (including correlative uses/tenses, such as "Uses," "Used," and "Using"): with respect to TI, means the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

Workforce Member(s): any employees, volunteers, trainees, and other persons whose conduct, in the performance of work for an entity, is under the direct control of such entity, whether or not they are paid by the entity.

XP Code: the code used to identify the XP in any given transaction, as set forth in the applicable SOP(s).

1.2 ToP Terminology.

1.2.1 References to You and QHINs, Participants, and Subparticipants. As set forth in its definition and in the introductory paragraph of these ToP, the term "You" is used to refer to the specific entity that is a party to these ToP with the Upstream QPS. (You and Upstream QPS may also be referred to herein individually as a "Party" or collectively as the "Parties.") Any and all rights and obligations of a QHIN, Participant or Subparticipant stated herein are binding upon all other QHINs, Participants, and Subparticipants that have entered into a Framework Agreement. References herein to "QHINs," "other Participants," "other Subparticipants," and similar such terms are used to refer to any and all other organizations that have signed a Framework Agreement.

1.2.2 General Rule of Construction. For the avoidance of doubt, a reference to a specific section of the ToP in a particular section does not mean that other sections of the ToP that expressly apply to You are inapplicable. A reference in these ToP to any law, any regulation, or to Applicable Law includes any amendment, modification or replacement to such law, regulation, or Applicable Law.

1.2.3 Terms of Participation for Subparticipants. You shall contractually obligate your Subparticipants, if any, to comply with the ToP. Notwithstanding the foregoing, for any entity that became Your Subparticipant prior to the Implementation Date, You shall (i) contractually obligate such entity to comply with the ToP within one-hundred eighty (180) days of the Implementation Date, provided that such Subparticipant is and remains a party to the Participant Subparticipant Agreement, as defined in and required by Common Agreement Version 1.1, during such period; or (ii) terminate such entity's ability to engage in TEFCA Exchange upon the earlier of the date of termination of the existing Participant-Subparticipant Agreement or one-hundred (180) days after the Implementation Date.

2. Cooperation and Non-Discrimination.

2.1 Cooperation. You understand and acknowledge that numerous activities with respect to the ToP will likely involve the RCE, QHINs, and their respective Participants and Subparticipants, as well as employees, agents, third-party contractors, vendors, or consultants of each of them. You shall reasonably cooperate with the RCE, ONC, QHINs and their respective Participants and Subparticipants in all matters related to TEFCA Exchange, including any dispute resolution activities in which You are involved. Expectations for reasonable

cooperation are set forth in an SOP. The costs of cooperation to You shall be borne by You and shall not be charged to the RCE or other QHINs. Nothing in this Section 2.1 shall modify or replace the TEFCA Security Incident notification obligations under Section 8.3 and, if applicable, the IAS Incident notification obligations under Section 6.3.2 of the ToP.

2.2 Non-Discrimination.

2.2.1 Prohibition Against Exclusivity. Upstream QPS shall not prohibit or attempt to prohibit You, nor shall You or Upstream QPS prohibit or attempt to prohibit any of Your Subparticipants, if any, from joining, exchanging with, conducting other transactions with, or supporting any other networks or exchange frameworks that use services *other than* the Upstream QPS's Designated Network Services or Your Connectivity Services, concurrently with Your or Your Subparticipants' participation in TEFCA Exchange. Notwithstanding the foregoing, this subsection does not preclude You from including and enforcing reasonable term limits in the contracts with Your Subparticipants related to Your Subparticipants' use of Your Connectivity Services.

2.2.2 No Discriminatory Limits on Exchange of TI. Neither You nor Upstream QPS shall engage in TEFCA Exchange, refrain from engaging in TEFCA Exchange, or limit TEFCA Exchange with any QHIN, Participant, Subparticipant, or Individual in a Discriminatory Manner. Notwithstanding the foregoing, if You refrain from engaging in TEFCA Exchange or limit interoperability with any other QHIN, Participant, or Subparticipant under the following circumstances, Your actions or inactions shall not be deemed discriminatory: (i) Your Connectivity Services require load balancing of network traffic or similar activities provided such activities are implemented in a consistent and non-discriminatory manner for a period of time no longer than necessary to address the network traffic issue; (ii) You have a reasonable and good-faith belief that the other QHIN, Participant, or Subparticipant has not satisfied or will not be able to satisfy the applicable terms of a Framework Agreement (including compliance with Applicable Law) in any material respect; and/or (iii) Your actions or inactions are consistent with or permitted by an applicable SOP. One QHIN, Participant, or Subparticipant suspending its exchange activities with another QHIN, Participant, or Subparticipant in accordance with Section 17.4.2 of the Common Agreement or Section 10.4.5 of the ToP, as applicable, shall not be deemed discriminatory.

2.2.3 Updates to Connectivity Services. In revising and updating Connectivity Services from time to time, You will use commercially reasonable efforts to

do so in accordance with generally accepted industry practices and to implement any changes in a non-discriminatory manner; provided, however, this provision shall not apply to limit modifications or updates to the extent that such revisions or updates are required by Applicable Law or implemented to respond promptly to newly discovered privacy or security threats.

2.2.4 Notice of Updates to Connectivity Services. You shall implement a reporting protocol to provide reasonable prior written notice of all modifications or updates of Your Connectivity Services to Upstream QPS and Your Subparticipants if such revisions or updates are expected to adversely affect Your ability to engage in TEFCA Exchange or require changes in the Connectivity Services of Upstream QPS or Your Subparticipants, regardless of whether they are necessary due to Applicable Law or newly discovered privacy or security threats.

3. Confidentiality and Accountability.

3.1 Confidential Information. You and Upstream QPS each agree to use and disclose all Confidential Information received pursuant to these ToP only as authorized in these ToP and any applicable SOP(s) and solely for the purposes of performing its obligations under a Framework Agreement or the proper exchange of information through TEFCA Exchange and for no other purpose. You and Upstream QPS may act as a CI Discloser and a CI Recipient, accordingly. A CI Recipient may disclose the Confidential Information it receives only to its Workforce Members who require such knowledge and use in the ordinary course and scope of their employment or retention and are obligated to protect the confidentiality of the CI Discloser's Confidential Information in a manner substantially equivalent to the terms required herein for the treatment of Confidential Information. If a CI Recipient must disclose the CI Discloser's Confidential Information under operation of law, it may do so provided that, to the extent permitted by Applicable Law, the CI Recipient gives the CI Discloser reasonable notice to allow the CI Discloser to object to such redisclosure, and such redisclosure is made to the minimum extent necessary to comply with Applicable Law.

3.2 Disclosure of Confidential Information. Nothing herein shall be interpreted to prohibit Upstream QPS or the RCE from disclosing any Confidential Information to ONC. You acknowledge that ONC, as a Federal government agency, is subject to the Freedom of Information Act. Any disclosure of Your Confidential Information to

ONC or any ONC contractor will be subject to Applicable Law, as well as the limitations, procedures, and other relevant provisions of any applicable SOP(s).

3.3 ONC's and the RCE's Approach when Requesting Confidential Information. As a matter of general policy, ONC will request only the limited set of Confidential Information that ONC believes is necessary to inform the specific facts and circumstances of a matter. The RCE will request only the limited set of Confidential Information that the RCE believes is necessary to inform the specific facts and circumstances of a matter.

4. RCE Directory Service and Directory Entries.

4.1 Utilization of Directory Entries. The RCE Directory Service and Directory Entries contained therein shall be used by QHINs solely as necessary to create and maintain operational connectivity to enable TEFCA Exchange. Upstream QPS is providing You with access to, and the right to use, Directory Entries on the express condition that You only use and disclose Directory Entry information as necessary to advance the intended use of the Directory Entries or as required by Applicable Law. For example, You are permitted to disclose Directory Entry information to Your Workforce Members, Your Subparticipant's Workforce Members, and/or to the Workforce Members of health information technology vendors who are engaged in assisting You or Your Subparticipant with establishing and maintaining connectivity via the Framework Agreements. Further, You shall not use another QPS's Directory Entries or information derived therefrom for marketing or any form of promotion of Your own products and services, unless otherwise permitted pursuant to an SOP. In no event shall You use or disclose the information contained in the Directory Entries in a manner that should be reasonably expected to have a detrimental effect on ONC, the RCE, Upstream QPS, Your Subparticipants, other QHINs, other Participants, other Subparticipants, or any other individual or organization. For the avoidance of doubt, Directory Entries are Confidential Information of the CI Discloser except to the extent such information meets one of the exceptions to the definition of Confidential Information. Nothing herein shall be interpreted to prohibit a QHIN or Upstream QPS from publicly disclosing the identity of its own Participants or Subparticipants.

4.2 ToP Record. You must maintain a record of all ToPs into which You enter with Your Subparticipants, if any, regardless of whether such Subparticipants are listed in the RCE Directory Services. Such record must be provided to the RCE within four (4) business days following the RCE's or Upstream QPS's written request unless such other timeframe is agreed to by the RCE.

5. TEFCA Exchange Activities.

5.1 Utilization of TEFCA Exchange. You may only utilize Connectivity Services for purposes of facilitating TEFCA Exchange. You may only utilize TEFCA Exchange for an XP. To the extent there are limitations on what types of Participants or Subparticipants may transact TEFCA Information for a specific XP, such limitations will be set forth in the applicable SOP(s). All TEFCA Exchange is governed by and must comply with the Framework Agreements governing the QHINs, Participants, and Subparticipants engaging in the TEFCA Exchange.

To the extent that Upstream QPS provides you with access to other health information exchange networks, these ToP do not affect these other activities or the reasons for which You may request and exchange information within these other networks. Such activities are not in any way limited by the Framework Agreements provided the transactions are not TEFCA Exchange.

5.2 Uses. You may Use TI in any manner that: (i) is not prohibited by Applicable Law; (ii) is consistent with Your Privacy and Security Notice, if applicable; and (iii) is in accordance with Sections 7 and 8 of these ToP.

5.3 Disclosures. You may Disclose TI provided such Disclosure: (i) is not prohibited by Applicable Law; (ii) is consistent with Your Privacy and Security Notice, if applicable; and (iii) is in accordance with Sections 7 and 8 of these ToP.

5.4 Responses. Except as otherwise set forth in an applicable SOP, Your Responding Nodes must Respond to Queries for all XP Codes that are identified as "required." in the applicable SOP(s). Such Response must include all Required Information. Notwithstanding the foregoing, You may withhold some or all of the Required Information to the extent necessary to comply with Applicable Law.

5.5 Special Legal Requirements. If and to the extent Applicable Law requires that an Individual either consent to, approve, or provide an authorization for the Use or Disclosure of that Individual's information to You, such as a more stringent federal or State law relating to sensitive health information, then You shall refrain from the Use or Disclosure of such information in connection with these ToP unless such Individual's consent, approval, or authorization has been obtained consistent with the requirements of Applicable Law and Section 7 of these ToP, including, without limitation, communicated pursuant to the access consent policy(ies) described in the QTF or applicable SOP(s). Copies of such consent, approval, or authorization shall be maintained and transmitted pursuant to the process described in the QTF by whichever party is required to obtain it under Applicable Law, and You may make such copies of the consent, approval, or authorization available electronically to any QHIN, Participant, or Subparticipant in accordance with the QTF and to the extent

permitted by Applicable Law. You shall maintain written policies and procedures to allow an Individual to revoke such consent, approval, or authorization on a prospective basis. If You are an IAS Provider, the foregoing shall not be interpreted to modify, replace, or diminish the requirements set forth in Section 6 of these ToP and any applicable SOP(s) for obtaining an Individual's express written consent.

6. **Individual Access Services.**

6.1 IAS Offering(s). You may elect to be an IAS Provider by offering IAS to any Individual in accordance with the requirements of this section and in accordance with all other provisions of these ToP and applicable SOP(s). Nothing in this Section 6 shall modify, terminate, or in any way affect an Individual's right of access under the HIPAA Privacy Rule at 45 CFR § 164.524 if You are a Covered Entity or a Business Associate. Nothing in this Section 6 of these ToP shall be construed as modifying or taking precedence over any provision codified in 45 CFR Part 171. An IAS Provider shall not prohibit or attempt to prohibit any Individual using the IAS of any other IAS Provider or from joining, exchanging with, conducting other transactions with any other networks or exchange frameworks, using services *other than* the IAS Providers' Designated Network Services, concurrently with the QHIN's, Participant's, or Subparticipant's participation in TEFCA Exchange.

6.2 Individual Consent. This Section 6.2 shall apply to You if You are an IAS Provider. The Individual requesting IAS shall be responsible for completing the IAS Consent. The IAS Consent shall include, at a minimum: (i) consent to use the IAS; (ii) the Individual's acknowledgement and agreement to Your Privacy and Security Notice; and (iii) a description of the Individual's rights to access, delete, and export such Individual's Individually Identifiable Information. You may implement secure electronic means (e.g., secure e-mail, secure web portal) by which an Individual may submit the IAS Consent. You shall collect the IAS Consent prior to the Individual's first use of the IAS and prior to any subsequent use if there is any material change in the applicable IAS Consent, including the version of the Privacy and Security Notice referenced therein. Nothing in the IAS Consent may contradict or be inconsistent with any applicable provision of these ToP or the SOP(s). If You are a Covered Entity and have a Notice of Privacy Practices that meets the requirements of 45 CFR § 164.520, You are not required to have a Privacy and Security Notice that meets the requirements of the applicable SOP. Nothing in Section 6 reduces a Covered Entity's obligations under the HIPAA Rules.

6.3 Additional Security Requirements for IAS Providers. In addition to meeting the applicable security requirements set forth in Section 8, if You are an IAS Provider, You must further satisfy the requirements of this subsection.

6.3.1 Scope of Security Requirements. You must meet the applicable security requirements set forth in Section 8 for all Individually Identifiable Information You maintain as an IAS Provider, regardless of whether such information is TI.

6.3.2 IAS Incident Notice to Affected Individuals. If You reasonably believe that an Individual has been affected by an IAS Incident, You must provide such Individual with notification without unreasonable delay and in no case later than sixty (60) days following Discovery of the IAS Incident. The notification required under this section must be written in plain language and shall include, to the extent possible, the information set forth in the applicable SOP(s). To the extent You are already required by Applicable Law to notify an Individual of an incident that would also be an IAS Incident, this section does not require duplicative notification to that Individual.

6.4 Survival for IAS Providers. This Section 6.4 shall apply to You if You are an IAS Provider. As between You as an IAS Provider and an Individual, the IAS Provider's obligations in the IAS Consent, including Your requirement to comply with the Privacy and Security Notice and provide Individuals with rights, shall survive for so long as You maintain such Individual's Individually Identifiable Information. If You were an IAS Provider, the requirements of Section 6.3 shall survive termination of these ToP for so long as You maintain Individually Identifiable Information acquired during the term of these ToP as an IAS Provider regardless of whether such information is or was TI.

7. **Privacy.**

7.1 Compliance with the HIPAA Privacy Rule. If You are a NHE (but not to the extent that You are acting as an entity entitled to make a Government Benefits Determination under Applicable Law, a Public Health Authority, or a Government Health Care Entity or any other type of entity exempted from compliance with this Section in an applicable SOP), then You shall comply with the provisions of the HIPAA Privacy Rule listed below with respect to all Individually Identifiable

information as if such information is Protected Health Information and You are a Covered Entity.

7.1.1 From 45 CFR § 164.502, General Rules:

- Subsection (a)(1) – Dealing with permitted Uses and Disclosures, but only to the extent You are authorized to engage in the activities described in this subsection of the HIPAA Privacy Rule for the applicable XP.
- Subsection (a)(2)(i) – Requiring Disclosures to Individuals
- Subsection (a)(5) – Dealing with prohibited Uses and Disclosures
- Subsection (b) – Dealing with the minimum necessary standard
- Subsection (c) – Dealing with agreed-upon restrictions
- Subsection (d) – Dealing with de-identification and re-identification of information
- Subsection (e) – Dealing with Business Associate contracts
- Subsection (f) – Dealing with deceased persons' information
- Subsection (g) – Dealing with personal representatives
- Subsection (h) – Dealing with confidential communications
- Subsection (i) – Dealing with Uses and Disclosures consistent with notice
- Subsection (j) – Dealing with Disclosures by whistleblowers

7.1.2 45 CFR § 164.504(e), Organizational Requirements.

7.1.3 45 CFR § 164.508, Authorization Required. Notwithstanding the foregoing, the provisions of Sections 6.2 shall control and this Section 7.1.3 shall not apply with respect to You if You are an IAS Provider that is a NHE.

7.1.4 45 CFR § 164.510, Uses and Disclosures Requiring Opportunity to Agree or Object. Notwithstanding the foregoing, an IAS Provider that is a NHE but is not a Health Care Provider shall not have the right to make the permissive Disclosures described in § 164.510(a)(3) - Emergency circumstances; provided, however, that an IAS Provider is not prohibited from making such a Disclosure if the Individual has consented to the Disclosure pursuant to Section 6 of these ToP.

7.1.5 45 CFR § 164.512, Authorization or Opportunity to Object Not Required. Notwithstanding the foregoing, an IAS Provider that is a NHE but is not a

Health Care Provider shall not have the right to make the permissive Disclosures described in § 164.512(c) - Standard: Disclosures about victims of abuse, neglect or domestic violence, § 164.512 Subsection (d) - Standard: Uses and Disclosures for health oversight activities, and § 164.512 Subsection (j) - Standard: Uses and Disclosures to avert a serious threat to health or safety; provided, however, that an IAS Provider is not prohibited from making such a Disclosure(s) if the Individual has consented to the Disclosure(s) pursuant to Section 6 of these ToP.

7.1.6 From 45 CFR § 164.514, Other Requirements Relating to Uses and Disclosures:

- Subsections (a)-(c) – Dealing with de-identification requirements that render information not Individually Identifiable Information for purposes of this Section 7 and TEFCA Security Incidents
- Subsection (d) – Dealing with minimum necessary requirements
- Subsection (e) – Dealing with Limited Data Sets

7.1.7 45 CFR § 164.522, Rights to Request Privacy Protections.

7.1.8 45 CFR § 164.524, Access of Individuals, except that an IAS Provider that is a NHE shall be subject to the requirements of Section 6 with respect to access by Individuals for purposes of IAS and not this Section 7.1.8.

7.1.9 45 CFR § 164.528, Accounting of Disclosures.

7.1.10 From 45 CFR § 164.530, Administrative Requirements:

- Subsection (a) – Dealing with personnel designations
- Subsection (b) – Dealing with training
- Subsection (c) – Dealing with safeguards
- Subsection (d) – Dealing with complaints
- Subsection (e) – Dealing with sanctions
- Subsection (f) – Dealing with mitigation
- Subsection (g) – Dealing with refraining from intimidating or retaliatory acts
- Subsection (h) – Dealing with waiver of rights
- Subsection (i) – Dealing with policies and procedures
- Subsection (j) – Dealing with documentation

7.2 Written Privacy Policy. You must develop, implement, make publicly available, and act in accordance with a written privacy policy describing Your privacy practices with respect to Individually Identifiable Information that is Used or Disclosed pursuant to these ToP. You can satisfy the written privacy policy requirement by including applicable content consistent with the HIPAA Rules in Your existing privacy policy, except as otherwise stated herein with respect to IAS Providers. If You are a Covered Entity, this written privacy policy requirement does not supplant the HIPAA Privacy Rule obligations to post and distribute a Notice of Privacy Practices that meets the requirements of 45 CFR § 164.520. If You are a Covered Entity, then this written privacy policy requirement can be satisfied by Your Notice of Privacy Practices. If You are an IAS Provider, then the written privacy practices requirement must be in the form of a Privacy and Security Notice that meets the requirements of Section 6.2 of these ToP. Notwithstanding Section 11.1, to the extent the Signatory's written privacy policy is "more stringent" than the HIPAA Privacy Rule provisions listed below, the written privacy policy shall govern. "More stringent" shall have the meaning assigned to it in 45 CFR § 160.202 except the written privacy policy shall be substituted for references to State law and the reference to "standards, requirements or implementation specifications adopted under subpart E of part 164 of this subchapter" shall be limited to those listed below.

8. Security.

8.1 Security Controls. You shall implement and maintain appropriate security controls for Individually Identifiable Information that are commensurate with risks to the confidentiality, integrity, and/or availability of the Individually Identifiable Information. If You are a NHE, You shall comply with the HIPAA Security Rule provisions with respect to all Individually Identifiable Information as if such information were Protected Health Information and You were a Covered Entity or Business Associate. You shall comply with any additional security requirements that may be set forth in an SOP applicable to Participants and Subparticipants.

8.2 TEFCA Security Incident Reporting.

8.2.1 Reporting to Upstream QPS. You shall report to Upstream QPS any suspected TEFCA Security Incident, as set forth in the applicable SOP(s). Such report must include sufficient information for Upstream QPS and others affected to understand the nature and likely scope of the TEFCA Security Incident. You shall supplement the information contained in the report as additional relevant information becomes available and cooperate with Upstream QPS and, at the direction of Upstream QPS, with the RCE, and with

other QHINs, Participants, and Subparticipants that are likely impacted by the TEFCA Security Incident.

8.2.2 Reporting to Subparticipants. You shall report any TEFCA Security Incident experienced by or reported to You to Your Subparticipants as required by an applicable SOP.

8.2.3 Compliance with Notification Under Applicable Law. Nothing in this Section 8.3 shall be deemed to modify or replace any breach notification requirements that You may have under the HIPAA Rules, the FTC Rule, or other Applicable Law. To the extent You are already required by Applicable Law to notify Upstream QPS or a Subparticipant of an incident that would also be a TEFCA Security Incident, this section does not require duplicative notification.

8.3 Security Resource Support to Subparticipants. You shall make available to Your Subparticipants (if any): (i) security resources and guidance regarding the protection of TI applicable to the Subparticipants' participation in TEFCA Exchange; and (ii) information and resources that the RCE or Cybersecurity Council makes available to You related to promotion and enhancement of the security of TI under the Framework Agreements.

8.4 TI Outside the United States. You shall only Use TI outside the United States or Disclose TI to any person or entity outside the United States to the extent such Use or Disclosure is permitted or required by Applicable Law and the Use or Disclosure is conducted in conformance with the HIPAA Security Rule, regardless of whether You are a Covered Entity or Business Associate and as set forth in an applicable SOP.

8.5 Encryption. If You are a NHE (but not to the extent that You are a federal agency or any other type of entity exempted from compliance with this Section in an applicable SOP), You must encrypt all Individually Identifiable Information You maintain, both in transit and at rest, regardless of whether such information is TI. Requirements for encryption may be set forth in an SOP.

9. General Obligations.

9.1 Compliance with Applicable Law and the ToP. You shall comply with all Applicable Law and shall implement and act in accordance with any provision required by the ToP, including all applicable SOPs and provisions of the QTF, when engaging in or facilitating TEFCA Exchange. While each SOP identifies the relevant group(s) to which it applies, not every requirement in an SOP or the QTF will necessarily be

applicable to You. It is Your responsibility to determine, in consultation with Upstream QPS, which of the SOPs and QTF provisions are applicable to You.

9.2 Your Responsibility for Your Subparticipants. You shall be responsible for taking reasonable steps to confirm that all of Your Subparticipants (if any) are abiding by the ToP, specifically including all applicable SOPs and QTF provisions. In the event that You become aware of a material non-compliance by one of Your Subparticipants, then You shall promptly notify the Subparticipant in writing. Such notice shall inform the Subparticipant that its failure to correct any such deficiencies within thirty (30) days of receiving notice shall constitute a material breach of the ToP, which may result in early termination of these ToP.

9.3 Your Responsibility for Your Third-Party Technology Vendors. To the extent that You use a third-party technology vendor that will have access to TEFCA Information in connection with Connectivity Services or TEFCA Exchange, You shall include in a written agreement with each such subcontractor or agent a requirement to comply with all applicable provisions of these ToP and a prohibition on engaging in any act or omission that would cause You to violate the terms of these ToP if You had engaged in such act or omission Yourself.

9.4 Fees Charged by QHINs, Participants, or Subparticipants. You may charge fees to an Initiating Node when Responding to Queries through TEFCA Exchange as defined in an applicable SOP. The foregoing shall not prohibit You from charging Your Subparticipants fees for use of Your Connectivity Services.

10. Term, Termination, and Suspension.

10.1 Term. These ToP shall become effective upon agreement of both Parties and shall remain in effect until terminated by either Party. You may terminate these ToP by providing at least thirty (30) days' prior written notice of termination to Upstream QPS. Upstream QPS may terminate these ToP by providing at least ninety (90) days' prior written notice to You. Notwithstanding the foregoing, in the event that Upstream QPS's Framework Agreement is terminated, Your ToP shall be immediately terminated.

10.2 Termination for Cause. Either Party may terminate these ToP for cause if the other Party commits a material breach of a Framework Agreement, and fails to cure its material breach within thirty (30) days of receiving notice specifying the nature of such breach in reasonable detail from the non-breaching Party; provided, however, that if Upstream QPS is diligently working to cure its material breach at the end of this thirty (30) day period, then You must provide Upstream QPS with up to another thirty (30) days to complete its cure.

10.3 Effect of Termination. Upon termination of these ToP, You will no longer be able to engage in TEFCA Exchange facilitated by or through Upstream QPS. To the extent You store TI, such TI may not be distinguishable from other information maintained by You. When the TI is not distinguishable from other information, it is not possible for You to return or destroy TI You maintain upon termination or expiration of these ToP. Upon termination or expiration of these ToP, if You are subject to Section 7 of these ToP, such sections shall continue to apply so long as the information would be ePHI if maintained by a Covered Entity or Business Associate. The protections required under the HIPAA Security Rule shall also continue to apply to all TI that is ePHI, regardless of whether You are a Covered Entity or Business Associate. The provisions set forth in this Section 10.3 are in addition to those survival provisions set forth in Section 11.9.

10.4 Conflict with Other Agreements Between You and Upstream QPS. Notwithstanding anything herein to the contrary, in the event You and Upstream QPS are parties to an agreement that provides additional terms related to TEFCA Exchange and that agreement provides for a shorter notice period for termination, such shorter notice period shall control.

10.5 Rights to Suspend.

10.5.1 RCE's Right to Suspend Your Ability to Engage in TEFCA Exchange. You acknowledge and agree that the RCE has the authority to suspend, or direct the Upstream QPS to suspend, any QPS's ability to engage in TEFCA Exchange if: (i) there is an alleged violation of the respective Framework Agreement or of Applicable Law by the respective party/parties; (ii) there is a Threat Condition; (iii) the RCE determines that the safety or security of any person or the privacy or security of TI and/or Confidential Information is threatened; (iv) such suspension is in the interests of national security as directed by an agency of the United States government; or (v) there is a situation in which the RCE may suffer material harm and suspension is the only reasonable step that the RCE can take to protect itself. You acknowledge that upon receiving direction from the RCE, You will be suspended as soon as practicable provided, however, if the suspension is based on Subsections 10.5.1(i) or 10.5.1(iv) or a Threat Condition that results in a cognizable threat to the security of TEFCA Exchange or the information that the RCE reasonably believes is TI, then You will be suspended within twenty-four (24) hours of the RCE having directed Your QHIN to effectuate the suspension, unless the RCE specifies a longer period of time is permitted.

10.5.2 Upstream QPS's Right to Suspend Your Ability to Engage in TEFCA Exchange. You acknowledge and agree that Upstream QPS has the same authority as the RCE to suspend Your ability to engage in TEFCA Exchange, and Your Subparticipant's (if any) ability to engage in TEFCA Exchange, if any of the circumstances described in Subsections 10.5.1 (i)-(iii) above occur with respect to You or any of Your Subparticipants.

(i) Upstream QPS *may* exercise such right to suspend based on its own determination that any of the circumstances described in Subsections 10.5.1 (i)-(iii) above occurred with respect to You or any of Your Subparticipants.

(ii) Upstream QPS *must* exercise such right to suspend if directed to do so by the RCE or its Upstream QPS based on its determination that suspension is warranted based on any of the circumstances described in Subsections 10.5.1 (i)-(v) above with respect to You or any of Your Subparticipants.

(iii) You acknowledge that if Upstream QPS makes a determination that suspension is warranted or receives direction from its Upstream QPS to suspend Your ability to engage in TEFCA Exchange, You will be suspended as soon as practicable provided, however, if the suspension is based on the circumstances described in Subsections 10.5.1(i) or 10.5.1(iv) or a Threat Condition that results in a cognizable threat to the security of TEFCA Exchange or the information that the RCE reasonably believes is TI, then You will be suspended within twenty-four (24) hours of notice of Upstream QPS's determination or receipt of direction from its Upstream QPS, unless Upstream QPS specifies a longer period of time is permitted.

10.5.3 Upstream QPS Suspension. Notwithstanding the foregoing, in the event that Upstream QPS's ability to engage in TEFCA Exchange is suspended, Your and any of Your Subparticipants' ability to engage in TEFCA Exchange will be immediately suspended.

10.5.4 Suspension Rights Granted to You Related to Your Subparticipants. If You have Subparticipants, You acknowledge and agree that You have the same responsibility and authority to suspend Your Subparticipant's ability to engage in TEFCA Exchange if any of the circumstances described in Subsections 10.5.1 (i)-(iii) above occur with respect to any of Your Subparticipants. If You make a determination to suspend, You are required

to promptly notify Upstream QPS of Your decision and the reason(s) for making the decision. If any of Your Subparticipants notify You of their decision to suspend exchange with their Subparticipant(s), You must notify Upstream QPS of such decision.

(i) You *may* exercise such right to suspend based on Your own determination that any of the circumstances described in Subsections 10.5.1 (i)-(iii) above occurred with respect to any of Your Subparticipants.

(ii) You *must* exercise such right to suspend if directed to do so, by the RCE or Upstream QPS based on the RCE's determination that suspension is warranted based on any of the circumstances described in Subsections 10.5.1 (i)-(v) above with respect to any of Your Subparticipants.

(iii) You must effectuate such suspension of Your Subparticipant as soon as practicable provided, however, if the suspension is based on the circumstances described in Subsections 10.5.1(i) or 10.5.1(iv) or a Threat Condition that results in a cognizable threat to the security of TEFCA Exchange or the information that the RCE reasonably believes is TI, then it must be effectuated within twenty-four (24) hours of the triggering event, unless a longer period of time is permitted. For purposes of this subsection, the triggering event is Your determination to suspend, Your receipt of direction from your Upstream QPS to suspend, or the RCE having directed Your QHIN to effectuate the suspension.

10.5.5 Selective Suspension. You may, in good faith and to the extent permitted by Applicable Law, determine that You must suspend exchanging with a QHIN, Participant, or Subparticipant with which You are otherwise required to exchange in accordance with an SOP because of reasonable and legitimate concerns related to the privacy, security, accuracy, or quality of information that is exchanged. If You make this determination, You are required to promptly notify Upstream QPS of Your decision and the reason(s) for making the decision. If any of Your Subparticipants notify You of their decision to suspend exchange with a QHIN, Participant, or Subparticipant, You must notify Upstream QPS of such decision. You acknowledge that You may be required to engage in a process facilitated by the RCE to resolve whatever issues led to the decision to suspend. Provided that You selectively suspend exchanging with another QHIN, Participant, or Subparticipant in accordance with this section and in accordance with Applicable Law, such selective

suspension shall not be deemed a violation of Section 2.2 of these ToP.

11. Contract Administration.

11.1 Authority to Agree. You warrant and represent that You have the full power and authority to enter into these ToP.

11.2 Assignment. None of these ToP can be transferred by either Party, including whether by assignment, merger, other operation of law, change of control (i.e., sale of substantially all of the assets of the Party) of the Party or otherwise, without the prior written approval of the other Party.

11.3 Severability. If any provision of these ToP shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be struck from the ToP, and the remaining provisions of these ToP shall remain in full force and effect and enforceable.

11.4 Captions. Captions appearing in these ToP are for convenience only and shall not be deemed to explain, limit, or amplify the provisions of these ToP.

11.5 Independent Parties. Nothing contained in these ToP shall be deemed or construed as creating a joint venture or partnership between Upstream QPS and You.

11.6 Acts of Contractors and Agents. To the extent that the acts or omissions of a Party's agent(s) or contractor(s), or their subcontractor(s), result in that Party's breach of and liability under these ToP, said breach shall be deemed to be a breach by that Party.

11.7 Waiver. The failure of either Party to enforce, at any time, any provision of these ToP shall not be construed to be a waiver of such provision, nor shall it in any way affect the validity of these ToP or any part hereof or the right of such Party thereafter to enforce each and every such provision. No waiver of any breach of these ToP shall be held to constitute a waiver of any other or subsequent breach, nor shall any delay by either Party to exercise any right under these ToP operate as a waiver of any such right.

11.8 Priority. In the event of any conflict or inconsistency between any other agreement that You and Upstream QPS enter into with respect to TEFCA Exchange, Applicable Law, a provision of these ToP, the QTF, an SOP, and/or any implementation plans, guidance documents, or other materials or documentation the RCE makes available to QHINs, Participants, and/or Subparticipants regarding the operations or activities conducted under the Framework Agreements, the following shall be the order of

precedence for these ToP to the extent of such conflict or inconsistency: (1) Applicable Law; (2) these ToP; (3) the QTF; (4) the SOPs; (5) all other attachments, exhibits, and artifacts incorporated herein by reference; (6) other RCE plans, documents, or materials made available regarding activities conducted under the Framework Agreements; and (7) any other agreement that You and Upstream QPS enter into with respect to TEFCA Exchange.

11.9 Survival. The following sections of these ToP shall survive expiration or termination of these ToP as more specifically provided below:

(i) Section 3, Confidentiality and Accountability shall survive for a period of six (6) years following the expiration or termination of these ToP.

(ii) Section 6.4, Survival for IAS Providers, to the extent that You are an IAS Provider, shall survive following the expiration or termination of these ToP for the respective time periods set forth in Section 6.4.

(iii) Section 7, Privacy, to the extent that You are subject to Section 7, said Section shall survive the expiration or termination of these ToP so long as the information maintained by You would be ePHI if maintained by a Covered Entity or Business Associate.

(iv) Section 8.1 Security Controls, and Section 8.5, Encryption, to the extent that You are subject to Sections 8.1 and 8.5, said Section or Sections shall survive the expiration or termination of these ToP for so long as the information maintained by You would be ePHI if maintained by a Covered Entity or Business Associate regardless of whether You are a Covered Entity or Business Associate.

(v) The requirements of Section 8.2, TEFCA Security Incidents Reporting, shall survive for a period of six (6) years following the expiration or termination of these ToP.

Common Agreement Version Control Table

Version 1.0	January 2022
Version 1.1	November 2023
Draft Version 2.0	January 2024
Version 2.0	April 2024

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Common Agreement Version 2.0 is also available on the Office of the National Coordinator for Health Information Technology's public internet website at *www.HealthIT.gov/TEFCA.*

Authority: 42 U.S.C. 300jj–11.

Suhas Tripathi,

National Coordinator for Health Information Technology.

[FR Doc. 2024–09476 Filed 4–30–24; 8:45 am]

BILLING CODE 4150–45–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final HHS National Environmental Policy Act Compliance Procedures to Incorporate Federal Flood Risk Management Standard Procedures

AGENCY: Assistant Secretary for Administration, Department of Health and Human Services (HHS).

ACTION: Notice; final procedures.

SUMMARY: In accordance with Executive Order 13690 of January 30, 2015—Establishing a Federal Flood Risk Management Standard and Process for Soliciting and Considering Stakeholder Input, HHS is publishing its final floodplain management procedures to include climate science if an action takes place in a floodplain.

DATES: The final procedures are in effect on the May 1, 2024.

FOR FURTHER INFORMATION CONTACT: CAPT Leo Angelo Gumapas, Environmental Engineering Program Chief, at 202–669–6942 or by email at *leoangelo.gumapas@psc.hhs.gov,* for clarification of content.

SUPPLEMENTARY INFORMATION:

Background

E.O. 13690 of January 30, 2015—*Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input*—was issued to improve the nation's resilience to flooding and to better prepare for the impacts of climate change. In amending and building upon E.O. 11988—*Floodplain Management*—which was issued in 1977, E.O. 13690 and the associated Federal Flood Risk Management Standard (FFRMS) reinforce the important tenets and concepts articulated in E.O. 11988, such as avoiding actions in or impacting a floodplain and minimizing potential harm if an action must be located in a floodplain. When avoiding a floodplain is not possible, E.O. 13690 calls for agencies to improve the resilience of communities and federal actions.

On August 15, 2017, E.O. 13807 was issued, which revoked E.O. 13690. Accordingly, the ''Revised Guidelines for Implementing Executive Order 11988, Floodplain Management'' and its supplementary policy were withdrawn. On May 20, 2021, E.O. 14030, reinstated E.O. 13690 and all supplementary policies.

HHS's current floodplain management procedures are published in the General Administration Manual Part 30: Environmental Protection (GAM–30) section *30–40–40 Floodplain Management,* and they are based on E.O. 11988. The GAM–30 was last updated on February 25, 2000, and it is based on outdated laws and regulations. Program Support Center (PSC) | Real Estate, Logistics, Operations (RLO) | Real Property Management Service (RPMS) | Real Property Policy and Strategy (RPPS) drafted HHS FFRMS procedures based on E.O. 13690 to update GAM–30 Section 30–40–40 Floodplain Management.

The Council on Environmental Quality (CEQ) reviewed HHS's FFRMS procedures and provided favorable comments on December 2022.

HHS published its FFRMS procedures on the **Federal Register** for public comment for a thirty-day period from November 6, 2023 to December 6, 2023. HHS FFRMS procedures were viewed 128 times with no comments received over the thirty-day comment period.

Procedure Revisions

Revised General Administration Manual, HHS Part 30, Environmental Protection

Part 30—Environmental Protection

30–40 Natural Asset Review
30–40–40 Floodplain Management

Purpose: Executive Order (E.O.) 13690 on Establishing a Federal Flood Risk Management Standard (FFRMS) and a Process for Further Soliciting and Considering Stakeholder Input (2015), establishes a Federal Flood Risk Management Standard to ensure each Federal agency takes actions to enhance the Nation's resilience to current and future flooding and better prepare the United States for the impacts of climate change, such as sea level rise and extreme weather events. E.O. 13690 and the associated FFRMS amended and built upon E.O. 11988 on Floodplain Management (1977), which requires agencies to take action to reduce the risk of flood loss, to minimize the impacts of floods on human safety, health, and welfare, and to restore and preserve the natural and beneficial values served by floodplains. E.O. 13690 modernizes E.O. 11988 by increasing the vertical flood elevation and expanding corresponding horizontal extent of the floodplain to consider changing flood hazards due to climate change and other processes, and by encouraging climate-conscious resilient design if there are no practicable locations outside the expanded floodplain.

Definitions

Base Flood. ''Base Flood'' means that flood which has a one percent of greater chance of occurrence in any given year.

Base Flood Elevation (BFE). ''BFE'' means the computed elevation to which the floodwater is anticipated to rise during the base flood.

Base Floodplain. ''Floodplain'' means the area subject to flooding by the base flood, the flood that has a one percent or greater chance of flooding in any given year.

Climate-Informed Science Approach (CISA). ''CISA'' means the flood hazard area (vertical flood elevation and corresponding horizontal extent) that results from using the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science.

Critical Action. ''Critical Action'' means any activity for which even a slight chance of flooding is too great, *e.g.,* elderly housing proposals.

Federal Flood Risk Management Standard (FFRMS). ''FFRMS'' means the floodplain determined using one of the three approaches: CISA, 0.2PFA, and FVA.

Freeboard Value Approach (FVA). ''FVA'' means the flood hazard area that results from adding an additional 2 feet to the BFE and expanding to the corresponding horizontal extent for non-critical actions, and by adding an additional 3 feet to the BFE and expanding to the corresponding horizontal extent for critical actions.

Horizontal Extent. ''Horizontal Extent'' means the horizontal land area flooded by the vertical extent (extra flood elevation beyond the BFE).

Nature-Based Approach. HHS OPDIVs/STAFFDIVs, where possible, must use natural systems, ecosystem processes, and natural features and nature-based approaches in development of alternatives for proposed action.

Vertical Extent. ''Vertical Extent'' means the additional flood height above the BFE. 0.2-Percent-Annual-Chance (500-year) Flood Approach (0.2PFA). ''0.2PFA'' means the area subject to flooding by the 0.2-percent annual chance flood.

Responsibilities: Each OPDIV/STAFFDIV has the responsibility under E.O. 13690 to act on Federally Funded Projects to reduce the risk of flood loss, to minimize the impact of floods on human safety, health, and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for:

Acquiring, managing, and disposing of Federal lands and facilities

Providing Federally undertaken, financed, or assisted construction, substantial improvements, and substantial damages to structures and facilities

Conducting Federal activities and programs affected land use, including but not limited to, water and related land resources planning, regulating, and licensing activities.

Each OPDIV/STAFFDIV shall determine whether the site in which their action would occur could potentially be inundated by floodwaters using FFRMS and shall use this information to make an informed decision to either avoid siting in the determined flood hazard area or design the action to be more resilient to the associated flood hazard. Each OPDIV/STAFFDIV shall evaluate the potential effects of any actions it may take in a FFRMS floodplain in accordance with the floodplain assessment procedures in this section. It must also ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management.

Integration with NEPA. OPDIVs/STAFFDIVs are to evaluate the potential effects of a proposed action in a floodplain in accordance with the procedures for National Environmental Policy Act (NEPA) review in HHS General Administration Manual Part *30–50.* If an environmental assessment (EA)

or environmental impact statement (EIS) is required to be prepared for the proposed action, a floodplain assessment as described Paragraph E of this section, shall be included in the EA or EIS.

Floodplain Assessment (E.O. 13690)

Determine if Proposed Action is in a FFRMS floodplain: First, determine if Federally Funded Project is a critical action, which impacts floodplain determinations for the FVA approach. Second, evaluate the vertical extent and corresponding horizontal extent to establish the FFRMS floodplain using one of the three approaches in the following is the order of preference pending data availability:

CISA

0.2PFA

FVA

Involve Public in Decision-making Process: Notify the public such as a notice in a local newspaper or posting in an accessible public space for the area where the action is under consideration. Public notifications and all supporting communications and activities should be accessible to all (*e.g.,* plain language, culturally responsive, and accommodating), including but not limited to those with disabilities or limited English proficiency. All public notifications are required to follow all guidance and regulation regarding 508 compliance, the use of plain language, and limited English proficiency. If completing an EA or EIS, then include floodplain notice in Description of Proposed Action and Alternatives or Notice of Intent, respectively.

Identify and Evaluate Practicable Alternatives to Locating in FFRMS Floodplain: OPDIVs/STAFFDIVs shall use input from public comments on practicable alternatives, including, if possible, nature-based solutions.

Identify Adverse and Beneficial Impacts: Identify adverse and beneficial impacts, including stimulating floodplain development, which may result from the project. Analyze the following factors: (1) Natural environment (water resources, hydrology, topography, habitat); (2) Social concerns (environmental justice, visual quality/aesthetics, historic and cultural values, land use patterns), (3) Economic Aspects (costs of construction, transportation, relocation, natural features, and ecosystem processes), and (4) Legal considerations (deeds, leases).

Mitigate Adverse Impacts: Minimize impacts identified and restore and preserve the beneficial values served by floodplains. The analysis shall discuss the following:

Alternatives to the proposed action that may avoid adverse effects and incompatible development in the floodplain, including the alternatives of no action or location at an alternate site.

Proposed buildings and structures located in FFRMS floodplain shall be programmed and designed to latest version of the American Society of Civil Engineers ''*Flood Resistant Design and Construction*'' (ASCE/SEI 24–14) provisions to mitigate the adverse effects of the proposed action.

Senior Real Property Official Approval: No action shall take place involving HHS Federal Real Property in an FFRMS floodplain without a finding by the Senior Real Property Officer that the only practicable alternative consistent with the law and with the policy set forth in E.O. 13690 requires siting in a FFRMS floodplain. The action involving HHS Federal Real Property proposed for Senior Real Property Official approval shall be designed to minimize potential harm to or within the FFRMS floodplain. The Senior Real Property Official shall approve proposed actions requiring an EA or EIS on projects involving HHS Federal Real Property affecting FFRMS floodplains.

Re-Evaluate Alternatives: Use any new information obtained from Public Notice to determine if the proposed project is still applicable. Reissue public notice with Finding of No Significant Impact or Record of Decision if EA or EIS is drafted, respectively.

Announce and Explain Decision to the Public (Notice): Notify the public of the draft decision by publishing such as a notice in a local newspaper or posting in an accessible public space, dating the notice and the posting at removal.

For programs subject to E.O. 12372, the public notice shall be sent to the appropriate state and local reviewing agencies the geographic areas affected. A public review period of 30 days after the issuance of the public notice shall be allotted before any action is taken.

Implement the Proposed Federally Funded Project: Implement the Federally Funded Project with appropriate mitigation measures. Design and construction contracts shall include any mitigation measures are identified through the process. Ensure through independent 3rd party construction quality assurance that mitigation measures are fully implemented.

Licenses, permits, loans, or grants: Each OPDIV/STAFFDIV shall take FFRMS into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate risk management measures to mitigate the degree of hazard involved. Adequate provision shall be made for the evaluation and consideration of flood hazards determined by FFRMS for the licenses, permits, loan, or grant-in-aid programs that an OPDIV/STAFFDIV administers. OPDIVs/STAFFDIVs shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposal in FFRMS floodplains prior to submitting applications for Federal licenses, permits, loans, or grants.

Authorization or Appropriation Requests: OPDIVs/STAFFDIVs shall indicate in any requests for new authorizations or appropriations whether the proposed action is in accord with Executive Order 13690 if the proposed action will be in a floodplain.

Guidance: The following resources provides guidance for Implementation of FFRMS.

FFRMS Floodplain Determination Job Aid, Version 1.0, August 2023.

Reducing Flood Losses through the International Codes: Coordinating Building Codes and Floodplain Management Regulations, 5th Edition, September 2019.

Protecting Building Utility Systems from Flood Damage: Principles and Practices for the Design and Construction of Flood Resistant Building Utility Systems, Federal Emergency Management Agency (FEMA) P–348, Edition 2, February 2017.

Cheryl R. Campbell,

Assistant Secretary for Administration.

[FR Doc. 2024–09335 Filed 4–30–24; 8:45 am]

BILLING CODE 4150–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Digestive Diseases and Nutrition C Study Section.

Date: June 6–7, 2024.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Chicago Hotel, 505 North Michigan Avenue, Chicago, IL 60611 (In-person and Virtual).

Contact Person: Peter J. Kozel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7009, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4721, *kozelp@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 25, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–09322 Filed 4–30–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Synergy in Science: Innovations in Autoimmune Disease Research and Care

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This symposium is sponsored by the National Institutes of Health (NIH), Office of Research on Women's Health (ORWH), and the title of this year's symposium is ''Synergy in Science: Innovations in Autoimmune Disease Research and Care.'' The symposium will discuss the convergence of cutting-edge insights and collaborative efforts in the realm of autoimmune diseases.

DATES: The meeting will be held on May 15, 2024, from 1 to 5 p.m.

ADDRESSES: The meeting will be virtual. Registration is available at *https://nih.zoomgov.com/webinar/register/WN_jYi3sBFvToeHZJcfytw6GA#/registration.* The meeting is viewable on NIH Videocast at *https://videocast.nih.gov/watch=54417;* no registration is required.

FOR FURTHER INFORMATION CONTACT: For information concerning this meeting, see the ORWH website, *https://orwh.od.nih.gov/about/newsroom/events/8th-annual-vivian-w-pinn-symposium,* or contact Dr. Vicki Shanmugam, Director, NIH Office of Autoimmune Disease Research in the Office of Research on Women's Health, 6707 Democracy Boulevard, Suite 400, Bethesda, MD 20817, telephone: 301–402–4179; email: *vicki.shanmugam@nih.gov*.

SUPPLEMENTARY INFORMATION: This Notice is in accordance with 42 U.S.C. 287d, of the Public Health Service Act, as amended. The 8th Annual Vivian W. Pinn Symposium honors the first full-time Director of ORWH, Dr. Vivian Pinn, and is held during National Women's Health Week. This event serves as a critical forum for experts across sectors to communicate and collaborate for the advancement of women's health.

Providing the keynote address, ''Understanding the Immunome: Past, Present, and Future,'' is Jane Buckner, M.D., President of Benaroya Research Institute.

The objectives of the symposium are:

- *Drivers of Autoimmunity:* Understand the state of the science on sex-differences in autoimmune diseases, and what the future may hold for interventions.
- *NIH Research Frontiers:* Explore innovations arising from NIH's intramural research programs, driving progress in autoimmune care through rigorous scientific inquiry and technological breakthroughs.
- *Advocacy Accelerating Treatments:* Examine the synergy between patient advocacy and scientific progress, highlighting how collaborative efforts expedite the development of novel treatments for rare autoimmune diseases.
- *Research at the Bedside:* Unravel the complexities of autoimmune diseases across the lifespan through patient-centric bedside research insights.

Interested individuals can register at: https://nih.zoomgov.com/webinar/register/WN_jYi3sBFvToeHZJcfytw6GA#/registration.

More information about the speakers and agenda can be found at *https://orwh.od.nih.gov/about/newsroom/events/8th-annual-vivian-w-pinn-symposium.*

This event is free.

Dated: April 24, 2024.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2024–09345 Filed 4–30–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

FOR FURTHER INFORMATION CONTACT: Anastasia Flanagan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Flanagan@samhsa.hhs.gov* (email).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) publishes a notice listing all HHS-certified laboratories and Instrumented Initial Testing Facilities (IITFs) in the **Federal Register** during the first week of each month, in accordance with Section 9.19 of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and Section 9.17 of the Mandatory Guidelines using Oral Fluid. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/drug-testing-resources/certified-lab-list.*

HHS separately notifies Federal agencies of the laboratories and IITFs currently certified to meet the standards of the Mandatory Guidelines using Urine and of the laboratories currently

certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); January 23, 2017 (82 FR 7920); and on October 12, 2023 (88 FR 70768).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020, and subsequently revised in the **Federal Register** on October 12, 2023 (88 FR 70814).

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for Federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

HHS-Certified Laboratories Approved to Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid effective October 10, 2023 (88 FR 70814), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved to Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine effective February 1, 2024 (88 FR 70768), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare*, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Approved to Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine effective February 1, 2024 (88 FR 70768), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Desert Tox, LLC, 5425 E Bell Rd, Suite 125, Scottsdale, AZ 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare*, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295 (Formerly: Legacy Laboratory Services Toxicology MetroLab)

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088. Testing for Veterans Affairs (VA) Employees Only

Omega Laboratories, Inc.*, 2150 Dunwin Drive, Unit 1 & 2, Mississauga, ON, Canada L5L 5M8, 289–919–3188

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085. Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories continued under

DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory as meeting the minimum standards of the current Mandatory Guidelines published in the **Federal Register**. After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program. DOT established this process in July 1996 (61 FR 37015) to allow foreign laboratories to participate in the DOT drug testing program.

Anastasia D. Flanagan,

Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2024–09372 Filed 4–30–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2024–N026; FXES11140400000–245–FF04E00000]

Endangered Species; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive written data or comments on the applications by May 31, 2024.

ADDRESSES: *Reviewing Documents:* Submit requests for copies of applications and other information submitted with the applications to Karen Marlowe (see **FOR FURTHER INFORMATION CONTACT**). All requests and comments should specify the applicant's name and application number (*e.g.,* Mary Smith, ESPER0001234).

Submitting Comments: If you wish to comment, you may submit comments by one of the following methods:

- *Email (preferred method): permitsR4ES@fws.gov.* Please include your name and return address in your email message. If you do not receive a confirmation from the U.S. Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed in **FOR FURTHER INFORMATION CONTACT.**
- *U.S. mail:* U.S. Fish and Wildlife Service Regional Office, Ecological Services, 1875 Century Boulevard, Atlanta, GA 30345 (Attn: Karen Marlowe, Permit Coordinator).

FOR FURTHER INFORMATION CONTACT: Karen Marlowe, Permit Coordinator, via telephone at 404–679–7097 or via email at *karen_marlowe@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a), and the Freedom of Information Act (5 U.S.C. 552).

Background

With some exceptions, the ESA prohibits take of listed species unless a Federal permit is issued that authorizes such take. The definition of ''take'' in the ESA includes hunting, shooting, harming, wounding, or killing, and also such activities as pursuing, harassing, trapping, capturing, or collecting.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to take endangered or threatened species while engaging in activities that are conducted for scientific purposes that promote recovery of species or for enhancement of propagation or survival of species. These activities often include the capture and collection of species, which would result in prohibited take if a permit were not issued. Our regulations implementing section 10(a)(1)(A) of the ESA for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies, and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES117405–5	Tennessee Valley Authority; Knoxville, TN.	Tricolored bat (*Perimyotis subflavus*)	Alabama, Arkansas, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, and Virginia.	Presence/probable absence surveys.	Enter hibernacula or maternity roost caves, capture with mist nets or harp traps, handle, identify, collect hair samples, band, radio tag, light tag, wing punch, and release.	Renewal and amendment

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES79580A–4	Jason Butler; Midway, KY.	Tricolored bat (*Perimyotis subflavus*)	Kentucky, Tennessee, Virginia, and West Virginia.	Presence/probable absence surveys.	Enter hibernacula or maternity roost caves, capture, handle, identify, band, radio tag, and release.	Renewal and amendment
ES75560C–1	Jeffrey Hawkins; Richmond, KY.	Gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), tricolored bat (*Perimyotis subflavus*), Virginia big-eared bat (*Corynorhinus townsendii virginianus*), blackside dace (*Phoxinus cumberlandensis*), Kentucky arrow darter (*Etheostoma spilotum*), and 40 species of freshwater mussels.	Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Scientific research and population monitoring.	Bats: Enter hibernacula or maternity roost caves, capture, handle, identify, collect hair samples, band, radio tag, light tag, swab, and wing punch; fishes and mussels: capture, identify, and release.	Renewal and amendment
ES171493–5	Memphis Zoo; Memphis, TN.	Dusky gopher frog (*Rana sevosa*) and Louisiana pinesnake (*Pituophis ruthveni*).	Louisiana, Mississippi, Tennessee, and Texas.	Captive propagation and release, monitoring of reintroduced populations, and scientific research.	Dusky gopher frog: capture by hand and with dip nets, PIT tag, VIA tag, collect eggs, collect toe clips, swab, preserve deceased specimens, transport, release, monitor, and humanely euthanize captive-bred individuals; Louisiana pinesnake: capture, handle, PIT tag, collect semen, collect blood and shed skins, conduct in-situ gastric washing, swab, and remove up to five males from the wild.	Renewal and amendment

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES75551C–1	Phillip Arant; Fairmont, WV.	Gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), and northern long-eared bat (*Myotis septentrionalis*).	Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/probable absence surveys.	Capture, handle, identify, band, radio tag, and release.	Renewal
ES100626–10	Selby Environmental, Inc; Decatur, AL.	Atlantic pigtoe (*Fusconaia masoni*), birdwing pearlymussel (*Lemiox rimosus*), black warrior waterdog (*Necturus alabamensis*), Canoe Creek clubshell (*Pleurobema athearni*), longsolid (*Fusconaia subrotunda*), oyster mussel (*Epioblasma capsaeformis*), purple bankclimber (*Elliptoideus sloatianus*), round hickorynut (*Obovaria subrotunda*), sheepnose (*Plethobasus cyphyus*), snuffbox (*Epioblasma triquetra*), Suwannee moccasinshell (*Medionidus walkeri*), tan riffleshell (*Epioblasma florentina walkeri* [=*E. walkeri*]), and yellow lance (*Elliptio lanceolata*).	Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.	Presence probable absence surveys.	Capture, handle identify, release, and salvage relic shells.	Renewal and amendment
PER0018443–1	U.S. Army Engineer Research and Development Center; Vicksburg, MS.	Cylindrical lioplax (*Lioplax cyclostomaformis*), Lacy elimia (*Elimia crenatella*), painted rocksnail (*Leptoxis taeniata*), rough hornsnail (*Pleurocera foremani*), and tulotoma snail (*Tulotoma magnifica*).	Alabama	Presence/probable absence surveys and scientific studies.	Capture, handle, identify, and release.	Amendment
PER0039682–0	Carl Dick; Bowling Green, KY.	Gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), and Virginia big-eared bat (*Corynorhinus towsendii virginianus*).	North Carolina	Parasitic micro fungi study.	Capture, handle, identify, band, and release.	New

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
PER8279969–0	Drew Powell; Louisville, KY.	Gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), and tricolored bat (*Perimyotis subflavus*).	Alabama, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/probable absence surveys.	Enter hibernacula or maternity caves, capture, handle, identify, band, radio tag, collect hair, swab, fungal lift tape, and release.	New
PER8275393–0	Scott Slankard; Lawrenceburg, KY.	Gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), tricolored bat (*Perimyotis subflavus*), Virginia big-eared bat (*Corynorhinus townsendii virginianus*).	Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/probable absence surveys.	Capture, handle, identify, band, radio tag, and release.	New
ES102418–3	Florida Army National Guard; Starke, FL.	Red-cockaded woodpecker (*Picoides borealis*) and eastern indigo snake (*Drymarchon corais couperi*).	Camp Blanding Joint Training Center, Starke, FL.	Presence/probable absence surveys and population management.	Red-cockaded woodpecker: monitor nest cavities, capture, band, release, and install artificial nest cavities; eastern indigo snake: scope burrows, capture, handle, and release.	Renewal and amendment
ES50300D–1	Edward Wilson; Lexington, KY.	Gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), and tricolored bat (*Perimyotis subflavus*).	Kentucky, Ohio, and Tennessee.	Presence/probable absence surveys.	Capture, handle, identify, band, radio tag, and release.	Amendment
ES009638–13	Appalachian Technical Services, Inc.; Wise, VA.	Tricolored bat (*Perimyotis subflavus*)	Alabama, Georgia, Indiana, Kentucky, Mississippi, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.	Presence/probable absence surveys.	Enter hibernacula, capture, handle, identify, band, radio tag, and release.	Amendment

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES82659D–1	Sarah Messer; Huntington, WV.	Indiana bat (*Myotis sodalis*), gray bat (*Myotis grisescens*), northern long-eared bat (*Myotis septentrionalis*), and tricolored bat (*Perimyotis subflavus*).	Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, Wyoming.	Presence/probable absence surveys.	Capture, handle, identify, band, radio tag, and release.	Amendment
CS5916357–0	Peter Hazelton, University of Georgia; Athens, GA.	Carolina heelsplitter (*Lasmigona decorata*)	South Carolina	Presence/probable absence surveys and population demographic and habitat data collection.	Capture, handle, identify, release, and salvage relic shells.	New
PER9340831–0	Jeffrey Garner; Florence, AL.	Anthony's riversnail (*Athearnia anthonyi*), armored marstonia (*Marstonia pachyta*), cylindrical lioplax (*Lioplax cyclostomatiformis*), flat pebblesnail (*Lepyrium showalteri*), interrupted rocksnail (*Leptoxis foremani*), lacy elimia (*Elimia crenatella*), painted rocksnail (*Leptoxis taeniata*), plicate rocksnail (*Leptoxis plicata*), rough hornsnail (*Pleurocera foremani*), round rocksnail (*Leptoxis ampla*), royal marstonia (*Marstonia ogmorhaphe*), slender campeloma (*Campeloma decampi*), tulotoma (*Tulotoma magnifica*), and 73 species of freshwater mussels.	Alabama, Florida, Georgia, Mississippi, North Carolina, Tennessee, and Virginia.	Presence/probable absence surveys, quantification of community composition and density, and nonlethal collection of DNA samples.	Capture, handle, identify, release, and salvage relic shells.	New
ES676379–8	NOAA/National Marine Fisheries Service; Pascagoula, MS.	Green sea turtle (*Chelonia mydas*), hawksbill sea turtle (*Eretmochelys imbricata*), Kemp's ridley sea turtle (*Lepidochelys kempii*), leatherback sea turtle (*Dermochelys coriacea*), and loggerhead sea turtle (*Caretta caretta*).	Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas.	Population monitoring.	PIT tag and flipper tag; collect biopsy, blood, and scute samples.	Renewal and amendment
ES41910B–4	Scott Rush, Mississippi State University; Starkville, MS.	Indiana bat (*Myotis sodalis*), gray bat (*Myotis grisescens*), northern long-eared bat (*Myotis septentrionalis*), and gopher tortoise (*Gopherus polyphemus*).	Alabama, Louisiana, Mississippi, Ohio, and Tennessee.	Presence/probable absence surveys and scientific research.	Bats: capture, handle, identify, band, collect hair samples, and release; Gopher tortoise: scope burrows, capture, handle, mark, attach transmitters, and attach GPS data loggers.	Renewal and amendment

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
PER9604902–0	Kaitlyn Torrey; Woodstock, GA.	Indiana bat (*Myotis sodalis*), gray bat (*Myotis grisescens*), northern long-eared bat (*Myotis septentrionalis*), and tricolored bat (*Perimyotis subflavus*).	Alabama, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.	Presence/probable absence surveys.	Capture, handle, identify, band, radio tag, and release.	New
PER9605390–0	Amanda Rosenberger; Cookeville, TN.	Chucky madtom (*Noturus crypticus*) and 53 species of freshwater mussels.	Tennessee and Virginia.	Presence/probable absence surveys and scientific research.	Fishes: capture, handle, identify, swab, fin clip, and release; Mussels: capture, handle, identify, release, and salvage relic shells.	New

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can 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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed above in this notice, we will publish a subsequent notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the application number listed above in this document. Type in your search exactly as the application number appears above, with spaces and hyphens as necessary. For example, to find information about the potential issuance of Permit No. PER 1234567–0, you would go to *https://www.regulations.gov* and put ''PER 1234567–0'' in the Search field.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Sean Blomquist,

Acting Deputy Assistant Regional Director, Ecological Services, Southeast Region.

[FR Doc. 2024–09347 Filed 4–30–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R3–ES–2023–0248; FXES11140300000–245–FF03E00000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sweet Acres Wind Project, White County, IN; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of documents; request for comment and information.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from Indiana Crossroads Wind Farm II LLC (applicant), for an incidental take permit (ITP) under the Endangered Species Act, for its Sweet Acres Wind Project (project). If approved, the ITP would be for a 6-year period and would authorize the incidental take of the federally endangered Indiana bat, the federally endangered northern long-eared bat, and the tricolored bat and little brown bat, both of which are proposed for listing. The applicant has prepared a habitat conservation plan in support of the application. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action

statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before May 31, 2024.

ADDRESSES:

Obtaining Documents: The documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No . FWS–R3–ES–2023–0248 at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R3–ES–2023–0248.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R3–ES–2023–0248; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB/3W; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Susan Cooper, Field Supervisor, Indiana Ecological Services Field Office, by email at *susan_cooper@fws.gov* or by telephone at 812–334–4261, extension 214; or Andrew Horton, Regional HCP Coordinator, by email at *andrew_horton@fws.gov* or by telephone at 612–713–5337. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from Indiana Crossroads II Wind Farm LLC (applicant) for a 6-year incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the Indiana bat (*Myotis sodalis*) and northern long-eared bat (*Myotis septentrionalis*), both federally listed as endangered, and the proposed as endangered tricolored bat (*Perimyotis subflavus*) and little brown bat (*Myotis lucifugus*), being considered for listing. Take would be incidental to the operation of 42 wind turbines, with a total generating capacity of 201.6 megawatts (MW), at the Sweet Acres Wind Project in White County, Indiana. While the ITP would be for 6 years, the operational life of most new wind energy facilities is 30 years; therefore, intensive monitoring conducted during the 6-year permit term would inform the need for future avoidance or a future new or revised long-term ITP for the remaining life of the project that would comply with a new NEPA analysis and habitat conservation plan (HCP). The applicant has prepared an HCP that describes the actions and measures that the applicant would implement to avoid, minimize, and mitigate incidental take of the covered species for the first 6 years.

We request public comment on the application, which includes the applicant's proposed HCP, and on the Service's preliminary determination that this HCP qualifies as ''low effect,'' and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

Background

Section 9 of the ESA and its implementing regulations prohibit the ''take'' of animal species listed as endangered or threatened. Take is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [listed animal species], or to attempt to engage in any such conduct'' (16 U.S.C. 1532). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (16 U.S.C. 1539). Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22 and 50 CFR 17.32.

Applicant's Proposed Project

The applicant requests a 6-year ITP to take the federally endangered Indiana bat (*Myotis sodalis*), federally endangered northern long-eared bat (*Myotis septentrionalis*), proposed endangered tricolored bat (*Perimyotis subflavus*) and under discretionary review, the little brown bat (*Myotis lucifugus*). The applicant determined that take is reasonably certain to occur incidental to operation of 42 previously constructed wind turbines in White County, Indiana, covering approximately 11,646 hectares (28,778 acres) of private land. The proposed conservation strategy in the applicant's proposed HCP is designed to avoid, minimize, and mitigate the impacts of the covered activity on the covered species. The biological goals and objectives are to minimize potential take of covered bat species through on-site minimization measures and to provide habitat conservation measures to offset any impacts from project operations. The HCP provides on-site avoidance and minimization measures, which include turbine operational adjustments. The authorized level of take from the project is 18 Indiana bats, 2 northern long-eared bats, 18 tricolored bats, and 18 little brown bats bat over the 6-year permit duration. To offset the impacts of the taking of the species, the applicant will implement one or more of the following mitigation options:

- Purchase credits from an approved conservation bank;
- Contribute to an in-lieu fee mitigation fund;
- Implement a permittee-responsible mitigation project; or
- Contribute to a white-nose syndrome treatment fund.

National Environmental Policy Act

The issuance of an ITP is a Federal action that triggers the need for compliance with NEPA. The Service has made a preliminary determination that the applicant's proposed project, and the proposed mitigation measures, would individually and cumulatively have a minor effect on the covered species and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a low-effect ITP that individually or cumulatively would have a minor effect on the species and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A low-effect ITP is one that would result in (1) minor or nonsignificant effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonably foreseeable actions, would not result in significant cumulative effects to the human environment.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the

requested ITP. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue the requested ITP to the applicant.

Request for Public Comments

The Service invites comments and suggestions from all interested parties on the proposed HCP and screening form during a 30-day public comment period (see **DATES**). In particular, information and comments regarding the following topics are requested:

1. Whether the adaptive management, monitoring, and mitigation provisions in the proposed HCP are sufficient;

2. The requested 6-year ITP term;

3. Any threats to the covered bat species that may influence their populations over the life of the ITP that are not addressed in the proposed HCP or screening form;

4. Any new information on white-nose syndrome effects on covered bat species;

5. Whether or not the significance of the impact on various aspects of the human environment has been adequately analyzed; and

6. Any other information pertinent to evaluating the effects of the proposed action on the human environment.

Availability of Public Comments

You may submit comments by one of the methods shown under **ADDRESSES**. We will post on *https://regulations.gov* all public comments and information received electronically or via hardcopy. All comments received, including names and addresses, will become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1539) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508; 43 CFR part 46).

Karen Herrington,

Acting Assistant Regional Director, Ecological Services.

[FR Doc. 2024–09349 Filed 4–30–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX.24.DJ73.V3410.00; OMB Control Number 1028–NEW]

Vulnerability to Water Insecurity, Hazards Planning and Response

AGENCY: U.S. Geological Survey, Department of Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before May 31, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–NEW—Water Insecurity in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), contact Jennifer Rapp by email at *jrapp@usgs.gov,* or by telephone at 804–261–2635. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.* Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 2, 2022 (87 FR 54240). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might 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 identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: The United States is facing growing challenges related to the availability and quality of water due to shifting demographics, aging water delivery infrastructure, the impacts of climate change, and increasing hazards risk, like floods and drought. Working with incomplete knowledge, managers must consider the needs of various

demographic groups and economic sectors when making management decisions as well as when responding to emergencies. To improve delivery of effective science to support decision-making, the USGS must adapt to meet the evolving needs of stakeholders in the water hazard space. We will collect information regarding the decision-making process, data, and data format needs to support daily, long-term, and emergency management decision-making. Information will also be sought on gaps in data delivery and coverage. A lack of decision-support data within water institutions can lead to poor decision-making and outcomes that produce conflict between water use sectors, states, or communities and ultimately may led to crisis. This information will support the delivery of appropriate data, in appropriate formats, at the right time for decision-making and emergency management. The information will guide USGS support of water resource institutions, enhancing resilience in the face of the many water-resources challenges the Nation currently faces.

Title of Collection: Vulnerability to Water Insecurity, Hazards Planning and Response.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: state, Tribal nation, and local water resource managers and water resource stakeholders; water hazard responders; and members of the public that engage in use of water data as part of their job (*i.e.,* academics or non-governmental organizations).

Total Estimated Number of Annual Respondents: 750.

Total Estimated Number of Annual Responses: 750.

Estimated Completion Time per Response: 60 minutes.

Total Estimated Number of Annual Burden Hours: 750.

Respondent's Obligation: Voluntary.

Frequency of Collection: Once per year.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person is 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.*).

Joseph Nielsen,

Director, Integrated Information Dissemination Division, Water Resources Mission Area.

[FR Doc. 2024–09423 Filed 4–30–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037834; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of California, Riverside, Riverside, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Riverside has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 31, 2024.

ADDRESSES: Megan Murphy, University of California, Riverside, 900 University Avenue, Riverside, CA 92517–5900, telephone (951) 827–6349, email *megan.murphy@ucr.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of California, Riverside, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. The two associated funerary objects are charcoal samples. From December 1984 through January 1985 the University of California, Riverside Archaeological Research Unit (UCR–ARU) investigated archaeological site CA–RIV–1806 (Hi Card Ranch) as part of an environmental impact assessment related to a housing development near Wildomar. Daniel McCarthy, staff archaeologist for the UCR–ARU published a report on the excavation in 1986 entitled ''Excavations at Hi Card Ranch (CA–RIV–1806), Santa Rosa Plateau, Near Wildomar, Riverside County, California''. A total of 26 units, including four test units were excavated. Items removed from the site included cremated human remains and charcoal, as well as faunal bone, a bead made from faunal bone, seeds, stone tools and flakes, ground stones, modified disc-shaped and donut-shaped stones, and projectile points. The human bone removed from the site was not identified as human until a morphological laboratory analysis following excavation. Five small human bone fragments were all uncovered in unit 6, which was located on the northwestern edge of the excavation in what archaeologists believed was a single cremation. The associated archaeological collection was temporarily housed in the University of California Riverside Archaeological Curation Unit under Accession #101. The cremated human bone fragments and charcoal listed in this inventory were sent to the UCR Radiocarbon Laboratory under the direction of Dr. Taylor to be dated and remained in the UCR collection after testing. The remainder of the collection was returned to the landowner, Mr. Keith Card, in October of 1989. UCR NAGPRA Program Staff contacted the family and colleagues of the late Keith Card, but were unable to locate the other artifacts removed from the site.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The University of California, Riverside has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The two objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in

this notice and the Pechanga Band of Indians (*previously* listed as Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California).

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 31, 2024. If competing requests for repatriation are received, the University of California, Riverside must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of California, Riverside is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–09409 Filed 4–30–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037829; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Toledo, Toledo, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Toledo has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after May 31, 2024.

ADDRESSES: Thomas Zych, The University of Toledo, 2801 W Bancroft Street, MS 956, Toledo, OH 43606, telephone (419) 530–4395, email *thomas.zych@UToledo.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Toledo, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. On an unknown date, the individual was found and removed from a Morris Hill in Bowling Green, Wood County, Ohio by Joseph Unkart and later donated to the University of Toledo. No associated funerary objects are present.

Based on the information available, human remains representing, at least, 21 individuals have been reasonably identified. On an unknown date, the individuals were removed from an area in northwestern Ohio, likely by David Stothers, an archaeologist and professor at the University of Toledo between 1972 and 2011. No associated funerary objects are present.

Based on the information available, human remains representing, at least, 13 individuals have been reasonably identified. The individuals were likely removed from an area in northwestern Ohio by Edward Lincoln Moseley, a professor and naturalist at Bowling Green State University in Bowling Green, Ohio between 1924 and 1936, where he served as the head of the biology department. Moseley frequently collected from the Sandusky Bay area. On an unknown date, the individuals were acquired by the University of Toledo. No associated funerary objects are present.

Based on the information available, human remains representing, at least, one individual has been reasonably identified. The individual was located in the University of Toledo collections on March 31, 2023. The individual was likely removed from an area in northwestern Ohio by David Stothers. No associated funerary objects are present.

The University of Toledo has no record of any potentially hazardous substances used to treat the human remains described in this notice.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The University of Toledo has determined that:

- The human remains described in this notice represent the physical remains of 36 individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cayuga Nation; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan; Omaha Tribe of Nebraska; Oneida Indian Nation; Oneida Nation; Onondaga Nation; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of

Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians; Seneca-Cayuga Nation; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; and the Wyandotte Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after May 31, 2024. If competing requests for repatriation are received, the University of Toledo must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The University of Toledo is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–09403 Filed 4–30–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037827; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Toledo, Toledo, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Toledo has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 31, 2024.

ADDRESSES: Thomas Zych, University of Toledo, 2801 W Bancroft Street, MS 956, Toledo, OH 43606, telephone (419) 590–4395, email *thomas.zych@UToledo.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Toledo, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. On October 28, 1976, the individual was removed from the Turkeyfoot Site (33–LU–129), Lucas County, Ohio by the University of Toledo. No associated funerary objects are present.

Based on the information available, human remains representing, at least, two individuals have been reasonably identified. In 1972, the individuals were removed during a surface survey of the Little Road Site (33–LU–13), Lucas County, Ohio by David Stothers, a professor at the University of Toledo. The two associated funerary objects are one lot of lithic debitage and one lot of faunal remains.

The University of Toledo has no record of any potentially hazardous substances being used to treat any of the human remains or associated funerary objects described in this notice.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The University of Toledo has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- The two objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan; Omaha Tribe of

Nebraska; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians; Seneca-Cayuga Nation; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Tonawanda Band of Seneca; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Wyandotte Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 31, 2024. If competing requests for repatriation are received, the University of Toledo must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of Toledo is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–09401 Filed 4–30–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037840; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: San Francisco State University NAGPRA Program, San Francisco, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the San Francisco State University (SF State) NAGPRA Program has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the associated funerary objects in this notice may occur on or after May 31, 2024.

ADDRESSES: Elise Green, San Francisco State University NAGPRA Program, 1600 Holloway Avenue, San Francisco, CA 94132, telephone (415) 405–3545, email *egreen@sfsu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the San Francisco State University NAGPRA Program, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, 100 individuals have been reasonably identified in a Notice of Inventory Completion published in the **Federal Register** on August 29, 2008, by the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley (73 FR 50995–50996). The 160 associated funerary objects listed in this notice are chert arrow points, obsidian arrow points, obsidian cores, chert scraper, mollusk shells, clamshell beads, pestles, mano, shaft straightener, Olivella beads, metal object, buckle, glass, porcelain fragments, shell fragments, blades, wood, basalt flake, bone awl, and a snag hook. CA–TEH–58 was located on the Sacramento River about five miles north of Red Bluff.

CA–TEH–58 was recorded in 1950 by U.C. Berkeley and was described as an historic Wintun village site. The site was destroyed because of construction of the Red Bank Reservoir project. CA–TEH–58 was excavated in 1953, 1955, and 1962 by A. E. Treganza of SF State. The 1953 project was sponsored by the National Park Service; U.C. Berkeley sponsored the 1955 excavation. The burials (1–104) collected in 1953 and 1955 are curated at U.C. Berkeley although, according to an undated document at the Treganza Museum (Anon n.d. [a]), ''TEH–58 Burial 103'' was sent to the Lowie (now Hearst) Museum at U. C. Berkeley indicating that burial had been curated at SF State. A letter from the Treganza Museum to the Lowie Museum on May 26, 1969, indicates the materials were transferred ''late in 1965 or early in 1966'' (Van Dyke 1969). The 1962 project was conducted under National Park Service contract # 14–10–0434–893 between SF State and the National Park Service. The objects from the 1962 project were curated at SF State. According to Treganza Burials 105–109 were curated at SF State. No human remains from CA–TEH–58 were found at SF State during the current inventory.

It was once common practice by museums to use chemicals on cultural items to prevent deterioration by mold, insects, and moisture. To date, the SF State NAGPRA Program has no records documenting use of chemicals at our facilities, and we currently do not use chemicals on any cultural items. A former SF State professor, Dr. Michael Moratto, stated that staff used glues, polyvinyl acetate, and a solution called Glyptol to mend and stabilize cultural objects in the past. Prior non-invasive and non-destructive hazardous chemical tests conducted at the SF State NAGPRA Program repositories show arsenic, mercury, and/or lead in some storage containers, surfaces, and certain cultural items.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The SF State University NAGPRA Program has determined that:

- The 160 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• There is a reasonable connection between the associated funerary objects described in this notice and the Grindstone Indian Rancheria of Wintun-Wailaki Indians of California and the Paskenta Band of Nomlaki Indians of California.

Requests for Repatriation

Written requests for repatriation of the associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the associated funerary objects in this notice to a requestor may occur on or after May 31, 2024. If competing requests for repatriation are received, the SF State NAGPRA Program must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the associated funerary objects are considered a single request and not competing requests. The SF State NAGPRA Program is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–09413 Filed 4–30–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037837; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Haffenreffer Museum of Anthropology, Brown University, Bristol, RI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Haffenreffer Museum of Anthropology, Brown University (Haffenreffer Museum) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 31, 2024.

ADDRESSES: Thierry Gentis, Brown University, Haffenreffer Museum of Anthropology, 300 Tower Street, Bristol, RI 02889, telephone (401) 863–5702, email *thierry_gentis@brown.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Haffenreffer Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. On an unknown date, the individual and associated funerary objects were removed from the Northern Plains area by J.A Monroe. On an unknown date, the individual and associated funerary objects were donated to the Jenks Museum of Natural History and later transferred to the Haffenreffer Museum of Anthropology at Brown University. The Haffenreffer Museum of Anthropology has no knowledge or record of any potentially hazardous substances being used to treat the human remains. The five associated funerary objects include two pottery sherds, two cord-marked pottery sherds, and one flint projectile point which is embedded in the vertebra of the individual.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The Haffenreffer Museum has determined that:

• The human remains described in this notice represent the physical remains of one individual of Native American ancestry.

• The five objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Blackfeet Tribe of the Blackfeet Indian Reservation of Montana; Cheyenne and Arapaho Tribes, Oklahoma; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Crow Tribe of Montana; Eastern Shoshone Tribe of the Wind River Reservation, Wyoming; Flandreau Santee Sioux Tribe of South Dakota; Fort Belknap Indian Community of the Fort Belknap Reservation of Montana; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Kaw Nation, Oklahoma; Kiowa Indian Tribe of Oklahoma; Little Shell Tribe of Chippewa Indians of Montana; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Northern Arapaho Tribe of the Wind River Reservation, Wyoming; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Pawnee Nation of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Island Indian Community in the State of Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Upper Sioux Community, Minnesota; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Ute Tribe; and the Yankton Sioux Tribe of South Dakota.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 31, 2024. If competing requests for repatriation are received, the Haffenreffer Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Haffenreffer Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–09412 Filed 4–30–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037828; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Toledo, Toledo, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Toledo has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after May 31, 2024.

ADDRESSES: Thomas Zych, The University of Toledo, 2801 W Bancroft Street, MS 956, Toledo, OH 43606, telephone (419) 530–4395, email *thomas.zych@UToledo.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Toledo, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, 118 individuals have been reasonably identified. On an unknown date, the individuals were likely removed from Sandusky County, Ohio by Gene Edwards, a previous president of the Sandusky Bay Chapter of the Archaeological Society of Ohio. On an unknown date, the individuals were acquired by the University of Toledo. No associated funerary objects are present. The University of Toledo has no record of the human remains being treated with any potentially hazardous substances.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location and acquisition history of the human remains described in this notice.

Determinations

The University of Toledo has determined that:

- The human remains described in this notice represent the physical remains of 118 individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cayuga Nation; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan; Omaha Tribe of Nebraska; Oneida Indian Nation; Oneida Nation; Onondaga Nation; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians; Seneca-Cayuga Nation; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Tonawanda Band of Seneca; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; and the Wyandotte Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after May 31, 2024. If competing requests for repatriation are received, the University of Toledo must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The University of Toledo is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–09402 Filed 4–30–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037826; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Los Rios Community College District, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Los Rios Community College District (LRCCD) has completed an inventory of associated funerary objects and has determined that there is a cultural affiliation between the associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the associated funerary objects in this notice may occur on or after May 31, 2024.

ADDRESSES: Jamey Nye, Los Rios Community College District, 1919 Spanos Ct., Arden-Arcade, CA 95825, telephone (916) 568–3031, email *nagpra@losrios.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of LRCCD, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, sometime before 1936, associated funerary objects were removed from the Johnson Mound (CA–SAC–06) in Sacramento County, California by Jeremiah B. Lillard. Between 1923 and 1940, Lillard was president of the Sacramento Junior College, now named Sacramento City College, which is one of four campuses in LRCCD. In April 2023, the associated funerary objects were located on the American River College campus, another campus within LRCCD. The two associated funerary objects are one abalone ornament and one bow-shaped abalone ornament.

Based on the information available, sometime between 1933 and 1938, the associated funerary object was removed from Augustine Mound (CA–SAC–127) in Sacramento County, California by Jeremiah B. Lillard. Between 1923 and 1940, Lillard was president of the Sacramento Junior College, now named Sacramento City College, which is one of four campuses in LRCCD. In April 2023, the associated funerary object was located on the American River College campus, another campus within LRCCD. The associated funerary object is one bone pendant (awl).

Based on the information available, in 1939, the associated funerary object was removed from the Needs Site (CA–SAC–151) in Sacramento County, California by the Sacramento Junior College Field Party, which was led by the college president, Jeremiah B. Lillard. Sacramento Junior College, now named Sacramento City College, is one of four campuses in LRCCD. In April 2023, the associated funerary object was located on the American River College campus, another campus within LRCCD. The associated funerary object is one basal point.

LRCCD has no record of any potentially hazardous substances being used to treat any of the associated funerary objects described in this notice.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the associated funerary objects described in this notice.

Determinations

LRCCD has determined that:

- The four objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the associated funerary objects described in this notice and the Buena Vista Rancheria of Me-Wuk Indians of California; California Valley Miwok Tribe, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Band of Miwuk Indians; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; United Auburn Indian Community of the Auburn Rancheria of California; and the Wilton Rancheria, California.

Requests for Repatriation

Written requests for repatriation of the associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the associated funerary objects in this notice to a requestor may occur on or after May 31, 2024. If competing requests for repatriation are received, LRCCD must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of associated funerary objects are considered a single request and not competing requests. LRCCD is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–09400 Filed 4–30–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037841; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: San Francisco State University NAGPRA Program, San Francisco, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the San Francisco State University (SF State) NAGPRA Program has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 31, 2024.

ADDRESSES: Elise Green, San Francisco State University NAGPRA Program, 1600 Holloway Avenue, San Francisco, CA 94132, telephone (415) 405–3545, email *egreen@sfsu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the SF State NAGPRA Program and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual has been reasonably identified. The 92 associated funerary objects are Olivella beads, abalone pendants, obsidian points, basalt cores, flakes, polished bones, pestles, mortars, and stone tools. All sites: CA–TEH–23; CA–TEH–22, the Thomes Creek Site; and CA–TEH–233, the Lindauer Site, were excavated in the summer of 1963 by Adan E. Treganza as part of the Tehama-Colusa Canal Survey. This survey was conducted to capture baseline archaeological data about the area prior to the construction of a canal by the Bureau of Reclamation.

CA–TEH–23 is in the Tehama Quad and contained several burials which were excavated. CA–TEH–22 is in the Corning Quad, on a bluff at the confluence off the Thomes Creek and Sacramento River. According to the available site documentation, CA–TEH–22 was a large village site and contained at least two burials. CA–TEH–233 was an occupation mound and may have included a cemetery. Two burials were found and reinterred at the time of recording. Because the remains recorded at CA–TEH–233 were reburied, it is assumed that these elements represent a portion of the remains originally designated Burial 1 that were collected at CA–TEH–22. A letter from Suzanne Griest, UC Davis Museum Preparator, to Robin Wells, Treganza Anthropology Museum Curator, indicates that materials collected from CA–TEH–22 were transferred to Davis at some point prior to July 3, 1980. An additional letter from Griest to Wells suggests that the CA–TEH–22 burials had been misplaced as early as July 14, 1980. The survey abstract indicates that these sites are affiliated with the Central Wintun, whose aboriginal occupation of the surrounding areas is well-documented in the ethnographic literature.

It was once common practice by museums to use chemicals on cultural items to prevent deterioration by mold, insects, and moisture. To date, the SF State NAGPRA Program has no records documenting use of chemicals at our facilities, and we currently do not use chemicals on any cultural items. A former SF State professor, Dr. Michael Moratto, stated that staff used glues, polyvinyl acetate, and a solution called Glyptol to mend and stabilize cultural objects in the past. Prior non-invasive and non-destructive hazardous chemical tests conducted at the SF State NAGPRA Program repositories show arsenic, mercury, and/or lead in some storage containers, surfaces, and certain cultural items.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The SF State NAGPRA Program has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The 92 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Grindstone Indian Rancheria of Wintun-Wailaki Indians of California and the Paskenta Band of Nomlaki Indians of California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 31, 2024. If competing requests for repatriation are received, SF State NAGPRA Program must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The SF State NAGPRA Program is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–09414 Filed 4–30–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037839; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: William S. Webb Museum of Anthropology, University of Kentucky, Lexington, KY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the William S. Webb Museum of Anthropology, University of Kentucky (WSWM) intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after May 31, 2024.

ADDRESSES: Celise Chilcote-Fricker, William S. Webb Museum of Anthropology, University of Kentucky, 1020 Export Street, Lexington, KY 40504, telephone (859) 257–5124, email *celise.fricker@uky.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the WSWM, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of five cultural items have been requested for repatriation. The five unassociated funerary objects are one lot lithic, one lot faunal, one lot charcoal, one lot floatation, and one lot botanics. Site 15McN81 (Hedden) in McCracken, KY, was excavated in 1994 by Wilbur Smith Associates to mitigate road construction and in 2003 the Kentucky Office of Vital Statistics approved a request from the Kentucky Transportation Cabinet to curate at the University of Kentucky.

Determinations

The WSWM has determined that:

- The five unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and The Chickasaw Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after May 31, 2024. If competing requests for repatriation are received, the WSWM must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The WSWM is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: April 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–09408 Filed 4–30–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037835; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Field Museum, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field Museum has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after May 31, 2024.

ADDRESSES: June Carpenter, NAGPRA Director, Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7820, email *jcarpenter@fieldmuseum.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Field Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. No associated funerary objects are present. The human remains are hair clippings belonging to one individual, identified with the tribal designation ''Pitt River'' (Field Museum catalog numbers 193211.4). Field Museum staff believe they were collected under the direction of Franz Boas and Frederick Ward Putnam for the 1893 World's Columbian Exposition in Chicago. The hair clippings were accessioned into the Field Museum's collection in 1939. No information regarding the individual's name, sex, age, or geographic location has been found. There is no known presence of any potentially hazardous substances.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains described in this notice.

Determinations

The Field Museum has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek, and Roaring Creek Rancherias).

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under

ADDRESSES. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after May 31, 2024. If competing requests for repatriation are received, the Field Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Field Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: April 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–09410 Filed 4–30–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037831; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Fort Totten Indian School, Benson County, ND, the Flandreau Indian School, Moody County, SD, and Cass Lake Chippewa Agency, Cass County, MN.

DATES: Repatriation of the human remains in this notice may occur on or after May 31, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at minimum, 44 individuals were collected at the Fort Totten Indian School, Benson County, ND. The human remains are hair clippings collected from one individual who was recorded as being 24 years old, one individual who was recorded as being 18 years old, four individuals who were recorded as being 16 years old, one individual who was recorded as being 15 years old, three individuals who were recorded as being 14 years old, three individuals who were recorded as being 13 years old, 10 individuals who were recorded as being 12 years old, four individuals who were recorded as being 11 years old, six individuals who were recorded as being 10 years old, three individuals who were recorded as being 9 years old, four individuals who were recorded as being 8 years old, two individuals who were recorded as being 7 years old, and two individuals who were recorded as being 6 years old and identified as ''Chippewa.'' Orrin C. Gray took the hair clippings at the Fort Totten Indian School between 1930 and 1933. Gray sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Human remains representing, at minimum, one individual was collected at the Flandreau Indian School, Moody County, SD. The human remains are hair clippings collected from one individual who was recorded as being 17 years old and identified as ''Chippewa.'' George E. Peters took the hair clippings at the Flandreau Indian School between 1930 and 1933. Peters sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Human remains representing, at minimum, one individual was collected at the Cass Lake Chippewa Agency, Cass County, MN. The human remains are hair clippings collected from one individual who was recorded as being 22 years old and identified as ''Chippewa.'' M.L. Burns took the hair clippings at the Cass Lake Chippewa Agency between 1930 and 1933. Burns sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains in this notice.

Determinations

The PMAE has determined that:

- The human remains described in this notice represent the physical remains of 46 individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Little Shell Tribe of Chippewa Indians of Montana.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after May 31, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–09404 Filed 4–30–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037833; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: William S. Webb Museum of Anthropology, University of Kentucky, Lexington, KY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the William S. Webb Museum of Anthropology, University of Kentucky (WSWM) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 31, 2024.

ADDRESSES: Celise Chilcote-Fricker, William S. Webb Museum of Anthropology, University of Kentucky, 1020 Export Street, Lexington, KY 40504, telephone (859) 257–5124, email *celise.fricker@uky.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the WSWM, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, 10 individuals have been reasonably identified. The 48 associated funerary objects are one lot ceramic sherds, one lot lithic, one lot faunal, one lot shell, one soil sample, 35 shell beads, one ceramic gorget, four shell gorgets, and three stone celts. These remains and funerary objects were removed from an unknown site in Perry County, KY, at an unknown time and donated to the Bobby Davis Museum in Hazard, Kentucky. After the dissolution of the museum, the remains and associated artifacts were donated to the WSWM for the purpose of pursuing repatriation.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location and acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The WSWM has determined that:

- The human remains described in this notice represent the physical remains of 10 individuals of Native American ancestry.
- The 48 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Cherokee Nation; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Shawnee Tribe; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 31, 2024. If competing requests for repatriation are received, the WSWM must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The WSWM is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–09406 Filed 4–30–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037824; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Longyear Museum of Anthropology, Colgate University, Hamilton, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Longyear Museum of Anthropology (LMA) has completed an inventory of associated funerary objects and has determined that there is a cultural affiliation between the associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the associated funerary objects in this notice may occur on or after May 31, 2024.

ADDRESSES: Kelsey Olney-Wall, Repatriation Manager, University Museums, Colgate University, 13 Oak Drive, Hamilton, NY 13346, telephone (315) 228–7677, email *kolneywall@colgate.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the LMA, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, the associated funerary objects are six shell beads. The six shell beads (Catalog number A234), were gathered by Mortimer Cooley Howe while he was a student at Colgate and the University of Michigan. The Howe collection was

donated to Colgate University, posthumously, by his father Burton Howe in 1947. The handwritten tag on the shell beads connects them to one individual removed from an unknown location in Arkansas, previously reported in a Notice of Inventory Completion published in the **Federal Register** on August 8, 2011 (76 FR 48178–48179). The LMA established the beads are associated with the human remains repatriated to the Osage Nation in 2017.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the associated funerary objects described in this notice.

Determinations

The LMA has determined that:

- The six objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the associated funerary objects described in this notice and The Osage Nation.

Requests for Repatriation

Written requests for repatriation of the associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the associated funerary objects in this notice to a requestor may occur on or after May 31, 2024. If competing requests for repatriation are received, the LMA must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the associated funerary objects are considered a single request and not competing requests. The LMA is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–09398 Filed 4–30–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037825; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Wisconsin Oshkosh, Oshkosh, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Wisconsin Oshkosh has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 31, 2024.

ADDRESSES: Adrienne Frie, University of Wisconsin Oshkosh, 800 Algoma Boulevard, Oshkosh, WI 54901, telephone (920) 424–1365, email *friea@uwosh.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Wisconsin Oshkosh, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual (UnprovBurial1_UNKNO) have been reasonably identified. The individual was removed from an unknown geographic location in Wisconsin. There are no records indicating when or how this individual came into the possession of the Archaeology Collection at the University of Wisconsin Oshkosh. The outside of the original storage box was labeled ''human burial, Wisconsin (?),'' according to the University of Oshkosh Culturally Unidentifiable NAGPRA Inventory, which was submitted in 1995. A note in the box reads ''Femur found in trunk at Doty Cabin—no other prov. Deer bone found under driveway in my neighbor's yard.'' The deer bone does not seem to have been originally associated with the human remains. There are no records of this acquisition from the Doty Cabin Museum. No associated funerary objects are present.

Based on the information available, human remains representing, at least, 13 individuals (UnprovBurial2_UNKNO) have been reasonably identified. The individuals were removed from an unknown geographic location, WI. There is no known collection history for these individuals, however, they were described as ''Unprovenienced Burial #2'' in the University of Wisconsin Oshkosh Culturally Unidentifiable NAGPRA Inventory, which was submitted in 1995. According to this Inventory, the outside of the original storage box had been labeled ''human burial, Wisconsin (?)''. The six associated funerary objects are one deer antler; one fragment of an ungulate metapodial; one snake vertebra; one rodent incisor; one lot of gastropod shells and shell fragments; and one lot of soil matrix.

Based on the information available, human remains representing, at least, three individuals (UnprovBurial3_UNKNO) have been reasonably identified. The individuals were removed from an unknown geographic location in Wisconsin. No information was found regarding the provenience of this burial. Jeff Behm, an archaeologist with the University of Wisconsin Oshkosh, noted that the human remains were housed at the University for as long as he'd been employed (since 1985). The box label and the history of the collections at the University of Wisconsin Oshkosh provides a preponderance of evidence that this individual was removed from somewhere in the state of Wisconsin. No associated funerary objects are present.

Based on the information available, human remains representing, at least, one individual (Unprov004_REHWIN) have been reasonably identified. The individual was removed from an unknown geographic location in Wisconsin. On February 16, 1976, the individual was donated to the University of Wisconsin Oshkosh by John Rehwinkel, according to writing present on the individual. Based on Rehwinkel's residence and avocational

archaeology in Wisconsin, the remains are thought to originate from the state. No associated funerary objects are present.

Based on the information available, human remains representing, at least, two individuals (UnprovBurial5_UNKNO) have been reasonably identified. The individuals were removed from an unknown geographic location in Wisconsin. The University of Wisconsin Oshkosh does not have any records related to this collection except what was reported in the Culturally Unidentifiable NAGPRA Inventory, which was submitted in 1995. In that Inventory, the collection was reported as ''Unprovenienced Burial Number 5'' with an MNI of one individual, as well as ''the apparent association with a flake of Hixton silicified sandstone strongly supports a Wisconsin, or at least Upper Midwest provenience''. The outside of the original storage box had simply been labeled ''human burial, Wisconsin (?)''. Based on this evidence, the University of Wisconsin Oshkosh concluded that these individuals were likely removed from Wisconsin. The seven associated funerary objects are one silicified sandstone flake; one cow rib fragment; one lot of incisors from a large ungulate; two large mammal long bone shaft fragments; one large mammal long bone fragment; and one large burnt mammal bone fragment.

Based on the information available, human remains representing, at least, one individual (UnprovStateWI001_UNKNO) have been reasonably identified. The individual was removed from an unknown geographic location in Wisconsin. There are no records indicating when or how this individual came into the possession of the University of Wisconsin Oshkosh. The box label read ''Unprovenienced Burial Wisconsin?''. The box label and the history of the collections at the University provides a preponderance of evidence that this individual was removed from somewhere in the state of Wisconsin. No associated funerary objects are present.

The University of Wisconsin Oshkosh has no record of any potentially hazardous substances being used to treat the human remains or associated funerary objects described in this notice.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location of the human remains and associated funerary objects described in this notice.

Determinations

The University of Wisconsin Oshkosh has determined that:

- The human remains described in this notice represent the physical remains of 21 individuals of Native American ancestry.
- The 13 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cayuga Nation; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community in the State of Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan; Oglala Sioux Tribe; Oneida Indian Nation; Oneida Nation; Onondaga Nation; Otoe-Missouria Tribe of Indians, Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation; Prairie Island Indian Community in the State of Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe; Santee Sioux Nation, Nebraska; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians; Seneca-Cayuga Nation; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Sokaogon Chippewa Community, Wisconsin; Spirit Lake Tribe, North Dakota; St. Croix Chippewa Indians of Wisconsin; Standing Rock Sioux Tribe of North & South Dakota; Stockbridge Munsee Community, Wisconsin; The Osage Nation; Tonawanda Band of Seneca; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 31, 2024. If competing requests for repatriation are received, the University of Wisconsin Oshkosh must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not

competing requests. The University of Wisconsin Oshkosh is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–09399 Filed 4–30–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037836; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Haffenreffer Museum of Anthropology, Brown University, Bristol, RI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Haffenreffer Museum of Anthropology, Brown University (Haffenreffer Museum) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after May 31, 2024.

ADDRESSES: Thierry Gentis, Brown University, Haffenreffer Museum of Anthropology, 300 Tower Street, Bristol, RI 02889, telephone (401) 863–5702, email *thierry_gentis@brown.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Haffenreffer Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. On an unknown date, the individual was removed from an unknown location, possibly in New Mexico by Robert Gal during a surface collection. On an unknown date, the individual was donated to the Haffenreffer Museum of Anthropology. In 2019, when the Haffenreffer Museum was relocating the individual to a restricted area, the provenience information for ''possibly New Mexico'' was found on a piece of paper with the individual. The Haffenreffer Museum of has no knowledge or record of any potentially hazardous substances being used to treat the human remains. No associated funerary objects are present.

Based on the information available, human remains representing, at least, one individual have been reasonably identified. On an unknown date, the individual was removed from Clear Creek, New Mexico by Edmund B. Delabarre, a professor at Brown University. In 1961, the individual was donated to the Haffenreffer Museum of Anthropology. The Haffenreffer Museum of has no knowledge or record of any potentially hazardous substances being used to treat the human remains. No associated funerary objects are present.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The Haffenreffer Museum has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Apache Tribe of Oklahoma; Cheyenne and Arapaho Tribes, Oklahoma; Comanche Nation, Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico, & Utah; Northern Arapaho Tribe of the Wind River Reservation, Wyoming; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Santo Domingo Pueblo; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Ysleta del Sur Pueblo; and the Zuni Tribe of the Zuni Reservation, New Mexico.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after May 31, 2024. If competing requests for repatriation are received, the Haffenreffer Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Haffenreffer Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–09411 Filed 4–30–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037832; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there are known lineal descendants connected to the human remains in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after May 31, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing one individual have been reasonably identified. The human remains were collected at the Carson Indian School, Ormsby County, NV, and are hair clippings collected from one individual, Evelina Anthony, who was recorded as being 15 years old and identified as ''Washoe.'' Frederic Snyder took the hair clippings at the Carson Indian School between 1930 and 1933. Snyder sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Lineal Descendant

Based on the information available and the results of consultation, two lineal descendants are connected to the human remains described in this notice.

Determinations

The PMAE has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Cheyenne Stone and Ross Stone are connected to the human remains described in this notice.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. The known lineal descendants connected to the human remains.
2. Any other lineal descendant not identified who shows, by a preponderance of the evidence, that the requestor is a lineal descendant.

Repatriation of the human remains in this notice to a requestor may occur on or after May 31, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. The PMAE is responsible for sending a copy of this notice to the lineal descendant and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–09405 Filed 4–30–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037838; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: William S. Webb Museum of Anthropology, University of Kentucky, Lexington, KY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the William S. Webb Museum of Anthropology, University of Kentucky (WSWM) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 31, 2024.

ADDRESSES: Celise Chilcote-Fricker, William S. Webb Museum of Anthropology, University of Kentucky, 1020 Export St., Lexington, KY 40504, telephone (859) 257–5124, email *celise.fricker@uky.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the WSWM, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, six individuals have been reasonably identified. The 33 associated funerary objects are five lots of ceramic sherds, five lots of lithics, six lots of shell, six lots of faunal, three lots of flotation, four lots of soil samples, three lots of seeds, and one bone pin. Site 15McN18 (Crawford Lake) in McCracken, KY was excavated in 1990 by the University of Illinois' Western Kentucky Project. Calibrated radiocarbon dates place it in the Middle Archaic and Mississippian archaeological periods.

Based on the information available, human remains representing, at least, seven individuals have been reasonably identified. The 91 associated funerary objects are seven lots of lithics, six lots of faunal, six lots of floatation, six lots of soil samples, five lots of flora, seven lots of charcoal, 20 lithic projectile points, one lithic scraper, 13 faunal teeth, 13 pieces of ochre, two pieces of hematite, and five lots of burned clay. Site 15McN81 (Hedden) in McCracken, KY, was excavated in 1994 by Wilbur Smith Associates to mitigate road construction and in 2003 the Kentucky Office of Vital Statistics approved a request from the Kentucky Transportation Cabinet to curate at the University of Kentucky.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and

associated funerary objects described in this notice.

Determinations

The WSWM has determined that:

- The human remains described in this notice represent the physical remains of 13 individuals of Native American ancestry.
- The 124 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and The Chickasaw Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 31, 2024. If competing requests for repatriation are received, the WSWM must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The WSWM is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–09407 Filed 4–30–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2024–0022]

Pacific Wind Lease Sale 2 for Commercial Leasing for Wind Power Development on the Oregon Outer Continental Shelf—Proposed Sale Notice

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Proposed sale notice; request for comments.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) proposes to hold Pacific Lease Sale 2 and offer one or more lease areas (Lease Areas) for commercial wind power development on the U.S. Outer Continental Shelf (OCS). The Lease Areas are located in the Brookings and Coos Bay wind energy areas (WEAs) offshore the State of Oregon. This proposed sale notice (PSN) contains information pertaining to the areas available for leasing, certain lease provisions and conditions, auction details, criteria for evaluating competing bids, and procedures for lease award, appeals, and lease execution. BOEM proposes a multiple factor bidding format using a simultaneous clock auction and will use new auction software for the lease sale, resulting in changes to its previous auction rules. Any lease resulting from this sale does not constitute approval for any offshore wind energy facilities. Lessees must first submit project-specific plans to BOEM and obtain BOEM's approval before they may start any construction of an OCS wind energy facility. BOEM will make such plans available for environmental, technical, and public reviews before deciding whether the proposed development should be authorized.

DATES: BOEM must receive your comments no later than July 1, 2024.

For prospective bidders who want to participate in this lease sale, unless you have already received confirmation from BOEM that you are qualified to participate in the Oregon auction, BOEM must receive your qualification materials no later than July 1, 2024. Prior to the auction, BOEM must confirm your qualification to bid in the auction.

ADDRESSES: You may send comments in any of the following ways:

- *Electronically:* Visit *https://www.regulations.gov.* In the box titled ''Search for dockets and documents on agency actions'' enter ''BOEM–2024–0022'' and click ''Search.'' Follow the instructions to submit comments.
- *Mail or delivery service:* Enclose comment in an envelope labeled ''Comments on Oregon Wind Lease Sale PSN'' and send to: Jean Thurston-Keller, Bureau of Ocean Energy Management, Office of Strategic Resources, 760 Paseo Camarillo, Suite 102 (CM102), Camarillo, California 93010.

For prospective bidders who want to participate in this lease sale: Enclose your qualification materials in an envelope labeled ''Qualification Materials for Oregon Wind Energy Lease Sale'' and send to Bureau of Ocean Energy Management, Office of Strategic Resources, 760 Paseo Camarillo, Suite 102 (CM102), Camarillo, California 93010 or electronically to *renewableenergypocs@boem.gov.*

For more information about submitting comments, see sections XX, ''Public Participation,'' and XXI, ''Protection of Privileged and Confidential Information,'' in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Jean Thurston-Keller, Bureau of Ocean Energy Management, *jean.thurston-keller@boem.gov* or (805) 384–6303.

SUPPLEMENTARY INFORMATION:

I. Background

(1) *Call for Information and Nominations:* On April 29, 2022, BOEM published the ''Call for Information and Nominations-Commercial Leasing for Wind Power Development on the Outer Continental Shelf offshore Oregon'' (Call). The Call consisted of two areas identified as the Brookings and Coos Bay Call Areas. BOEM received 278 comments from Tribal nations; the general public; Federal, State, and local agencies; the fishing industry; industry groups; developers; non-governmental organizations; universities; and other stakeholders. Comments can be viewed at *https://www.regulations.gov/document/BOEM-2022-0009-0001/comment.* Four developers nominated areas for a commercial wind energy lease within the Call Areas.

(2) *Area Identification:* After the close of the Call comment period on June 28, 2022, BOEM initiated the process for identifying possible leasing areas (Area ID) by reviewing the input received on the Call. BOEM used the modified Area ID process described in a note to stakeholders, available at: *https://www.boem.gov/newsroom/notes-stakeholders/boem-enhances-its-processes-identify-future-offshore-wind-energy-areas.* BOEM and the National Oceanic and Atmospheric Administration's (NOAA) National Centers for Coastal Ocean Science

(NCCOS) team then used an ocean planning modeling tool to identify the two draft WEAs on the OCS offshore Oregon. The modeling tool, data inputs, and methodology are outlined in the ''NCCOS Draft Report: A Wind Energy Siting Analysis for the Oregon Call Areas,'' which can be found at *https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Oregon_WEA_Draft_Report_NCCOS.pdf.*

On August 15, 2023, BOEM announced a 60-day public comment period on the two draft WEAs offshore Oregon, covering approximately 219,568 acres. This comment period was later extended an additional 15 days for a total 75-day public comment period.

BOEM considered the following non-exclusive information sources when identifying the draft WEAs: comments and nominations received on the Call; input from the Oregon Intergovernmental Renewable Energy Task Force; results of the ''Data Gathering and Engagement Summary Report: Oregon Offshore Wind Planning''; input from Tribes, Oregon State agencies, and Federal agencies; comments from stakeholders and ocean users, including the maritime community, offshore wind developers, and the commercial and recreational fishing industry; State renewable energy goals; information on domestic and global offshore wind markets and technological trends; and the data and information found in OROWindMap at: *https://offshorewind.westcoastoceans.org/visualize/#x=-124.50&y=40.50&z=5&logo=true&controls=true&basemap=ocean&tab=data&legends=false&layers=true.*

After the close of the draft WEA comment period on October 31, 2023, BOEM reviewed the input received from all parties mentioned above and finalized the Area ID memorandum. BOEM announced the final WEAs on February 13, 2024, by designating two final WEAs within the Call areas. The first WEA (Brookings) is 133,792 acres and located approximately 18 miles from shore. The second WEA (Coos Bay) is 61,203 acres and located approximately 32 miles from shore. Both final WEAs combined would support approximately 2.4 gigawatts of wind energy capacity if fully developed. The Oregon Area ID documentation can be found at *https://www.boem.gov/renewable-energy/state-activities/oregon.*

(3) *Environmental Reviews:* On February 14, 2024, BOEM published a notice of intent to prepare an environmental assessment (EA). The EA will consider potential environmental consequences of the anticipated site characterization (*e.g.,* biological, archaeological, geological, and geophysical surveys and core samples) and assessment activities (*e.g.,* installation of meteorological buoys) after issuing wind energy leases in the WEAs. In addition to the preparation of the draft EA, BOEM has initiated other consultations under the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, and the Coastal Zone Management Act. The EA and associated consultations will inform BOEM's decision whether to proceed with the final sale notice (FSN). BOEM will solicit comments on the draft EA before it is finalized. BOEM will conduct additional environmental reviews upon receipt of a lessee's construction and operations plan (COP) if the proposed leases reach that stage of development.

II. Areas Proposed for Leasing

BOEM proposes two areas for leasing: the Brookings Lease Area, OCS–P 0567, and the Coos Bay Lease Area, OCS–P 0566.

Lease area name	Lease area ID	Acres
Brookings	OCS–P 0567	133,792
Coos Bay	OCS–P 0566	61,203
Total		194,995

Descriptions of the proposed Lease Areas can be found in addendum A of the proposed leases, which can be found on BOEM's website at *https://www.boem.gov/renewable-energy/state-activities/oregon.*

(1) *Map of the Area Proposed for Leasing:* A map of the Lease Areas, spatial data files, and a list of latitude/longitude coordinates in the WGS84 datum can be found on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/oregon.*

(2) *Potential Future Restrictions to Ensure Navigational Safety:* Potential bidders are advised that portions of the Lease Areas may not be available for future development (*i.e.,* installation of wind energy facilities) because of navigational safety concerns. BOEM may require additional mitigation measures at the COP stage when the lessee's site-specific navigational safety risk assessment is available to inform BOEM's decision-making.

(3) *Future Restrictions to Protect Sensitive Seafloor Habitats:* Potential bidders are advised that portions of the Lease Areas may not be available for future development (*i.e.,* installation of wind energy facilities) because of sensitive seafloor habitats. Based on comments received during development of the WEAs from Tribes, NOAA's National Marine Fisheries Service, Oregon Department of Fish and Wildlife, and other entities, there are areas of known or expected sensitive seafloor habitats within the WEAs, particularly within the Brookings WEA. The occurrence of these habitats was shown as part of the NCCOS modeling and discussed in the Area Identification memorandum. BOEM will require further data gathering and evaluation of seafloor habitats and expects to place restrictions on disturbance of sensitive seafloor habitats during COP review. The Brookings WEA was developed with the intention of providing sufficient area to accommodate the protection of sensitive seafloor habitat within the lease area.

III. Participation in the Proposed Lease Sale

(1) *Bidder Participation:* Entities that have been notified by BOEM that their qualification is pending or that they are qualified to participate in the upcoming Oregon auction through their response to the Call, or by separate submission of qualification materials, are not required to take any additional action to affirm their interest. Those entities are listed below:

Company name	Company No.
Avangrid Renewables, LLC	15019
BlueFloat Energy Oregon, LLC	15160
OW North America Ventures LLC	15133
U.S. Mainstream Renewable Power, Inc	15089

All other entities wishing to participate in this proposed Oregon auction must submit the required qualification materials to BOEM by the end of the 60-day comment period for this PSN.

(2) *Affiliated Entities:* On the Bidder's Financial Form (BFF), discussed below, eligible bidders must list any other eligible bidders with whom they are affiliated. For the purpose of identifying affiliated entities, a bidding entity is any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity) that is participating in the same auction. BOEM considers bidding entities to be affiliated when:

i. They own or have common ownership of more than 50 percent of the voting securities, or instruments of ownership or other forms of ownership, of another bidding entity. Ownership of less than 10 percent of a bidding entity constitutes a presumption of non-control that BOEM may rebut.

ii. They own or have common ownership of between 10 percent up to and including 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another bidding entity, and BOEM determines that there is control upon consideration of factors including the following:

(1) The extent to which there are common officers or directors.

(2) With respect to the voting securities, or instruments of ownership or other forms of ownership: the percentage of ownership or common ownership; the relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other bidding entities, if a bidding entity is the greatest single owner; or if there is an opposing voting bloc of greater ownership.

(3) Shared ownership, operation, or day-to-day management of a lease, grant, or facility as those terms are defined in BOEM's regulations at 30 CFR 585.113.

iii. They are both direct or indirect subsidiaries of the same parent company.

iv. If, with respect to any lease(s) offered in this auction, they have entered into an agreement prior to the auction regarding the shared ownership, operation, or day-to-day management of such lease.

v. Other evidence indicates the existence of power to exercise control, or that multiple bidders collectively have the power to exercise control over another bidding entity or entities.

Affiliated entities are not permitted to compete against each other in the auction. Where two or more affiliated entities have qualified to bid in the auction, the affiliated entities must decide prior to the auction which one (if any) will participate in the auction. If two or more affiliated entities attempt to participate in the auction, BOEM will disqualify those bidders from the auction.

BOEM solicits comments from stakeholders on the above criteria for ''affiliated entities'' and will consider this feedback to potentially update its definition of affiliated entities in the FSN.

IV. Questions for Stakeholders

Stakeholders are encouraged to comment on any matters related to this proposed lease sale that are of interest or concern. In addition, BOEM has identified the following issues as particularly important, and we encourage commenters to address these issues specifically:

(1) *Existing uses and how they may be affected by the development of the proposed Lease Areas:* BOEM asks commenters to submit technical and scientific data in support of their comments.

(2) *Limits on the Number of Lease Areas per Bidder:* BOEM is proposing to allow each qualified entity to bid for one Lease Area at a time and ultimately acquire only one Lease Area.

V. Proposed Lease Sale Deadlines and Milestones

This section describes the major deadlines and milestones in the auction process from publication of this PSN to execution of a lease issued pursuant to this sale.

(1) The PSN Comment Period:

i. *Submit Comments:* The public is invited to submit comments during this 60-day period, which will expire on July 1, 2024. All comments received or postmarked during the comment period will be made available to the public and considered by BOEM prior to publication of the FSN.

ii. *Public Auction Seminar:* BOEM will host a public seminar to discuss the lease sale process and the auction format. The time and place of the seminar will be announced by BOEM and published on the BOEM website at *https://www.boem.gov/renewable-energy/state-activities/oregon.* No registration or RSVP is required to attend.

iii. *Submit Qualification Materials:* For prospective bidders who want to participate in this lease sale: All qualification materials must be received by BOEM by July 1, 2024. This requirement includes the submission of materials sufficient to establish a company's legal, technical, and financial qualifications pursuant to 30 CFR 585.106–585.107. BOEM's qualification guidelines available at *https://www.boem.gov/Renewable-Energy-Qualification-Guidelines/* provide guidance on the types of information you should submit to BOEM. BOEM will inform you if you are qualified to participate in the auction.

iv. *Confidential information.* If you wish to protect the confidentiality of your comments or qualification materials, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information with the caption ''Contains Confidential Information'' and consider submitting such information as a separate attachment. Treatment of confidential information is addressed in section XXI entitled ''Protection of Privileged or Confidential Information.'' Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

(2) End of PSN Comment Period to FSN Publication:

i. *Review Comments:* BOEM will review all comments submitted in response to the PSN during the comment period.

ii. *Finalize Qualifications Reviews:* Prior to the publication of the FSN, BOEM will complete any outstanding reviews of bidder qualification materials submitted during the PSN comment period. The final list of eligible bidders will be published in the FSN.

iii. *Prepare the FSN:* BOEM will prepare the FSN by updating information contained in the PSN where necessary.

iv. *Publish FSN:* BOEM will publish the FSN in the **Federal Register** at least 30-calendar days before the date of the sale.

(3) *FSN Waiting Period:* During the period between FSN publication and the lease auction, qualified bidders will be required to take several steps to remain eligible to participate in the auction.

i. Bidder's Financial Form: Each bidder must submit a BFF to BOEM to participate in the auction. The BFF must include each bidder's conceptual strategy for each bidding credit for which that bidder wishes to be considered. BOEM must receive each bidder's BFF no later than the date listed in the FSN. BOEM could consider extensions to this deadline only if BOEM determines that the failure to timely submit a BFF was caused by events beyond the bidder's control. The proposed BFF can be downloaded at: *https://www.boem.gov/renewable-energy/state-activities/oregon.*

Once BOEM has processed a bidder's BFF, the bidder will be allowed to log into *https://www.pay.gov* and submit a bid deposit. For purposes of this auction, BOEM will not consider BFFs submitted by bidders for previous lease sales. An original signed BFF may be mailed to BOEM's Pacific Region, Office of Strategic Resources, for certification. A signed copy of the form may be submitted in PDF format to *renewableenergypocs@boem.gov.* A faxed copy will not be accepted. Your BFF submission should be accompanied with a transmittal letter on company letterhead. The BFF is required to be executed by an authorized representative listed in the qualification package on file with BOEM in accordance with 18 U.S.C. 1001 (fraud and false statements). Additional information regarding the BFF may be found below in section IX, ''Bidder's Financial Form.''

ii. *Bid Deposit:* Each qualified bidder must submit a bid deposit of $2,000,000 in order to bid for one (1) Lease Area. Further information about bid deposits can be found below in section X, ''Bid Deposit''.

(4) *Notification of Eligibility for Bidding Credits:* Prior to the mock auction, BOEM will notify each bidder of its determination of eligibility for bidding credits for the auction.

(5) *Mock Auction:* BOEM will hold a mock auction that is open only to qualified bidders who have met the requirements and deadlines for auction participation, including submission of the bid deposit. The mock auction is intended to give bidders an opportunity to clarify auction rules, test the functionality of the auction software, and identify any potential issues that may arise during the auction. Final details of the mock auction will be provided in the FSN.

(6) *The Auction:* BOEM, through its contractor, will hold an auction as described in the FSN. The auction will take place no sooner than 30-calendar days following the publication of the FSN in the **Federal Register**. The estimated timeframes described in this PSN assume the auction will take place approximately 30-calendar days after the publication of the FSN. Final dates will be included in the FSN. BOEM will announce the provisional winners of the lease sale after the auction ends.

(7) *From the Auction to Lease Execution:*

i. *Refund Non-Winners:* Once the provisional winners have been announced, BOEM will provide the non-winners with a written explanation of why they did not win and will return their bid deposits.

ii. *Department of Justice (DOJ) Review:* DOJ will have up to 30-calendar days to conduct an antitrust review of the auction, pursuant to 43 U.S.C. 1337(c).

iii. *Delivery of the Lease:* BOEM will send three lease copies to each provisional winner, with instructions on how to execute the lease. Once the lease has been fully executed, a provisional winner becomes an auction winner. The first year's rent is due 45-calendar days after the auction winners receive the lease copies for execution.

iv. *Return the Lease:* Within 10-business days of receiving the lease copies, the auction winners must post financial assurance, pay any outstanding balance of their winning bids (*i.e.,* winning bid minus applicable bid deposit and any applicable non-monetary bidding credit), and sign and return the three executed lease copies. The winners may request extensions and BOEM may grant such extensions if BOEM determines that the delay was caused by events beyond the requesting winner's control, pursuant to 30 CFR 585.224(e).

v. *Execution of Lease:* Once BOEM has received the signed lease copies and verified that all other required materials have been received, BOEM will make a final determination regarding its issuance of the leases and will execute the leases, if appropriate.

VI. Withdrawal of Blocks

BOEM reserves the right to withdraw all or portions of the Lease Areas prior to executing the leases with the winning bidders.

VII. Lease Terms and Conditions

Along with this PSN, BOEM is making available the proposed terms, conditions, and stipulations for the commercial leases that would be offered through this proposed sale. BOEM reserves the right to require compliance with additional terms and conditions associated with the approval of a site assessment plan (SAP) and COP. The proposed lease is on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/oregon.* Each lease will include the following attachments:

a. Addendum A (''Description of Leased Area and Lease Activities'');

b. Addendum B (''Lease Term and Financial Schedule'');

c. Addendum C (''Lease-Specific Terms, Conditions, and Stipulations''); and

d. Addendum D (''Project Easement(s)'').

VIII. Lease Financial Terms and Conditions

This section provides an overview of the required annual payments and financial assurance under the lease. Please see the proposed lease for more detailed information, including any changes from past practices.

(1) *Rent:* Pursuant to 30 CFR 585.224(b) and 585.503, the first year's rent payment of $3 per acre is due within 45-calendar days after the lessee receives the unexecuted lease copies from BOEM. Thereafter, annual rent payments are due on the anniversary of the effective date of the lease (the ''Lease Anniversary''). Once commercial operations under the lease begin, BOEM will charge rent only for the portions of the Lease Area remaining undeveloped (*i.e.,* non-generating acreage). For example, for the 61,203 acres of Lease Area OCS–P 0566 (Coos Bay), the rent payment would be $183,609 per year until commercial operations begin.

If the lessee submits an application for relinquishment of a portion of its leased area within the first 45-calendar days after receiving the lease copies from BOEM and BOEM approves that application, no rent payment would be due on the relinquished portion of the Lease Area. Later relinquishments of any portion of the Lease Area would reduce the lessee's rent payments starting in the year following BOEM's approval of the relinquishment.

A lease issued under this part confers on the lessee the right to one or more project easements, without further competition, for the purpose of installing gathering, transmission, and distribution cables, pipelines, and appurtenances on the OCS as necessary for the full enjoyment of the lease. A lessee must apply for the project easement as part of the COP or SAP, as provided under subpart F of 30 CFR part 585. The lessee also must pay rent for any project easement associated with the lease. Rent commences on the date that BOEM approves the COP that describes the project easement (or any modification of such COP that affects the easement acreage), as outlined in 30 CFR 585.507. If the COP revision results in increased easement acreage, additional rent would be required at the time the COP revision is approved. Annual rent for a project easement is the greater of $5 per acre per year or $450 per year.

(2) *Operating Fee:* For purposes of calculating the initial annual operating fee payment under 30 CFR 585.506, BOEM applies an operating fee rate to a proxy for the wholesale market value of the electricity expected to be

generated from the project during its first 12 months of operations. This initial payment will be prorated to reflect the period between the commencement of commercial operations and the Lease Anniversary. The initial annual operating fee payment will be due within 90-calendar days of the commencement of commercial operations. Thereafter, subsequent annual operating fee payments will be due on or before the Lease Anniversary.

The subsequent annual operating fee payments will be calculated by multiplying the operating fee rate by the imputed wholesale market value of the projected annual electric power production. For the purposes of this calculation, the imputed market value will be the product of the project's annual nameplate capacity, the total number of hours in a year (8,760), the capacity factor, and the annual average price of electricity derived from a regional wholesale power price index. For example, the annual operating fee for a 976-megawatt (MW) wind facility operating at a 40 percent capacity (*i.e.,* capacity factor of 0.4) with a regional wholesale power price of $40 per megawatt hour (MWh) and an operating fee rate of 0.02 would be calculated as follows:

$$\text{Annual Operating Fee} = 976\ \text{MW} \times 8{,}760\ \frac{\text{hrs}}{\text{year}} \times 0.4 \times$$

$$\frac{\$40}{\text{MWh}}\ \text{Power Price} \times 0.02 = \$2{,}735{,}923.20$$

i. *Operating Fee Rate:* The operating fee rate is the share of the imputed wholesale market value of the projected annual electric power production due to the Office of Natural Resources Revenue (ONRR) as an annual operating fee. For the Lease Areas, BOEM proposes to set the fee rate at 0.02 (2 percent) for the entire life of commercial operations.

ii. *Nameplate Capacity:* Nameplate capacity is the maximum rated electric output, expressed in MW, which the turbines of the wind facility under commercial operations can produce at their rated wind speed as designated by the turbine's manufacturer.

iii. *Capacity Factor:* BOEM proposes to set the capacity factor at 0.4 (*i.e.,* 40 percent) for the year in which the commercial operations begin and for the first 6 years of commercial operations on the lease. At the end of the sixth year, BOEM may adjust the capacity factor to reflect the performance over the previous 5 years based upon the actual metered electricity generation at the delivery point to the electrical grid. BOEM may make similar adjustments to the capacity factor once every 5 years thereafter.

iv. *Wholesale Power Price Index:* Under 30 CFR 585.506(c)(2)(i), the wholesale power price, expressed in dollars per MWh, is determined at the time each annual operating fee payment is due. For the leases offered in this sale the following table provides the proposed price data. A similar price dataset may also be used and may be posted by BOEM at *https://www.boem.gov* for reference.

Lease area name	Wholesale power price
Brookings, OCS–P 0567.	Mid-Columbia Hub.
Coos Bay, OCS–P 0566.	Mid-Columbia Hub.

(3) *Financial Assurance:* Within 10-business days after receiving the unexecuted lease copies and pursuant to 30 CFR 585.515–585.516, the provisional winners will be required to provide an initial lease-specific bond or other BOEM-approved financial assurance instrument in the amount of $100,000. The provisional winners may meet financial assurance requirements by posting a surety bond or other financial assurance instrument as detailed in 30 CFR 585.526–585.529. BOEM encourages the provisional winners to discuss financial assurance requirements with BOEM as soon as possible after the auction has concluded.

BOEM will base the amount of all SAP, COP, and decommissioning financial assurance on cost estimates for meeting all accrued lease obligations at the respective stages of development. The required amount of supplemental and decommissioning financial assurance will be determined on a case-by-case basis.

The financial terms described above can be found in addendum ''B'' of the lease, which is available at: *https://www.boem.gov/renewable-energy/state-activities/oregon.*

IX. Bidder's Financial Form

Each bidder must submit to BOEM the information listed in the BFF referenced in this PSN. A copy of the proposed form is available at: *https://www.boem.gov/renewable-energy/state-activities/oregon.* BOEM recommends that each bidder designate an email address in its BFF that the bidder will use to create an account in *https://www.pay.gov* (if it has not already done so). BOEM will not consider previously submitted BFFs for previous lease sales to satisfy the requirements of this auction. BOEM must receive each BFF, including any conceptual strategies, by the deadline set in the FSN. BOEM may consider BFFs, including any conceptual strategies, that are submitted after the deadline set in the FSN if BOEM determines that the failure to timely submit the BFF was caused by events beyond the bidder's control. The BFF is required to be executed by an authorized representative listed in the bidder's qualification package on file with BOEM.

X. Bid Deposit

Each qualified bidder must submit a bid deposit no later than the date listed in the FSN. Typically, the deadline is approximately 30-calendar days after the publication of the FSN. BOEM may consider extensions to this deadline only if BOEM determines that the failure to timely submit the bid deposit was caused by events beyond the bidder's control.

Following the auction, bid deposits will be applied against the winning bid and other obligations owed to BOEM. If a bid deposit exceeds that bidder's total financial obligation, BOEM will refund the balance of the bid deposit to the bidder. BOEM will refund bid deposits to the unsuccessful bidders once BOEM has announced the provisional winners.

If BOEM offers a lease to a provisional winner and that bidder fails to timely return the signed lease, establish financial assurance, or pay the balance of its bid, BOEM will retain the bidder's $2,000,000 bid deposit for the Lease Area. In such a circumstance, BOEM reserves the right to offer a lease to the

next highest bidder as determined by BOEM.

XI. Minimum Bid

The minimum bid is the lowest dollar amount per acre that BOEM will accept as a winning bid and is the amount at which BOEM will start the bidding in the auction. BOEM proposes a minimum bid of $50.00 per acre for this lease sale.

XII. Auction Procedures

(1) *Multiple-Factor Bidding Auction:* As authorized under 30 CFR 585.220(a)(4) and 585.221(a)(6), BOEM proposes to use a multiple-factor auction format for this lease sale. Under BOEM's proposal, the bidding system for this lease sale will be a multiple-factor combination of monetary and non-monetary factors. The bid made by a particular bidder in each round will represent the sum of the monetary factor (cash bid) and the value of any non-monetary factors in the form of bidding credits. BOEM proposes to start the auction using the minimum bid price for the Lease Area and to increase prices incrementally until no more than one bidder remains bidding on each Lease Area in the auction.

For this sale, BOEM is calculating bidding credits as a percentage of the whole bid, which is a change from the method used in recent sales, where bidding credits were calculated as a percentage of the cash portion of the bid. The intended purpose of this change is to simplify the bidding credit calculation.

BOEM is proposing to grant bidding credits to bidders that commit to any or all of the following:

i. Supporting workforce training programs for the floating offshore wind industry or supporting the development of a domestic supply chain for the floating offshore wind industry, or a combination of both;

ii. Establishing a Lease Area Use Community Benefit Agreement (Lease Area Use CBA) with one or more communities, stakeholder groups, or Tribal entities whose use of the geographic space of the Lease Area, or whose use of resources harvested from that geographic space, is expected to be impacted by the lessee's potential offshore wind development; or

iii. Establishing a General Community Benefit Agreement (General CBA) with one or more communities, Tribes, or stakeholder groups that are expected to be affected by the potential impacts on the marine, coastal, and/or human environment (such as impacts on visual or cultural resources) from activities resulting from lease development that are not otherwise addressed by the Lease Area Use CBA.

These bidding credits are intended to:

i. Enhance, through training, the floating offshore wind workforce and/or enhance the establishment of a domestic supply chain for floating offshore wind manufacturing, assembly, or services, both of which will contribute to the expeditious and orderly development of floating offshore wind resources on the OCS;

ii. Support the expeditious and orderly development of OCS resources by mitigating potential direct impacts from proposed projects and encouraging the investment in infrastructure germane to the floating offshore wind industry;

iii. Mitigate any potential impacts to a community or stakeholder group from renewable energy activity or structures on the Lease Area, and particularly to assist fishing and related industries to manage transitions, gear changes, or other similar impacts which may arise from the development of the Lease Area; and

iv. Mitigate any potential impacts to a community or stakeholder group from floating offshore wind energy development, and particularly to assist local communities to manage transitions, changes, or other similar impacts which may arise from the development of the Lease Area.

(2) *Changes to Auction Rules:* BOEM will be employing new auction software for sales held in 2024. The auction format remains an ascending clock auction with multiple-factor bidding. The new software makes five primary changes to the ascending clock auction rules.

i. If a bidder decides to bid on a different Lease Area in a subsequent round of the auction, it may submit a bid to reduce demand for the Lease Area it bid on in the previous round and, simultaneously, submit a bid to increase demand for another Lease Area. This allows a bidder the option to switch to another Lease Area if the price of the first Lease Area exceeds the specified bid price.

ii. Provisional winners will no longer be determined using a two-step process. The auction rules are implemented in such a way that, when the auction concludes, the bidder who remains on a Lease Area after the final round becomes its provisional winner. There will be no additional processing step.

iii. The auction will use a ''second price'' rule. A given Lease Area will be won by the bidder that submitted the highest bid amount for the Lease Area, but the winning bidder will pay the highest bid amount at which there was competition (*i.e.,* the ''second price'').

iv. For sales in which bidders are allowed to bid for and potentially acquire two or more Lease Areas, any bid for two Lease Areas will be treated as independent bids for those Lease Areas, rather than as a package bid.

v. Each bidder's bidding credit will be expressed directly as a percentage of the final price for the lease.

All potential bidders should review the complete Auction Procedures for Offshore Wind Lease Sales (Version 1) located at: *https://www.boem.gov/renewable-energy/lease-and-grant-information.*

(3) *The Auction:* Using an online bidding system to host the auction, BOEM will start the bidding for the Lease Areas as described below.

Lease area name	Lease area ID	Acres	Minimum bid
Brookings	OCS–P 0567	133,792	$6,689,600
Coos Bay	OCS–P 0566	61,203	3,060,150

The auction will be conducted in a series of rounds. Before each round, the auction system will announce the prices for each Lease Area offered in the auction. In Round 1, there is a single price for each Lease Area equal to the minimum bid price (also known as the 'opening price' or 'clock price of Round 1'). Each bidder can bid, at the opening price, for one Lease Area. After Round 1, the bidder's processed demand is one for the Lease Area for which the bidder bid in Round 1.[1]

Starting in Round 2, each Lease Area is assigned a range of prices for the round. The start-of-round price is the lowest price in the range, and the clock price is the highest price in the range.

[1] Bidders specify their demand for a lease area with either a 0 or 1 in the auction system. A demand of 1 indicates the lease area that they are bidding on. Processed demand is the demand, either 0 or 1, of a bidder for a lease area following the processing of the bids for the round.

A bidder still eligible to bid after the previous round can either continue bidding at the new round's clock price for the same Lease Area for which the bidder's processed demand is one or submit a bid to reduce demand for that Lease Area at any price in the range for that round. A bid to reduce demand at some price indicates that the bidder is not willing to acquire that Lease Area at a price exceeding the specified bid price. A bidder that bids to reduce demand for a Lease Area could bid to increase demand for the other Lease Area in the same round.

If an eligible bidder does not place a bid during the round for the Lease Area for which the bidder's processed demand is one, the auction system will consider this a request to reduce demand for that Lease Area at the start-of-round price. That bidder can nonetheless win that Lease Area if it is the last remaining bidder for that Lease Area.

After each round, the auction system processes the bids and determines each bidder's processed demand for each Lease Area and the posted prices for the Lease Areas. The bidder's eligibility for the next round will equal the number of Lease Areas for which the bidder had a processed demand of one. If, after any round, a bidder's processed demand is zero for both Lease Areas, the bidder's eligibility drops to zero and the bidder can no longer bid in the auction. The posted price is the price determined for each Lease Area after processing of all bids for a round. If only one bidder remains on a Lease Area, the posted price reflects the ''second price'' (*i.e.,* the highest price at which there was competition for the Lease Area).[2]

If, after the bids for the round have been processed, there is no Lease Area with excess demand (*i.e.,* no lease areas have more than one bidder), the auction will end. When this occurs, each bidder with a processed demand of one for a Lease Area will become the provisional winner for that Lease Area. Otherwise, the auction will continue with a new round in which the start-of-round price for each Lease Area equals the posted price of the previous round.

The increment by which the clock price exceeds the start-of-round price will be determined based on several factors, including, but not necessarily limited to, the expected time needed to conduct the auction and the number of rounds that have already occurred. BOEM reserves the right to increase or decrease the increment as it deems appropriate.

The provisional winners of the auction will pay the final posted price (less any applicable bidding credit), or risk forfeiting their bid deposits. A provisional winner will be disqualified if it is subsequently found to have violated auction rules or BOEM regulations, or otherwise engaged in conduct detrimental to the integrity of the competitive auction.

If a bidder submits a bid that BOEM determines to be a provisionally winning bid, the bidder must sign the applicable lease documents, post financial assurance, and submit the outstanding balance of its winning bid (*i.e.,* winning monetary bid minus the applicable bid deposit and the value of bidding credits, as applicable) within 10-business days of receiving the lease copies, pursuant to 30 CFR 585.224. BOEM reserves the right to not issue the lease to the provisionally winning bidder if that bidder fails to: timely execute three copies of the lease and return them to BOEM, timely post adequate financial assurance, timely pay the balance of its winning bid, or otherwise comply with applicable regulations or the terms of the FSN. In any of these cases, the bidder will forfeit its bid deposit and BOEM reserves the right to offer a lease to the next highest eligible bidder as determined by BOEM.

BOEM will publish the names of the provisional winners of the Lease Areas and the associated prices shortly after the conclusion of the sale. Full bid results, including round-by-round results of the entire sale, will be published on BOEM's website after a review of the results and announcement of the provisional winners.

Additional Information Regarding the Auction Format:

i. *Authorized Individuals and Bidder Authentication:* An entity that is eligible to participate in the auction will identify on its BFF up to three individuals who will be authorized to bid on behalf of the company, including their names, business telephone numbers, and email addresses. All individuals will log into the auction system using *Login.gov.* Prior to the auction, each individual listed on the BFF form must obtain a Fast Identity Online (FIDO) compliant security key,[3] and must register this security key on *Login.gov* using the same email address that was listed in the BFF. The *Login.gov* registration, together with the FIDO-compliant security key, will enable the individual to log into the auction system. BOEM will provide information on this process on its website.

After BOEM has processed the bid deposits, the auction contractor will send an email to the authorized individuals, inviting them to practice logging into the auction website on a specific day in advance of the mock auction. The *Login.gov* login process, along with the authentication for the auction helpdesk, will also be tested during the mock auction.

If an eligible bidder fails to submit a bid deposit or does not participate in the first round of the auction, BOEM will deactivate that bidder's login information.

ii. *Timing of Auction:* The FSN will provide specific information regarding when bidders can enter the auction system and when the auction will start.

iii. *Messaging Service:* BOEM and the auction contractors will use the auction system's messaging service to keep bidders informed on issues of interest during the auction. For example, BOEM could change the schedule at any time, including during the auction. If BOEM changes the schedule during an auction, it will use the messaging feature to notify bidders that a revision has been made and will direct bidders to the relevant page. BOEM will also use the messaging system for other updates during the auction.

iv. *Bidding Rounds:* Bidders are allowed to place bids or to change their bids at any time during the bidding round. At the top of the bidding page, a countdown clock shows how much time remains in each round. Bidders will have until the end of the round to place bids. Bidders should do so according to the procedures described in the FSN and the Auction Procedures for Offshore Wind Lease Sales. Information about the round results will be made available only after the round has closed, so there is no strategic advantage to placing bids early or late in the round.

The Auction Procedures for Offshore Wind Lease Sales elaborates on the auction procedures described in this PSN. In the event of any inconsistency among the Auction Procedures for Offshore Wind Lease Sales, the Bidder

[2] The Auction Procedures for Offshore Wind Lease Sales provides details on how bids are prioritized and processed.

[3] FIDO keys are produced by many manufacturers, such as Yubico and Google. They are widely available and can easily be purchased from Amazon, Best Buy, Walmart, or any other seller of electronics. The latest generation of the FIDO standard is FIDO2, and each authorized individual should obtain the key compliant with FIDO2 authentication standard. FIDO keys are typically inserted into a computer's USB port, so the authorized individual should obtain a FIDO key compatible with their computer (USB–A or USB–C) or a USB adapter, as necessary.

Manual, and the FSN, the FSN is controlling.[4]

v. *Alternate Bidding Procedures:* Redundancy is the most effective way to mitigate technical and human issues during an auction. BOEM strongly recommends that bidders consider authorizing more than one individual to bid in the auction—and confirming during the mock auction that each individual is able to access the auction system. A mobile hotspot or other form of wireless access is helpful in case a company's main internet connection should fail. As a last resort, an authorized individual facing technical issues may request to submit its bid by telephone. In order to be authorized to place a telephone bid, an authorized individual must call the help desk number listed in the auction manual before the end of the round. BOEM will authenticate the caller's identity, including requiring the caller to provide a code from the software token. The caller must also explain the reasons why a telephone bid needs to be submitted. BOEM may, in its sole discretion, permit or refuse to accept a request for the placement of a bid using this alternate telephonic bidding procedure. The auction help desk requires codes from the Google Authenticator application (app) as part of its procedure for identifying individuals who call for assistance. *Prior to the auction,* all individuals listed on the BFF should download the Google Authenticator™ mobile app [5] onto their smartphone or tablet.[6] The first time the individual logs into the auction system, the system will provide a QR token to be read into the Google Authenticator app. This token is unique to the individual and enables the Google Authenticator app to generate time-sensitive codes that will be recognized by the auction system. When an individual calls the auction help desk, the current code from the app must be provided to the help desk representative as part of the user authentication process. BOEM will provide information on this process on its website.

(4) *15 Percent Bidding Credit for Workforce Training or Supply Chain Development or a Combination of Both:* This proposed bidding credit will allow a bidder to receive a credit of 15 percent in exchange for a commitment to make a qualifying monetary contribution (''Contribution''), in the same amount as the bidding credit received, to programs or initiatives that support workforce training programs for the U.S. floating offshore wind industry or development of a U.S. domestic supply chain for the floating offshore wind industry, or both, as described in the BFF addendum and the lease. To qualify for this credit, the bidder must commit to the bidding credit requirements on the BFF and submit a conceptual strategy as described in the BFF addendum.

i. As proposed, the Contribution to workforce training must result in a better trained and/or larger domestic floating offshore wind workforce that will provide for more efficient operations via increasing the supply of fully trained personnel. Training of existing lessee employees, lessee contractors, or employees of affiliated entities will not qualify as an appropriate contribution toward fulfilling this bidding credit commitment.

ii. The Contribution to domestic supply chain development must result in overall benefits to the U.S. floating offshore wind supply chain available to all potential purchasers of floating offshore wind services, components, or subassemblies, not solely the lessee's project; and either: (i) the demonstrable development of new domestic capacity (including vessels) or the demonstrable buildout of existing capacity; or (ii) an improved floating offshore wind domestic supply chain by reducing the upfront capital or certification cost for manufacturing floating offshore wind components, including the building of facilities, the purchasing of capital equipment, and the certifying of existing manufacturing facilities.

iii. Contributions cannot be used to satisfy private cost shares for any Federal tax or other incentive programs where cost sharing is a requirement. No portion of the Contribution may be used to meet the requirements of any other bidding credits for which the lessee qualifies.

iv. Bidders interested in obtaining a bidding credit could choose to contribute to workforce training programs, domestic supply chain initiatives, or a combination of both. The conceptual strategy must describe verifiable actions that the lessee will take that will allow BOEM to confirm compliance once the lessee has submitted documentation that shows it has satisfied the bidding credit commitment. The Contribution must be tendered in full, and the lessee must provide documentation evidencing it has made the Contribution and complied with applicable requirements, no later than the date the lessee submits its first Facility Design Report (FDR).

v. As proposed, Contributions to workforce training must promote and support one or more of the following purposes: (i) Union apprenticeships, labor management training partnerships, stipends for workforce training, or other technical training programs or institutions focused on providing skills necessary for the planning, design, construction, operation, maintenance, or decommissioning of floating offshore wind energy projects in the United States; (ii) Maritime training necessary for the crewing of vessels to be used for the construction, servicing, and/or decommissioning of wind energy projects in the United States; (iii) Training workers in skills or techniques necessary to manufacture or assemble floating offshore wind components, subcomponents, or subassemblies. Examples of areas involving these skills and techniques include welding, wind energy technology, hydraulic maintenance, braking systems, mechanical systems that include blade inspection and maintenance, or computers and programmable logic control systems; (iv) Tribal floating offshore wind workforce development programs or training for employees of an Indian Economic Enterprise [7] in skills necessary in the floating offshore wind industry; or (v) Training in any other job skills that the lessee can demonstrate are necessary for the planning, design, construction, operation, maintenance, or decommissioning of floating offshore wind energy projects in the United States.

vi. As proposed, Contributions to domestic supply chain development must promote and support one or more of the following: (i) Development of a domestic supply chain for the floating offshore wind industry, including manufacturing of components and sub-assemblies and the expansion of related services; (ii) Domestic Tier 2 and Tier 3 floating offshore wind component suppliers and domestic Tier-1 supply chain efforts, including quay-side fabrication; [8] (iii) Technical assistance grants to help U.S. manufacturers re-tool or certify (*e.g.,* ISO–9001) for floating offshore wind manufacturing; (iv) Development of Jones Act-compliant

[4] The Bidder Manual is provided to the auction participants in advance of the auction.

[5] Google Authenticator must be installed from either the Apple App Store or the Google Play Store.

[6] Installing the Google Authenticator app is required only if the app has not already been installed on the smartphone or tablet.

[7] *https://www.bia.gov/sites/default/files/dup/assets/as-ia/ieed/Primer%20on%20Buy%20Indian%20Act%20508%20Compliant%202.6.18(Reload).pdf.*

[8] Tier-1 denotes the primary offshore wind components such as the blades, nacelles, towers, foundations, and cables. Tier 2 subassemblies are the systems that have a specific function for a Tier 1 component. Tier 3 subcomponents are commonly available items that are combined into Tier 2 subassemblies, such as motors, bolts, and gears.

vessels for the construction, servicing, and/or decommissioning of wind energy projects in the United States; (v) Purchase and installation of lift cranes or other equipment capable of lifting or moving foundations, towers, and nacelles quayside, or lift cranes on vessels with these capabilities; (vi) Port infrastructure directly related to floating offshore wind component manufacturing or assembly of major floating offshore wind facility components; (vii) Establishing a new or existing bonding support reserve or revolving fund available to all businesses providing goods and services to offshore wind energy companies, including disadvantaged businesses and/or Indian Economic Enterprises; or (viii) Other supply chain development efforts that the lessee can demonstrate advance the manufacturing of floating offshore wind components or subassemblies or the provision of floating offshore wind services in the United States.

vii. *Documentation:* If a lease is issued pursuant to a winning bid that includes a bidding credit for workforce training or supply chain development, the lessee must provide documentation showing that the lessee has met the financial commitment before the lessee submits the first FDR for the lease. The documentation must allow BOEM to objectively verify the amount of the Contribution and the beneficiary(ies) of the Contribution.

At a minimum, the documentation must include: all written agreements between the lessee and beneficiary(ies) of the Contribution, which must detail the amount of the Contribution(s) and how it will be used by the beneficiaries of the Contribution(s) to satisfy the goals of the bidding credit for which the Contribution was made; all receipts documenting the amount, date, financial institution, and the account and owner of the account to which the Contribution was made; and sworn statements by the entity that made the Contribution and the beneficiary(ies) of the Contribution attesting that all information provided in the above documentation is true and accurate. The documentation must describe how the funded initiative or program has advanced, or is expected to advance, U.S. floating offshore wind workforce training or supply chain development. The documentation must also provide qualitative and/or quantitative information that includes the estimated number of trainees or jobs supported, or the estimated leveraged supply chain investment resulting or expected to result from the Contribution. The documentation must contain any information called for in the conceptual strategy that the lessee submitted with its BFF and allow BOEM to objectively verify: (i) the amount of the Contribution and the beneficiary(ies) of the Contribution, and (ii) compliance with the bidding credit criteria provided in addendum ''C'' of the lease. If the lessee's implementation of its conceptual strategy changes due to market needs or other factors, the lessee must explain the changed approach. BOEM reserves all rights to determine that bidding credit criteria have not been satisfied if changes from the lessee's conceptual strategy result in the lessee not meeting the criteria for the bidding credit described in addendum ''C'' of the lease.

i. *Enforcement:* The commitment for the bidding credit must be made in the BFF and included in a lease addendum that will bind the lessee and all future assignees of the lease. If BOEM were to determine that a lessee or assignee had failed to satisfy the requirements of the bidding credit, or if a lessee were to relinquish or otherwise fail to develop the lease by the tenth anniversary date of lease issuance, the amount corresponding to the bidding credit awarded will be immediately due and payable to ONRR with interest from the lease Effective Date. The interest rate will be the underpayment interest rate identified by ONRR. The lessee would not be required to pay said amount if the lessee satisfied its bidding credit requirements but failed to develop the lease by the tenth Lease Anniversary. BOEM could, at its sole discretion, extend the documentation deadline beyond the first FDR submission or extend the lease development deadline beyond the 10-year timeframe.

(5) *5 percent Bidding Credit for Lease Area Use CBA:* The second bidding credit proposed will allow a bidder to receive a credit of 5 percent of its bid in exchange for a commitment to contribute to an existing Lease Area Use CBA or a commitment to enter into a new Lease Area Use CBA with a community or stakeholder group whose use of the geographic space of the Lease Area, or whose use of resources harvested from that geographic space, is expected to be impacted by the lessee's potential offshore wind development. To qualify for the credit, the bidder must commit to the bidding credit requirements in the BFF and submit a conceptual strategy, as described in the BFF addendum.

(1) Bidders committing to use the Lease Area Use CBA bidding credit must submit their conceptual strategy, along with their BFF, as further described below and in the BFF addendum. The conceptual strategy must describe the actions that the lessee intends to take that will allow BOEM to verify compliance when the lessee seeks to demonstrate satisfaction of the requirements for the bidding credit. The lessee must provide documentation showing that the lessee has met the commitment and complied with the applicable bidding credit requirements before the lessee submits the lease's first FDR or before the tenth Lease Anniversary, whichever is sooner.

(2) *Documentation:* As proposed, if a lease is awarded pursuant to a winning bid that includes a Lease Area Use CBA bidding credit, the lessee must provide written documentation to BOEM demonstrating execution of the Lease Area Use CBA commitment no later than submission of the lessee's first FDR or before the tenth Lease Anniversary, whichever is sooner. The documentation must enable BOEM to objectively verify the Contribution has met all applicable requirements outlined in addendum ''C'' of the lease. At a minimum, this documentation must include:

a. All written agreements between the lessee and beneficiary(ies), including the executed Lease Area Use CBA;

b. A description of work done with impacted communities, including the monetary and non-monetary commitments that reflect the value of the bidding credit received; and

c. Sworn statements by the Lease Area Use CBA signatories or their assignees, attesting to the truth and accuracy of all the information provided in the above documentation.

The documentation must contain any information specified in the conceptual strategy that was submitted with the BFF. If the lessee's implementation of its conceptual strategy changes due to market needs or other factors, the lessee must explain this change. BOEM reserves the right to determine that the bidding credit has not been satisfied if changes from the lessee's conceptual strategy result in the lessee not meeting the criteria for the bidding credit described in addendum ''C'' of the lease.

(3) *Enforcement:* The commitment for the bidding credit will be made in the BFF and will be included in a lease addendum that will bind the lessee and all future assignees of the lease. If BOEM were to determine that a lessee or assignee had failed to satisfy the requirements of the bidding credit, or if a lessee were to relinquish or otherwise fail to develop the lease by the submission of the lessee's first FDR or by the tenth anniversary date of lease issuance, the amount corresponding to the bidding credit awarded will be

immediately due and payable to ONRR with interest from the lease Effective Date. The interest rate will be the underpayment interest rate identified by ONRR. The lessee will not be required to pay said amount if the lessee satisfied its bidding credit requirements but failed to develop the lease by the tenth Lease Anniversary. BOEM could, at its sole discretion, extend the documentation deadline beyond the first FDR submission or extend the lease development deadline beyond the 10-year timeframe.

(6) *5 percent Bidding Credit for General CBA:* The third bidding credit proposed would allow a bidder to receive a credit of 5 percent of its bid in exchange for a commitment to contribute to an existing General CBA or a commitment to enter into a new General CBA with a community or stakeholder group that is expected to be impacted by the lessee's potential floating offshore wind development. To qualify for the credit, the bidder must commit to the bidding credit requirements in the BFF and submit a conceptual strategy as described in the BFF addendum. Bidders committing to use the General CBA bidding credit must submit their conceptual strategy along with their BFF, further described below and in the BFF addendum. The conceptual strategy must describe the actions that the lessee intends to take that will allow BOEM to verify compliance when the lessee seeks to demonstrate satisfaction of the requirements for the bidding credit.

(1) *Documentation:* As proposed, if a lease is awarded pursuant to a winning bid that includes a General CBA bidding credit, the lessee must provide written documentation to BOEM demonstrating execution of the General CBA commitment no later than submission of the lessee's first FDR or before the tenth Lease Anniversary, whichever is sooner. The documentation must enable BOEM to objectively verify that the Contribution has met all applicable requirements outlined in addendum ''C'' of the lease. At a minimum, this documentation must include:

a. All written agreements between the lessee and beneficiary(ies), including the executed General CBA;

b. A description of work with impacted communities to reach monetary and non-monetary commitments that reflect the value of the bidding credit received;

c. Sworn statements by the Lease Area Use CBA signatories or their assignees, attesting to the truth and accuracy of all the information provided in the above documentation.

The documentation must contain any information specified in the conceptual strategy that was submitted with the BFF. If the lessee's implementation of its conceptual strategy changes due to market needs or other factors, the lessee will need to explain this change. BOEM reserves the right to determine that the bidding credit has not been satisfied if changes from the lessee's conceptual strategy result in the lessee not meeting the criteria for the bidding credit described in addendum ''C'' of the lease.

(2) *Enforcement:* The commitment for the bidding credit must be made in the BFF and will be included in a lease addendum that will bind the lessee and all future assignees of the lease. If BOEM were to determine that a lessee or assignee had failed to satisfy the requirements of the bidding credit, or if a lessee were to relinquish or otherwise fail to develop the lease by the tenth anniversary date of lease issuance, the amount corresponding to the bidding credit awarded will be immediately due and payable to ONRR with interest from the lease Effective Date. The interest rate would be the underpayment interest rate identified by ONRR. The lessee will not be required to pay said amount if the lessee satisfied its bidding credit requirements but failed to develop the lease by the tenth Lease Anniversary. BOEM could, at its sole discretion, extend the documentation deadline beyond the first FDR submission or extend the lease development deadline beyond the 10-year time.

XIII. Rejection or Non-Acceptance of Bids

BOEM reserves the right and authority to reject any and all bids that do not satisfy the requirements and rules of the auction, the FSN, or applicable regulations and statutes.

XIV. Anti-Competitive Review

Bidding behavior in this sale is subject to Federal antitrust laws. Following the auction, but before the acceptance of bids and the issuance of the lease, BOEM must ''allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of [the] lease sale.'' 43 U.S.C. 1337(c)(1). If a provisional winner is found to have engaged in anti-competitive behavior in connection with this lease sale, BOEM may reject its provisionally winning bid. Compliance with BOEM's auction procedures and regulations is not an absolute defense against violations of antitrust laws.

Anti-competitive behavior determinations are fact specific. However, such behavior may manifest itself in several different ways, including, but not limited to:

a. An express or tacit agreement among bidders not to bid in an auction, or to bid a particular price;

b. An agreement among bidders not to bid against each other; or

c. Other agreements among bidders that have the potential to affect the final auction price.

Pursuant to 43 U.S.C. 1337(c)(3), BOEM may decline to award a lease if the Attorney General, in consultation with the Federal Trade Commission, determines that awarding the lease may be inconsistent with antitrust laws.

For more information on whether specific communications or agreements could constitute a violation of Federal antitrust law, please see *https://www.justice.gov/atr* and consult legal counsel.

XV. Process for Issuing the Lease

Once all post-auction reviews have been completed to BOEM's satisfaction, BOEM will issue three unsigned copies of the lease to the provisional winner. Within 10-business days after receiving the lease copies, the provisional winner must:

a. Execute and return the lease copies on the bidder's behalf;

b. File financial assurance, as required under 30 CFR 585.515–537; and

c. Pay by electronic funds transfer (EFT) the balance owed (the winning cash bid minus the applicable bid deposit). BOEM will require bidders to use EFT procedures (not *https://www.pay.gov,* the website bidders used to submit bid deposits) for payment of the balance, following the detailed instructions available on ONRR's website at: *https://onrr.gov/paying/payment-options?tabs=renewable-energy,bid-deposit-options.*

BOEM will not execute the lease until the three requirements above have been satisfied, BOEM has accepted the provisionally winning bidder's financial assurance pursuant to 30 CFR 585.515, and BOEM has processed the provisionally winning bidder's payment. BOEM may extend the 10-business-day deadline for signing a lease, filing the required financial assurance, and paying the balance owed if BOEM determines, in its sole discretion, that the provisionally winning bidder's inability to comply with the deadline was caused by events beyond the provisionally winning bidder's control pursuant to 30 CFR 585.224(e).

If the provisional winner does not meet these requirements or otherwise fails to comply with applicable regulations or the terms of the FSN,

BOEM reserves the right to not issue the lease to that bidder. In such a case, the provisional winner will forfeit its bid deposit. Also, in such a case, BOEM reserves the right to offer the lease to the next highest eligible bidder as determined by BOEM.

Within 45-calendar days after receiving the lease copies, the provisional winner must pay the first year's rent using the ''ONRR Renewable Energy Initial Rental Payments'' form available at: *https://www.pay.gov/public/form/start/27797604/.*

Subsequent annual rent payments must be made following the detailed instructions available on ONRR's website at: *https://onrr.gov/paying/payment-options?tabs=rent-payments.*

XVI. Non-Procurement Debarment and Suspension Regulations

Pursuant to 43 CFR part 42, subpart C, an OCS renewable energy lessee must comply with the Department of the Interior's non-procurement debarment and suspension regulations at 2 CFR parts 180 and 1400. The lessee must also communicate this requirement to persons with whom the lessee does business relating to this lease by including this requirement as a term or condition in their contracts and other transactions.

XVII. Final Sale Notice

The development of the FSN will be informed through the EA, related consultations, and comments received during the PSN comment period. The FSN will provide the final details concerning the offering and issuance of an OCS commercial wind energy lease for the Lease Areas offshore Oregon. The FSN will be published in the **Federal Register** at least 30-calendar days before the lease sale is conducted and will provide the date and time of the auction.

XVIII. Changes to Auction Details

BOEM has the discretion to change any auction detail specified in the FSN, including the date and time, if events outside BOEM's control have been found to interfere with a fair and proper lease sale. Such events may include, but are not limited to, natural disasters (*e.g.,* earthquakes, hurricanes, floods, and blizzards), wars, riots, acts of terrorism, fire, strikes, civil disorder, Federal Government shutdowns, cyberattacks against relevant information systems, or other events of a similar nature. In case of such events, BOEM will notify all qualified bidders via email, phone, and BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/oregon.* Bidders should call BOEM's Auction Manager at (703) 787–1121 if they have concerns.

XIX. Appeals

Reconsideration of rejected bid procedures are provided in BOEM's regulations at 30 CFR 585.118(c) and 585.225. BOEM's decision on a bid is the final action of the Department of the Interior, and is not subject to appeal to the Office of Hearings and Appeals, but an unsuccessful bidder may apply for reconsideration by the Director under 30 CFR 585.225 as follows:

a. If BOEM rejects your bid, BOEM will provide a written statement of the reasons and will refund any money deposited with your bid, without interest.

b. You may ask the BOEM Director for reconsideration, in writing, within 15-business days of bid rejection. The Director will send you a written response either affirming or reversing the rejection.

XX. Public Participation

BOEM will make all comments publicly available on *https://www.regulations.gov* under the docket number and will consider each comment prior to publication of the FSN. BOEM discourages anonymous comments; please include your name, address, and telephone number or email address as part of your comment. You should be aware that your entire comment, including your name, address, and any other personally identifiable information (PII) included in your comment, may be made publicly available at any time.

For BOEM to consider withholding from disclosure your PII, you must identify, in a cover letter, any information contained in the submittal of your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm.

Even if BOEM withholds your information in the context of this PSN, your comment is subject to the Freedom of Information Act (FOIA). If your submission is requested under FOIA, BOEM will withhold your information only if it determines that one of the FOIA's exemptions to disclosure applies. BOEM will make such a determination in accordance with the Department of the Interior's FOIA regulations and applicable law.

BOEM will make available for public inspection, in their entirety, all comments submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses.

XXI. Protection of Privileged and Confidential Information

BOEM will protect privileged and confidential information that you submit consistent with FOIA and 30 CFR 585.113. Exemption 4 of FOIA applies to ''trade secrets and commercial or financial information obtained from a person'' that are privileged or confidential. (5 U.S.C. 552(b)(4)). If you wish to protect the confidentiality of any information, clearly mark it ''Contains Privileged or Confidential Information'' and consider submitting such information as a separate attachment. BOEM will not disclose such information, except as required by FOIA. Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release. Further, BOEM will not treat as confidential aggregate summaries of otherwise non-confidential information.

Access to Information (54 U.S.C. 307103): BOEM may, after consultation with the Secretary of the Interior, withhold the location, character, or ownership of historic properties if it determines that disclosure may, among other things, cause a significant invasion of privacy, risk harm to the historic resources, or impede the use of a traditional religious site by practitioners. Tribes and other interested parties should designate such information that they wish to be withheld as confidential and provide the reasons why BOEM should do so.

Authority: 43 U.S.C. 1337(p); 30 CFR 585.211 and 585.216.

Elizabeth Klein,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2024–09391 Filed 4–30–24; 8:45 am]

BILLING CODE 4340–98–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2023–0065]

Notice of Availability of a Draft Environmental Assessment for Commercial Wind Lease Issuance on the Pacific Outer Continental Shelf, Oregon

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) announces the availability of a draft environmental assessment (EA) to consider the potential environmental impacts associated with possible wind energy-related leasing and grant issuance, site assessment, and site characterization activities on the U.S. Pacific Outer Continental Shelf (OCS) offshore Oregon. This notice of availability (NOA) announces the start of the public review and comment period, as well as the dates and times for public meetings on the draft EA. After BOEM holds a public meeting and addresses public comments submitted during the review period, BOEM will publish a final EA. The EA will inform BOEM's decision on whether to issue wind energy leases and grants in the Pacific wind energy areas (WEAs) offshore Oregon.

DATES: Comments must be received no later than 30 days after publication date.

BOEM's virtual public meeting will be held on the following date at the time (Pacific time) indicated.

- Tuesday, May 21, 2024, 1 p.m.

Please go to *https://www.boem.gov/oregon* for meeting link, dates, times and for additional information and updates. Meetings are open to the public and free to attend. Pre-registration is not required to attend.

ADDRESSES: The draft EA and detailed information about BOEM's actions related to offshore wind energy planning in Oregon can be found on BOEM's website at *https://www.boem.gov/renewable-energy/state-activities/oregon.* Comments can be submitted in any of the following ways:

- Through the *regulations.gov* web portal: Navigate to *https://www.regulations.gov* and search for docket no. BOEM–2023–0065. Click on the ''Comment'' button below the document link and follow online instructions. Enter your information and comment, then click ''Submit Comment.'' A commenter's checklist is available on the comment web page;
- Orally during the public meetings identified in this announcement; or
- In written form by mail or any other delivery service, enclosed in an envelope labeled ''Oregon Wind Leasing EA'' and addressed to Chief, Environmental Analysis Section, Bureau of Ocean Energy Management, Camarillo, California Office, 760 Paseo Camarillo, Suite 102, Camarillo, CA 93010.

For more information about submitting comments, please see ''Information on Submitting Comments'' under the **SUPPLEMENTARY INFORMATION** heading below.

FOR FURTHER INFORMATION CONTACT: Lisa Gilbane, Chief, Environmental Analysis Section, Bureau of Ocean Energy Management, Camarillo, California Office, 760 Paseo Camarillo, Suite 102, Camarillo, CA 93010, (805) 384–6387 or *lisa.gilbane@boem.gov.*

SUPPLEMENTARY INFORMATION: The draft EA analyzes the proposed action, which is the issuance of wind energy leases within the Oregon WEAs, and the no action alternative. The lease sale itself would not authorize any activities on the OCS. Therefore, the EA considers the reasonably foreseeable environmental consequences of site characterization surveys (*i.e.,* biological, archeological, geological and geophysical surveys, and core samples) and site assessment activities (*i.e.,* installation of meteorological buoys), which are expected to take place following lease issuance. Under the National Environmental Policy Act and its implementing regulations, BOEM is preparing an EA for this proposed action to assist the agency's planning and decision-making (40 CFR 1501.5(b)).

Availability of the Draft EA: The draft EA and associated information are available on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/oregon.*

Information on Submitting Comments: All interested parties are requested to comment on the EA document and appendices. For information on how to submit comments, see the **ADDRESSES** section above.

Freedom of Information Act: BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly label it and request that BOEM treat it as confidential. BOEM will not disclose such information if BOEM determines under 30 CFR 585.114(b) that it qualifies for exemption from disclosure under FOIA. Please label privileged or confidential information ''Contains Confidential Information'' and consider submitting such information as a separate attachment.

BOEM will not treat as confidential any aggregate summaries of information or any comments not containing privileged or confidential information. Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release.

Personally Identifiable Information: BOEM encourages you not to submit anonymous comments. Please include your name and address as part of your comment. You should be aware that your entire comment, including your name, address, and any personally identifiable information (PII) included in your comment, may be made publicly available. All submissions from identified individuals, businesses, and organizations will be available for public viewing at *https://www.regulations.gov.*

For BOEM to consider withholding your PII from disclosure, you must identify any information contained in your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm.

Even if BOEM withholds your information in the context of this notice, your submission is subject to FOIA. If your submission is requested under FOIA, your information will only be withheld if a determination is made that one of FOIA's exemptions to disclosure applies. Such a determination will be made in accordance with the Department of the Interior's FOIA regulations and applicable law.

Except for clearly identified privileged and confidential information, BOEM will make available for public inspection all comments, in their entirety, submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses.

Section 304 of the NHPA (54 U.S.C. 307103(a)): After consultation with the Secretary, BOEM is required to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities should designate information that falls under section 304 of NHPA as confidential.

Authority: 42 U.S.C. 4231 *et seq.* (NEPA, as amended) and 40 CFR 1506.6.

Richard Yarde,

Pacific Regional Supervisor, Office of Environment, Bureau of Ocean Energy Management.

[FR Doc. 2024–09360 Filed 4–30–24; 8:45 am]

BILLING CODE 4340–98–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2024–0026]

Atlantic Wind Lease Sale 11 (ATLW–11) for Commercial Leasing for Wind Power Development on the U.S. Gulf of Maine Outer Continental Shelf—Proposed Sale Notice

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Proposed sale notice; request for comments.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) proposes to hold Atlantic Wind Lease Sale 11 (ATLW–11) and offer multiple lease areas (Lease Areas) for commercial wind power development on the U.S. Outer Continental Shelf (OCS) in the Gulf of Maine. The proposed Lease Areas are located in the Gulf of Maine offshore the States of Maine and New Hampshire, and the Commonwealth of Massachusetts. This Proposed Sale Notice (PSN) contains information pertaining to the proposed Lease Areas, certain lease provisions and conditions, auction details, lease forms, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution procedures. The issuance of any lease resulting from a sale would not constitute approval of project-specific plans to develop floating offshore wind energy. Such plans, if submitted by the Lessee, would be subject to subsequent environmental, technical, and public reviews prior to a BOEM decision whether to approve them. BOEM is proposing an ascending clock auction with multiple-factor bidding.

DATES: BOEM must receive your comments no later than July 1, 2024. All comments received during the comment period will be made available to the public and considered prior to publication of any Final Sale Notice (FSN). For prospective bidders who want to participate in this lease sale, unless you have already received confirmation from BOEM that you are qualified to participate in the Gulf of Maine auction, BOEM must receive your qualification materials no later than July 1, 2024, and, prior to the auction, BOEM must confirm your qualification to bid in the auction.

ADDRESSES: You may submit written comments on the PSN in one of the following ways:

- *Electronically: https://www.regulations.gov.* In the search box, enter ''*BOEM–2024–0026*'' and click ''Search.'' Follow the instructions to submit public comments.
- *Written Comments:* Submit written comments in an envelope labeled ''Comments on Gulf of Maine Lease Sale PSN'' and deliver them by U.S. mail or other delivery service to: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road, Mailstop: VAM–OREP, Sterling, VA 20166.

Qualifications Materials for Potential Lease Sale Participants: To qualify to participate in a lease sale following the publication of this PSN, qualification materials should be developed in accordance with the guidelines at *https://www.boem.gov/Renewable-Energy-Qualification-Guidelines.* Qualification materials should be submitted electronically to *renewableenergy@boem.gov,* or in an envelope labeled, ''Qualification Materials for Gulf of Maine Wind Energy Lease Sale'' to Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road, VAM–OREP, Sterling, Virginia 20166.

For more information about submitting comments, see sections XX, ''Public Participation,'' and XXI, ''Protection of Privileged and Confidential Information,'' under the **SUPPLEMENTARY INFORMATION** caption below.

FOR FURTHER INFORMATION CONTACT: Zachary Jylkka, Bureau of Ocean Energy Management, *Zachary.Jylkka@boem.gov* or (978) 491–7732; or Gina Best, Bureau of Ocean Energy Management, *Gina.Best@boem.gov* or (703) 787–1341.

SUPPLEMENTARY INFORMATION:

I. Background

a. *Request for Interest (RFI):* On August 19, 2022, BOEM published an RFI in the **Federal Register** (87 FR 51129), to assess interest in, and to invite public comment on, possible commercial wind energy leasing on the Gulf of Maine OCS. The RFI Area consisted of approximately 13.7 million acres. In response to the RFI, BOEM received nominations of areas of interest from five developers, all of which BOEM deems legally, technically, and financially qualified. In addition to gauging interest in the development of commercial wind energy leases within the RFI Area, BOEM also sought feedback from Tribes, stakeholders, industry, and others regarding the location and size of specific areas they wished to be included in (or excluded from) a future offshore wind energy lease sale, along with other planning considerations. BOEM received 51 unique comments on the RFI. Comments and nominations are available at *https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine.*

b. *Call for Information and Nominations (Call):* On April 25, 2023, BOEM published a Call for Information and Nominations for Commercial Leasing for Wind Power Development on the Gulf of Maine'' (see 88 FR 25427). BOEM received 127 unique comments on the Call. Seven developers nominated areas for a commercial wind energy lease within the Call Area.[1]

c. *Area Identification (Area ID):* An Area ID determination is a required regulatory step under the renewable energy competitive leasing process used to identify areas for environmental analysis and consideration for leasing. After the close of the Call comment period, BOEM initiated the Area ID process using information and input from stakeholders received to date.

BOEM and the National Oceanic and Atmospheric Administration's National Centers for Coastal Ocean Science (NCCOS) collaborated in employing an ocean planning tool (the NCCOS model) to help identify an area that appears most suitable for floating offshore wind energy leasing and development in the Gulf of Maine. The Area ID process seeks to identify and minimize potential conflicts in ocean space as well as to mitigate interactions with other users and adverse interactions with the environment; the NCCOS model supports that effort. BOEM employed the NCCOS model during two distinct steps of the Area ID process: first, to model relative suitability within the boundaries of the Call Area to identify the Draft Wind Energy Area (WEA) and Secondary Areas; and second, to model the relative suitability within the boundaries of the Draft WEA (plus Secondary Area C).

On October 19, 2023, BOEM announced the Gulf of Maine Draft WEA and opened a 30-day public comment period. The methodology used to delineate the Gulf of Maine Draft WEA is outlined in the ''Draft NCCOS Report: A Wind Energy Area Siting Analysis for the Gulf of Maine Call Area.'' [2] The Draft WEA covered approximately 3.5 million acres. BOEM considered the following

[1] Comments can be viewed at *https://www.regulations.gov/docket/BOEM-2023-0025/comments.* A map of the nominations received can be viewed at *https://www.boem.gov/sites/default/files/images/gulf_of_maine_call_nominations_heatmap.png.*

[2] Available at *https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Gulf_of_Maine_Draft%20WEA_Report_NCCOS_0.pdf.*

non-exclusive information sources when identifying the Draft WEA: comments and nominations received on the Call; information from the Gulf of Maine Intergovernmental Renewable Energy Task Force; input from federally recognized Tribes; input from State and Federal agencies; comments from stakeholders and ocean users, including the maritime community, offshore wind developers, and the commercial and recreational fishing industry; input from State and local governments on renewable energy goals; and information on domestic and global offshore wind market and technological trends.

d. BOEM completed the Area ID process after considering additional input received from stakeholders during the Draft WEA comment period. BOEM published the Final WEA on March 15, 2024. The Final WEA comprises approximately 2 million acres and represents an 80% reduction from the size of the Call Area and a 43% reduction from the Draft WEA. The Final WEA has the potential to support generation of 32 gigawatts (GW) of clean energy, surpassing current State goals for offshore wind energy in the Gulf of Maine (13–18 GW, based on Massachusetts and Maine's offshore wind goals and estimates provided by the regional grid operator, ISO-New England). The size of the Final WEA allows BOEM to consider additional ways to reduce conflicts with users and resources, while also supporting the region's renewable energy goals. For additional information, the Gulf of Maine Area ID documentation can be found at *https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine.*

e. *Environmental Reviews:* On March 18, 2024, BOEM published a notice of intent to prepare an environmental assessment (EA) to consider potential environmental impacts of site characterization activities (*e.g.,* biological, archaeological, geological, and geophysical surveys and core samples) and site assessment activities (*e.g.,* installation of meteorological buoys) that are expected to take place after issuance of wind energy leases (89 FR 19354). The March 18 notice initiated a public scoping process, with BOEM seeking comments on the issues and alternatives that should inform the EA. Public comments on the notice can be found at *https://www.regulations.gov* in docket no. BOEM–2024–0020. In addition to the preparation of the Draft EA, and compliance with threatened and endangered species requirements for certain data collection activities associated with OCS leasing,[3] BOEM has initiated other required consultations under the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, and the Coastal Zone Management Act. The EA and associated consultations will inform BOEM's decision whether to proceed with a final sale notice (FSN). BOEM will solicit comments on the EA before it is finalized. BOEM will conduct additional environmental reviews upon receipt of a lessee's Construction and Operations Plan (COP) if one or more of the proposed leases reach that stage of development.

f. *Phased Leasing:* BOEM is proposing lease areas that we believe represent a balance between providing sufficient acreage to meet regional renewable energy demands and known spatial use conflicts. BOEM may propose additional lease sales within the region at a future date; however, the timing and scope of any future sale will be informed by the results of this proposed Gulf of Maine sale, as well as the position of potentially affected Tribes, Gulf of Maine States, stakeholder engagement, relevant market conditions, and regional energy goals.

II. Areas Proposed for Leasing

Within the Final WEA, BOEM proposes eight areas for leasing, as described in Table 1. Descriptions of the proposed Lease Areas may be found in Addendum A of each of the proposed leases, located on BOEM's website at *https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine.* Several leases are subject to a proposed lease stipulation that would prohibit surface or subsurface development in portions of the lease that are adjacent to corridors BOEM created between proposed leases to facilitate existing and future vessel transit (section II-d). For those leases, the total ''developable acres'' are less than the total ''lease acres'' as described in Table 1.

TABLE 1—GULF OF MAINE PROPOSED LEASE AREAS, ACRES, AND ASSIGNED REGION

Lease area ID	Region	Total lease acres	Total developable acres
OCS–A 0562	North	121,339	121,339
OCS–A 0563	North	132,369	132,369
OCS–A 0564	South	110,308	105,499
OCS–A 0565	South	115,290	115,290
OCS–A 0566	South	127,388	127,388
OCS–A 0567	South	123,118	117,391
OCS–A 0568	South	134,149	123,389
OCS–A 0569	South	106,038	101,757
Total		969,999	944,422

[3] See *https://www.boem.gov/sites/default/files/documents/renewable-energy/OSW-surveys-NLAA-programmatic.pdf.*

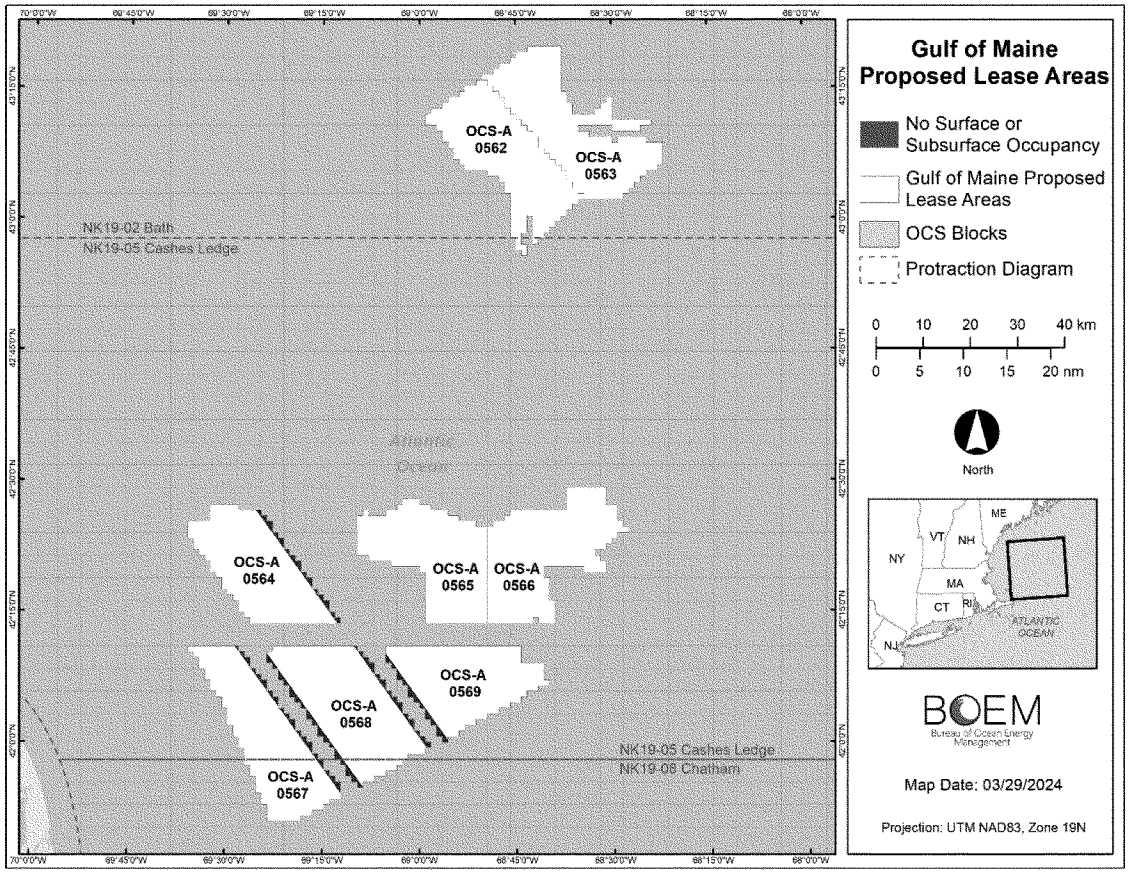

Figure 1: Gulf of Maine Proposed Lease Areas

a. *Map of the Area Proposed for Leasing:* In addition to Figure 1, maps of the Lease Areas, and various GIS spatial files may be found on BOEM's website at *https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine.*

b. *Potential Future Restrictions to Ensure Navigational Safety:* Potential bidders are advised of the possibility that portions of the Lease Areas may not be available for future development (*i.e.,* installation of wind energy facilities) because of navigational safety concerns. While the Final WEA avoids the vast majority of the U.S. Coast Guard's (USCG) Maine, New Hampshire, Massachusetts Port Access Route Study proposed safety fairways, there is one small area of overlap directly northeast of the Cashes Ledge Groundfish Closure area. This area now falls within the northern portions of leases OCS–A 0562 and 0563. BOEM will coordinate with USCG as its rulemaking process to designate possible safety fairways continues, and BOEM may require additional mitigation measures at the COP stage when the lessee's site-specific navigational safety risk assessment is available to inform BOEM's decision-making.

BOEM has also included a proposed lease stipulation ''Surface Structure Layout and Orientation'' (see Addendum C, section 10 in the Gulf of Maine proposed leases), which would require lessees with directly adjacent leases (*i.e.,* OCS–A 0562 and 0563; OCS–A 0565 and 0566) to design a surface structure layout that contains two common lines of orientation across the adjacent leases (as described in Navigation and Vessel Inspection Circular 02–23). If the lessees cannot agree on such a layout, each lessee would be required to incorporate a 1 nm setback from the boundary of the adjacent lease within which surface structures are prohibited. This would create a minimum 2 nm distance between the proposed facilities of each lessee along the lease boundary. These setback distances are based on USCG recommendations for prior lease sales for which development was expected to include fixed offshore wind foundations (BOEM has included similar lease stipulations for such sales where there were adjacent leases). Given the expectation that offshore wind development in the Gulf of Maine will necessitate floating foundations, BOEM requests comments on this proposed stipulation, particularly the required setback distances and whether setbacks should prohibit both surface and subsurface structures (*i.e.,* floating foundations, mooring lines, anchor structures, or inter-array cables).

c. *Corridors between Leases:* Members of the fishing community have requested that offshore wind energy facilities be designed in a manner that, among other things, provides for uninterrupted transit to fishing grounds where relevant. Within the southern region of the Final WEA, east of Massachusetts, BOEM has created three corridors between leases to facilitate existing and future transit through proposed lease areas.[4] These areas occur in a Northwest to Southeast direction, as well as in an East and West direction, and have a minimum width of 2.5 nautical miles (nm). The width of these areas was adapted from the New York Bight leasing process, which resulted in 2.44 nm corridors between lease areas (see *https://www.boem.gov/renewable-energy/state-activities/new-york-bight*). As stated in the New York Bight FSN (BOEM–2022–0001), BOEM used

[4] BOEM does not have the authority to designate transit lanes. The United States Coast Guard's (USCG) authority to provide safe access routes for the movement of vessel traffic is found in the Ports and Waterways Safety Act. See 46 U.S.C. 70003.

calculations and guidelines published by the Permanent International Association of Navigation Congresses World Association of Waterborne Transport Infrastructure and Maritime Institute in the Netherlands, as well as the USCG draft Port Access Route Study (USCG–2020–0172) to inform that analysis.

Bidders should be aware that BOEM may include a lease stipulation in the FSN that addresses corridors between leases, pending the outcome of additional discussions with ocean users and stakeholders as well as consideration of comments submitted in response to this PSN.

d. *Areas of No Surface or Subsurface Occupancy:* To accommodate the desired distances between surface and subsurface structures (*i.e.,* 2.5 nm width of the designated corridors between leases described above), select portions of the lease areas in the southern portion of the Gulf of Maine WEA (OCS–A 0564, 0567, 0568, 0569) will be offered for sale, but no surface or subsurface occupancy will be permitted, as described in Addendum A of each respective lease.

e. *Stellwagen Bank National Marine Sanctuary:* The Gulf of Maine WEA lies adjacent to the Stellwagen Bank National Marine Sanctuary. Should a lease be issued within the WEA, future offshore wind development may necessitate installation of energy transmission cables within the sanctuary boundaries in identified cable corridors. NOAA has advised BOEM that they may consider authorizing installation of energy transmission cables within sanctuary boundaries under the authority of the National Marine Sanctuaries Act, through one or more of the following mechanisms—General Permits, Authorizations, Certifications, and Special Use Permits.

f. *Potential Future Restrictions to Mitigate Potential Conflicts with Department of Defense (DOD) Activities:* Those interested in bidding should be aware of potential conflicts with DOD's existing uses of the OCS. BOEM coordinates with DOD throughout the leasing process. This included consultation with the Military Aviation and Installation Assurance Siting Clearinghouse, which conducted a DOD assessment of the Gulf of Maine Draft WEA. The assessment identified potential impacts, which are described below.

i. *Air Surveillance and Radar:* The North American Aerospace Defense Command (NORAD) mission may be affected by development of the Lease Areas. Similar impacts have been encountered with other Lease Areas along the Atlantic Coast and have been largely if not entirely mitigated. Considering both the expected height of offshore turbines and future cumulative wind turbine effects, adverse impacts can be mitigated through the use of Radar Adverse-impact Management (RAM) [5] and overlapping radar coverage. For projects where RAM mitigation is acceptable, BOEM anticipates including the following project approval conditions:

(1) Lessee will notify NORAD when the project is within 30–60 days of completion of commissioning of the last wind turbine generator (WTG) (meaning every WTG in the Project is installed with potential for blade rotation), and again when the project is complete and operational, for RAM scheduling;

(2) Lessee will contribute funds to DOD in the amount of no less than $80,000 toward the cost of DOD's execution of the RAM procedures for each radar system affected; and

(3) Lessee will curtail wind turbine operations for national security or defense purposes as described in the lease.

ii. *Department of Navy operations:* While the Navy did not identify any conflicts with the Final WEA, mitigations to resolve potential conflicts with ship testing may be necessary depending on the specific projects proposed within the Lease Areas.

BOEM may require the lessee to enter into an agreement with DOD to implement any necessary conditions and mitigate any identified impacts. BOEM will further coordinate with DOD and the lessee to eliminate potential conflicts throughout the project review stage, which may result in adding mitigation measures or terms and conditions as part of any plan approval.

g. *Potential Future Restrictions to Mitigate Potential Conflicts with Sand Resources:* Potential bidders are advised that BOEM has identified sand resource areas in aliquots offshore the Gulf of Maine (MMIS Application *https://mmis.doi.gov/BOEMMMIS*). OCS sand resource areas are composed of sand deposits found on or below the surface of the OCS seabed. There is potential for sand resources to exist in other areas in the Gulf of Maine not currently identified in aliquots. If it is determined that accessible and significant OCS sand resources may be impacted by a proposed activity, BOEM may require potential bidders to undertake measures deemed economically, environmentally, and technically feasible to protect the resources to the maximum extent practicable, including minimizing, avoiding, and mitigating impact to these resources. Measures may include modification of proposed transmission corridor locations if warranted. Neither BOEM nor the Bureau of Safety and Environmental Enforcement will approve future requests for in-place decommissioning of submarine cables in sand resource areas unless BOEM has determined that the submarine cables do not unduly interfere with other uses of the OCS, specifically sand resource use.

h. *Potential Future Restrictions to Mitigate Possible Conflicts with Deep-Sea Corals and Biologically Sensitive Benthic Habit:* Potential bidders are advised that in the Gulf of Maine Final WEA, BOEM has identified the presence of deep-sea corals and sponges, as well as hardbottom habitat areas suitable for sensitive deep-sea coral and sponge species. BOEM anticipates that any site assessment activities and site characterization activities within the Gulf of Maine authorized by a lease would be subject to the protections for live-bottom features included in BOEM's programmatic consultation with the National Marine Fisheries Service under ESA section 7 (see Addendum C, section 5.2 in the Gulf of Maine leases).[6] BOEM will conduct additional environmental review upon receipt of a lessee's COP and, as a condition of approval, may require avoidance measures to reduce potential impacts to sensitive benthic species and habitat within the Lease Area.

III. Participation in the Proposed Lease Sale

a. *Bidder Participation:* Entities that have been notified by BOEM that their qualification is pending or that they are qualified to participate in any Gulf of Maine auction through their response to the RFI or Call, or by separate submission of qualification materials, are not required to take any additional

[5] RAM is the technical process designed to minimize the adverse impact of obstruction interference on a radar system.

[6] Project Design Criteria 1: Avoid Live Bottom Features. Best Management Practice: All vessel anchoring and any seafloor-sampling activities (*i.e.,* drilling or boring for geotechnical surveys) are restricted from seafloor areas with consolidated seabed features. All vessel anchoring and seafloor sampling must also occur at least 150 m from any known locations of threatened or endangered coral species. All sensitive live bottom habitats (eelgrass, cold-water corals, etc.) should be avoided as practicable. All vessels in coastal waters will operate in a manner to minimize propeller wash and seafloor disturbance and transiting vessels should follow deep-water routes (*e.g.,* marked channels), as practicable, to reduce disturbance to sturgeon and sawfish habitat. *https://www.boem.gov/renewable-energy/final-nlaa-osw-programmatic.*

action to affirm their interest. Those entities are listed below:

Company name	Company No.
Avangrid Renewables, LLC	15019
Equinor Wind US LLC	15058
US Mainstream Renewable Power Inc	15089
Diamond Wind North America, LLC	15113
Hexicon USA, LLC	15151
TotalEnergies SBE US, LLC	15165
Pine Tree Offshore Wind, LLC	15167
OW Gulf of Maine LLC	15175
Repsol Renewables North America, Inc	15180
Maine Offshore Wind Development LLC	15181
Corio USA Projectco LLC	15182

All other entities wishing to participate in any Gulf of Maine auction must submit the required qualification materials to BOEM by the end of the 60-day comment period for this PSN.

b. *Affiliated Entities:* On the Bidder's Financial Form (BFF), discussed below, eligible bidders must list any other eligible bidders with whom they are affiliated. For the purpose of identifying affiliated entities, a bidding entity is any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity) that is participating in the same auction. BOEM considers bidding entities to be affiliated when:

i. They own or have common ownership of more than 50 percent of the voting securities, or instruments of ownership or other forms of ownership, of another bidding entity. Ownership of less than 10 percent of a bidding entity constitutes a presumption of non-control that BOEM may rebut.

ii. They own or have common ownership of between 10 percent and up to including 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another bidding entity, and BOEM determines that there is control upon consideration of factors including the following:

(1) The extent to which there are common officers or directors.

(2) With respect to the voting securities, or instruments of ownership or other forms of ownership: the percentage of ownership or common ownership, the relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other bidding entities, if a bidding entity is the greatest single owner, or if there is an opposing voting bloc of greater ownership.

(3) Shared ownership, operation, or day-to-day management of a lease, grant, or facility as those terms are defined in BOEM's regulations at 30 CFR 585.113.

iii. They are both direct or indirect subsidiaries of the same parent company.

iv. If, with respect to any lease(s) offered in this auction, they have entered into an agreement prior to the auction regarding the shared ownership, operation, or day-to-day management of such lease.

v. Other evidence indicates the existence of power to exercise control, such as evidence that one bidding entity has power to exercise control over the other, or that multiple bidders collectively have the power to exercise control over another bidding entity or entities.

Affiliated entities are not permitted to compete against each other in the auction. Where two or more affiliated entities have qualified to bid in the auction, the affiliated entities must decide prior to the auction which one (if any) will participate in the auction. If two or more affiliated entities attempt to participate in the auction, BOEM will disqualify those bidders from the auction.

IV. Questions for Stakeholders

Stakeholders are encouraged to comment on any matters related to this proposed lease sale that are of interest or concern. BOEM has identified the following issues as particularly important, and we encourage commenters to address these issues specifically:

a. *Number, size, orientation, and location of the proposed Lease Areas:* BOEM is seeking feedback on the proposed number, size, orientation, and location of the Lease Areas and welcomes comments on which Lease Areas, if any, should be prioritized for inclusion, or exclusion, from this lease sale. BOEM is also open to comment on areas of the WEA that were not included as Lease Areas.

b. *Considerations for delineation of the proposed Lease Areas:* These delineation considerations may include comparable commercial viability and size; prevailing wind direction and minimizing wake effects; maximized energy generating potential; mooring system anchor footprints and extents; possible setbacks at Lease Area boundaries; distance to shore, port infrastructure and electrical grid interconnections; and fair return to the Federal Government pursuant to the OCS Lands Act through competition for commercially viable Lease Areas. Additional comments are welcome regarding other considerations for delineating Lease Areas.

c. *Existing uses and how they may be affected by the development of the proposed Lease Areas:* BOEM asks commenters to submit technical and scientific data in support of their comments.

d. *Baseline Monitoring:* BOEM is considering a lease stipulation that would require Lessees to conduct baseline data collection activities for endangered and threatened marine mammals and their habitats in support of developing their construction and operations plans. BOEM requests comments on the scope of this potential requirement, including (but not limited to) priority information on species and habitats, methods to collect that data, regional collaboration, data sharing, and data management.

e. *Corridors between Leases:* BOEM welcomes comments on the potential effects of the proposed lease areas on existing vessel traffic, especially commercial maritime and fishing vessels. BOEM requests comments on the width, location, and orientation of corridors and how that would facilitate continuance of existing transit.

f. *Limits on the Number of Lease Areas per Bidder:* BOEM is proposing to allow each qualified entity to bid for and ultimately win a maximum of two leases each, including a maximum of one Lease Area in the North Region as shown in Table 2. As proposed, a bidder can bid for and win a maximum of two South Region leases, or one North Region lease and one South Region lease—but cannot bid for or win both North Region leases. BOEM is seeking feedback on this proposal, including feedback on how different leasing scenarios (*e.g.,* number of Lease Areas offered, size of Lease Areas, etc.) may influence the advisability of such a limitation.

TABLE 2—GULF OF MAINE PROPOSED LEASE AREAS AND REGIONS

[Preferred option]

Lease Area ID	Region	Acres
OCS–A 0562	North	121,339

TABLE 2—GULF OF MAINE PROPOSED LEASE AREAS AND REGIONS—Continued

[Preferred option]

Lease Area ID	Region	Acres
OCS–A 0563	North	132,369
OCS–A 0564	South	110,308
OCS–A 0565	South	115,290
OCS–A 0566	South	127,388
OCS–A 0567	South	123,118
OCS–A 0568	South	134,149
OCS–A 0569	South	106,038

Alternatively, BOEM could configure the leases into three regions, as shown in Table 3. BOEM would allow each qualified entity to bid for and ultimately win a maximum of two leases each, including a maximum of one Lease Area in each region. BOEM is seeking feedback on this alternative option.

TABLE 3—GULF OF MAINE PROPOSED LEASE AREAS AND REGIONS

[Alternative option]

Lease area ID	Region	Acres
OCS–A 0562	North	121,339
OCS–A 0563	North	132,369
OCS–A 0564	South	110,308
OCS–A 0565	East	115,290
OCS–A 0566	East	127,388
OCS–A 0567	South	123,118
OCS–A 0568	South	134,149
OCS–A 0569	South	106,038

V. Proposed Lease Sale Deadlines and Milestones

This section describes the major deadlines and milestones in the lease sale process from publication of this PSN to execution of a lease.

a. The PSN Comment Period:

i. *Submit Comments:* The public is invited to submit comments during the 60-day period expiring on July 1, 2024. All comments received or postmarked during the comment period will be made available to the public and considered by BOEM prior to publication of the FSN.

ii. *Public Auction Seminar:* BOEM will host a public seminar to discuss the lease sale process and the auction format. The time and place of the seminar will be announced by BOEM and published on the BOEM website at *https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine.* No registration or RSVP is required to attend.

iii. *Submit Qualification Materials:* Prospective bidders who want to participate in the proposed lease sale must ensure that BOEM receives your qualification materials by July 1, 2024. This requirement includes all materials sufficient to establish a company's legal, technical, and financial qualifications pursuant to 30 CFR 585.107–.108. To qualify to participate in the proposed lease sale, qualification materials must be developed in accordance with the guidelines available at *https://www.boem.gov/Renewable-Energy-Qualification-Guidelines.* BOEM will inform you if you are qualified to participate in the auction.

iv. *Confidential information.* If you wish to protect the confidentiality of your comments or qualification materials, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information with the caption ''Contains Confidential Information'' and consider submitting such information as a separate attachment. Treatment of confidential information is addressed in section XXI entitled ''Protection of Privileged or Confidential Information.'' Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

b. End of PSN Comment Period to FSN Publication:

i. *Review Comments:* BOEM will review all comments submitted in response to the PSN during the comment period.

ii. *Finalize Qualifications Reviews:* Prior to the publication of the FSN, BOEM will complete review of bidder qualification materials submitted during the PSN comment period. The final list of eligible bidders will be published in the FSN.

iii. *Prepare the FSN:* BOEM will prepare the FSN by updating or modifying information contained in the PSN where necessary.

iv. *Publish FSN:* BOEM will publish the FSN in the **Federal Register** at least 30 days before the date of the sale.

c. *FSN Waiting Period:* During the period between FSN publication and the lease auction, qualified bidders would be required to take several steps to remain eligible to participate in the auction.

i. *Bidder's Financial Form:* Each bidder must submit a BFF to BOEM to participate in the auction. The BFF must include the bidder's Conceptual Strategy for each non-monetary bidding credit for which that bidder wishes to be considered. If a bidder seeks to qualify for the same bidding credit in *more than one* region, the bidder must submit one bidding credit Conceptual Strategy. If, for a given bidding credit, there are any differences in the strategy for each region, the bidder must explicitly identify them in the Conceptual Strategy. BOEM must receive each bidder's BFF no later than the date listed in the FSN. BOEM may consider extensions to this deadline only if BOEM determines that the failure to timely submit a BFF was caused by events beyond the bidder's control. The proposed BFF can be downloaded at: *https://www.boem.gov/renewable-*

energy/state-activities/maine/gulf-maine.

(1) Once BOEM has processed a bidder's BFF, the bidder will be allowed to log into *https://www.pay.gov* and submit a bid deposit. For purposes of this auction, BOEM will not consider BFFs submitted by bidders for previous lease sales. An original signed BFF may be mailed to BOEM's Office of Renewable Energy Programs for certification. A signed copy of the form may be submitted in PDF format to *renewableenergy@boem.gov.* A faxed copy will not be accepted. BFF submissions must be accompanied by a transmittal letter on company letterhead.

(2) The BFF must be executed by an authorized representative listed on the bidder's legal qualifications in the BFF, in accordance with 18 U.S.C. 1001 (fraud and false statements).

(3) Additional information regarding the BFF may be found below in section IX entitled ''Bidder's Financial Form.''

ii. *Bid Deposit:* Each qualified bidder must submit a bid deposit of $2,000,000 for one Lease Area. If the FSN allows bidders to bid for and potentially win more than one Lease Area, each qualified bidder must submit a bid deposit of $2,000,000 per Lease Area sought. For example, if a qualified bidder wants to bid for and seek to win two Lease Areas, they will need to submit a bid deposit of $4,000,000. Further information about bid deposits can be found below in section X ''Bid Deposit.''

d. *Notification of Eligibility for Non-Monetary Credits:* BOEM will notify each bidder of their eligibility for bidding credits prior to the Mock Auction.

e. *Mock Auction:* BOEM will hold a Mock Auction that is open only to qualified bidders who have met the requirements and deadlines for auction participation, including submission of the bid deposit. The Mock Auction is intended to give bidders an opportunity to clarify auction rules, test the functionality of the auction software, and identify any potential issues that may arise during the auction. Final details of the Mock Auction will be provided in the FSN.

f. *The Auction:* BOEM, through its contractor, will hold an auction as described in the FSN. The auction will take place no sooner than 30 days following the publication of the FSN in the **Federal Register**. The estimated timeframes described in this PSN assume the auction will take place approximately 45 days after the publication of the FSN. Final dates will be included in the FSN. BOEM will announce the provisional winners of the lease sale after the auction ends.

g. *From the Auction to Lease Execution:*

i. *Refund Non-Winners:* Once the provisional winners have been announced, BOEM will provide the non-winners with a written explanation of why they did not win and will return their bid deposits.

ii. *Department of Justice (DOJ) Review:* DOJ will have up to 30 days to conduct an antitrust review of the auction, pursuant to 43 U.S.C. 1337(c).

iii. *Delivery of the Lease:* BOEM will send three lease copies to each provisional winner, with instructions on how to execute the lease. Once the lease has been fully executed, a provisional winner becomes an auction winner. The first year's rent is due 45 days after the auction winners receive the lease copies for execution.

iv. *Return the Lease:* Within 10-business days of receiving the lease copies, the auction winners must post financial assurance, pay any outstanding balance of their winning bids (*i.e.,* winning bids minus applicable bid deposit and any applicable non-monetary bidding credits), and sign and return the three executed lease copies. The winners may request extensions and BOEM may grant such extensions if BOEM determines the delay was caused by events beyond the requesting winner's control, pursuant to 30 CFR 585.224(e).

v. *Execution of Lease:* Once BOEM has received the signed lease copies and verified that all other required materials have been received, BOEM will make a final determination regarding its issuance of the leases and will execute the leases, if appropriate.

VI. Withdrawal of Blocks

BOEM reserves the right to withdraw all or portions of the Lease Areas prior to executing the leases with the winning bidders.

VII. Lease Terms and Conditions

Along with this PSN, BOEM has made available the proposed terms, conditions, and stipulations for the commercial leases that would be offered through this proposed sale. BOEM reserves the right to require compliance with additional terms and conditions associated with the approval of a site assessment plan (SAP) and COP. The proposed lease may be found on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine.* Each lease would include the following attachments:

a. Addendum A (''Description of Leased Area and Lease Activities'');

b. Addendum B (''Lease Term and Financial Schedule'');

c. Addendum C (''Lease-Specific Terms, Conditions, and Stipulations''); and

d. Addendum D (''Project Easement'').

Addenda ''A,'' ''B,'' and ''C'' provide detailed descriptions of proposed lease terms and conditions. Addendum ''D'' will be completed at the time of COP approval or approval with modifications. After considering comments on the PSN and the proposed lease, BOEM will publish final lease terms and conditions in the FSN.

VIII. Lease Financial Terms and Conditions

This section provides an overview of the required annual payments and financial assurances under the lease. Please see the proposed lease for more detailed information, including any changes from past practices.

a. *Rent:* Pursuant to 30 CFR 585.224(b) and 585.503, the first year's rent payment of $3 per acre is due within 45 days after the lessee receives the unexecuted lease copies from BOEM. Lease area acreage is delineated in Addendum A of the lease and, if applicable, includes portions of a lease that do not allow surface occupancy. Thereafter, annual rent payments are due on the anniversary of the effective date of the lease (the ''Lease Anniversary''). Once commercial operations under the lease begin, BOEM will charge rent only for the portions of the Lease Area remaining undeveloped (*i.e.,* non-generating acreage), as described in the lease. For example, for the 121,339 acres of Lease OCS–A 0562, the rent payment would be $364,017 per year until commercial operations begin.

If the lessee submits an application for relinquishment of a portion of its leased area within the first 45 days after receiving the lease copies from BOEM and BOEM approves that application, no rent payment would be due on the relinquished portion of the Lease Area. Later relinquishments of any portion of the Lease Area would reduce the lessee's rent payments starting in the year following BOEM's approval of the relinquishment.

A lease issued under this part confers on the Lessee the right to one or more project easements, without further competition, for the purpose of installing gathering, transmission, and distribution cables, pipelines, and appurtenances on the OCS as necessary for the full enjoyment of the lease. A Lessee must apply for the project easement as part of the COP or SAP, as

provided under subpart F of 30 CFR part 585.

The lessee also must pay rent for any project easement associated with the lease. Rent commences on the date that BOEM approves the COP that describes the project easement (or any modification of such COP that affects the easement acreage), as outlined in 30 CFR 585.507. If the COP revision results in increased easement acreage, additional rent would be due at the time the COP revision is approved. Annual rent for a project easement is the greater of $5 per acre per year or $450 per year.

b. *Operating Fee:* For purposes of calculating the initial annual operating fee under 30 CFR 585.506, BOEM applies an operating fee rate to a proxy for the wholesale market value of the electricity expected to be generated from the project during its first 12 months of operations. This initial payment will be prorated to reflect the period between the commencement of commercial operations and the Lease Anniversary. The initial annual operating fee must be paid within 90 days of the commencement of commercial operations. Thereafter, subsequent annual operating fees must be paid on or before the Lease Anniversary.

The subsequent annual operating fees will be calculated by multiplying the operating fee rate by the imputed wholesale market value of the projected annual electric power production. For the purposes of this calculation, the imputed market value will be the product of the project's annual nameplate capacity, the total number of hours in a year (8,760), the capacity factor, and the annual average price of electricity derived from a regional wholesale power price index. For example, the annual operating fee for a 976-megawatt (MW) wind facility operating at a 40 percent capacity (*i.e.,* capacity factor of 0.4) with a regional wholesale power price of $40 per megawatt hour (MWh) and an operating fee rate of 0.02 would be calculated as follows:

$$\text{Annual Operating Fee} = 976\ \text{MW} \times 8{,}760\ \frac{\text{hrs}}{\text{year}} \times 0.4 \times \frac{\$40}{\text{MWh}}\ \text{Power Price} \times 0.02 = \$2{,}735{,}923.20$$

i. *Operating Fee Rate:* The operating fee rate is the share of the imputed wholesale market value of the projected annual electric power production due to the Office of Natural Resources Revenue (ONRR) as an annual operating fee. For the Lease Areas, BOEM proposes to set the fee rate at 0.02 (2 percent) for the entire life of commercial operations.

ii. *Nameplate Capacity:* Nameplate capacity is the maximum rated electric output, expressed in MW, which the turbines of the wind facility under commercial operations can produce at their rated wind speed as designated by the turbine's manufacturer.

iii. *Capacity Factor:* BOEM proposes to set the capacity factor at 0.4 (*i.e.,* 40 percent) for the year in which the commercial operations *begin* and for the first 6 years of commercial operations on the lease. At the end of the sixth year, BOEM may adjust the capacity factor to reflect the performance over the previous 5 years based upon the actual metered electricity generation at the delivery point to the electrical grid. BOEM may make similar adjustments to the capacity factor once every 5 years thereafter.

iv. *Wholesale Power Price Index:* Under 30 CFR 585.506(c)(2)(i), the wholesale power price, expressed in dollars per MWh, is determined at the time each annual operating fee payment is due. For the leases offered in this sale, BOEM proposes to use the ISO New England H.INTERNAL_HUB. A similar price dataset may also be used and may be posted by BOEM at boem.gov for reference.

c. *Financial Assurance:* Within 10-business days after receiving the unexecuted lease copies and pursuant to 30 CFR 585.515–585.516, the provisional winners would be required to provide an initial lease-specific bond or other BOEM-approved financial assurance instrument in the amount of $100,000. The provisional winners may meet financial assurance requirements by posting a surety bond or other financial assurance instrument or alternative as detailed in 30 CFR 585.526–585.529. BOEM encourages the provisional winners to discuss financial assurance requirements with BOEM as soon as possible after the auction has concluded.

BOEM will base the amount of financial assurance (for all SAP, COP, and decommissioning activities) on cost estimates for meeting all accrued lease obligations at the respective stages of development. The required amount of supplemental and decommissioning financial assurance will be determined on a case-by-case basis.

The financial terms described above can be found in Addendum ''B'' of the lease, which is available at: *https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine.*

IX. Bidder's Financial Form

Each bidder must submit to BOEM the information listed in the BFF referenced in this PSN. A copy of the proposed form is available at *https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine.* BOEM recommends that each bidder designate an email address in its BFF that the bidder will use to create an account in *https://www.pay.gov* (if it has not already done so). BOEM will not consider previously submitted BFFs for previous lease sales to satisfy the requirements of this auction. BOEM must receive each BFF, including any Conceptual Strategy(ies), by the deadline set in the FSN. BOEM may consider BFFs, including any Conceptual Strategy(ies), that are submitted after the deadline set in the FSN if BOEM determines that the failure to timely submit the BFF was caused by events beyond the bidder's control. The BFF is required to be executed by an authorized representative listed in the bidder's qualification package on file with BOEM.

X. Bid Deposit

Each qualified bidder must submit a bid deposit no later than the date listed in the FSN. Typically, the deadline is approximately 30 days after the publication of the FSN. BOEM may consider requests for extensions of this deadline only if BOEM determines that the failure to timely submit the bid deposit was caused by events beyond the bidder's control.

Following the auction, bid deposits will be applied against the winning bid and other obligations owed to BOEM. If a bid deposit exceeds that bidder's total financial obligation, BOEM will refund the balance of the bid deposit to the bidder. BOEM will refund bid deposits to the unsuccessful bidders once BOEM has announced the provisional winners.

If BOEM offers a lease to a provisional winner and that bidder fails to timely return the signed lease, establish financial assurance, or pay the balance of its bid, BOEM will retain the bidder's $2,000,000 bid deposit for the Lease Area. In such a circumstance, BOEM reserves the right to offer a lease for that Lease Area to the next highest bidder as determined by BOEM.

XI. Minimum Bid

The minimum bid is the lowest dollar amount per acre that BOEM will accept as a winning bid and is the amount at which BOEM will start the bidding in the auction. BOEM proposes a minimum bid of $50.00 per acre for this lease sale.

XII. Auction Procedures

a. *Multiple-Factor Bidding Auction:* As authorized under 30 CFR 585.220(a)(4) and 585.221(a)(6), BOEM proposes to use a multiple-factor auction format for this lease sale. Under BOEM's proposal, the bidding system for this lease sale will be a combination of monetary and non-monetary factors. The bid made by a particular bidder in each round will represent the sum of the monetary factor (cash bid) and the value of any non-monetary factors in the form of bidding credits. BOEM proposes to start the auction using the minimum bid price for the Lease Areas and to increase these prices incrementally until no more than one bidder remains bidding on each Lease Area in the auction. For this sale, BOEM is calculating bidding credits as a percentage of the whole bid, which is a change from the method used in sales held prior to 2024, where bidding credits were calculated as a percentage of the cash portion of the bid. The intended purpose of this change is to simplify the bidding credit calculation. BOEM is proposing to grant bidding credits to bidders that commit to one or both of the following:

i. supporting workforce training programs for the floating offshore wind industry or supporting the development of a domestic supply chain for the floating offshore wind industry, or a combination of both; or

ii. establishing and contributing to a fisheries compensatory mitigation fund or contributing to an existing fund to mitigate potential negative impacts to commercial and for-hire recreational fisheries caused by offshore wind development in the Gulf of Maine.

These bidding credits are intended to:

i. enhance, through training, the floating offshore wind workforce and/or enhance the establishment of a domestic supply chain for floating offshore wind manufacturing, assembly, or services, both of which will contribute to the expeditious and orderly development of offshore wind resources on the OCS;

ii. support the expeditious and orderly development of OCS resources by mitigating potential direct impacts from proposed projects and encouraging the investment in infrastructure germane to the floating offshore wind industry; and

iii. minimize potential economic effects on commercial fisheries impacted by potential floating offshore wind development, as cooperation with commercial fisheries impacted by OCS operations will enable development of the Lease Area to advance.

If a bidder qualifies to bid for a Lease Area in more than one region and seeks to qualify for a bidding credit, the bidder must submit one bidding credit Conceptual Strategy, which must explicitly identify any differences in the strategy for each region.

b. *Changes to Auction Rules:* BOEM will be employing new auction software for sales held in 2024. The auction format remains an ascending clock auction with multiple-factor bidding. The new software makes five primary changes have been made to the ascending clock auction rules in the new software, described below.

i. If a bidder decides to bid on a different Lease Area in a given round of the auction, it may submit a bid to reduce demand for the Lease Area it bid on in the previous round and, simultaneously, submit a bid to increase demand for another Lease Area. This allows a bidder the option to switch to another Lease Area if the price of the first Lease Area exceeds the specified bid price.

ii. Provisional winners will no longer be determined using a two-step process. The auction rules are implemented in a way such that, when the auction concludes, the bidder who remains on a Lease Area after the final round becomes its provisional winner. There will be no additional processing step.

iii. The auctions will use a 'second price' rule. A given Lease Area will be won by the bidder that submitted the highest bid amount for the Lease Area, but the winning bidder will pay the highest bid amount at which there was competition (*i.e.,* the 'second price').

iv. Each bidder's bidding credit will be expressed directly as a percentage of the final price for the lease.

v. For sales in which bidders are allowed to bid for and potentially acquire two or more Lease Areas, any bid for two or more Lease Areas will be treated as independent bids for those Lease Areas, rather than as a package bid.

All five of these changes are applicable to the ATLW–11 sale, as proposed in this PSN. All potential bidders should review the complete Auction Procedures for Offshore Wind Lease Sales (Version 1) located at: *https://www.boem.gov/renewable-energy/lease-and-grant-information.*

c. *The Auction:* Using an online bidding system to host the auction, BOEM will start the bidding for the Lease Areas as described below.

TABLE 4—GULF OF MAINE PROPOSED LEASE AREAS AND MINIMUM BIDS

Lease area ID	Region	Acres	Minimum bid
OCS–A 0562	North	121,339	6,066,950
OCS–A 0563	North	132,369	6,618,450
OCS–A 0564	South	110,308	5,515,400
OCS–A 0565	South	115,290	5,764,500
OCS–A 0566	South	127,388	6,369,400
OCS–A 0567	South	123,118	6,155,900
OCS–A 0568	South	134,149	6,707,450
OCS–A 0569	South	106,038	5,301,900

BOEM is proposing to allow each qualified entity to bid for and ultimately win a maximum of two leases each, including a maximum of one Lease Area in the North Region as shown in Table 4. As proposed, a bidder can bid for and win a maximum of two South Region leases, or one North Region lease and one South Region lease—but cannot bid for or win both North Region leases. BOEM is also soliciting comments on an

alternative approach with three regions as discussed in section IV.f.

The auction will be conducted in a series of rounds. Before each round, the auction system will announce the prices for each Lease Area offered in the auction. In Round 1, there is a single price for each Lease Area equal to the minimum bid price (also known as the 'opening price' or 'clock price of Round 1'). Each bidder can bid, at the opening prices, for as many Lease Areas as allowed by the FSN and the bidder's bid deposit. After Round 1, the bidder's processed demand is one for each Lease Area for which the bidder bid in Round 1.[7] The bidder's eligibility for Round 2 equals the number of Lease Areas for which the bidder bid in Round 1.

Starting in Round 2, each Lease Area is assigned a range of prices for the round. The start-of-round price is the lowest price in the range, and the clock price is the highest price in the range. A bidder still eligible to bid after the previous round can either (i) continue bidding at the new round's clock price(s) for the Lease Area(s) for which the bidder's processed demand is one or (ii) submit a bid(s) to reduce demand for one (or more) Lease Area(s) at any price(s) in the range(s) for that round. A bid to reduce demand at some price indicates that the bidder is not willing to acquire that Lease Area at a price exceeding the specified bid price. A bidder that bids to reduce demand for one or two Lease Areas could bid to increase demand up to the same number of other Lease Areas in the same round.

If an eligible bidder does not place a bid during the round for a Lease Area for which the bidder's processed demand is one, the auction system will consider this a request to reduce demand for that Lease Area at the round's start-of-round price. The bidder can nonetheless win that Lease Area if it is the last remaining bidder for that Lease Area.

After each round, the auction system processes the bids and determines each bidder's processed demand for each Lease Area and the posted prices for the Lease Areas. The bidder's eligibility for the next round will equal the number of Lease Areas for which the bidder had processed demand of one. If, after any round, a bidder's processed demand is zero for every Lease Area, the bidder's eligibility drops to zero and the bidder can no longer participate in the auction. The posted price is the price determined for each Lease Area after processing of all bids for a round. If only one bidder remains on a Lease Area, the posted price reflects the ''second price'' (*i.e.,* the highest price at which there was competition for the Lease Area).[8] The posted price for a Lease Area after each round becomes the start-of-round price for that Lease Area in the next round.

If, after the bids for the round have been processed, there is no Lease Area with excess demand (*i.e.,* no lease areas have more than one bidder), the auction will end. When this occurs, each bidder with processed demand of one for a Lease Area will become the provisional winner for that Lease Area. Otherwise, the auction will continue with a new round in which the start-of-round price for each Lease Area equals the posted price of the previous round.

The increment by which the clock price exceeds the start-of-round price will be determined based on several factors including, but not necessarily limited to, the expected time needed to conduct the auction and the number of rounds that have already occurred. BOEM reserves the right to increase or decrease the increment as it deems appropriate.

The provisional winner of each Lease Area will pay the final posted price (less any applicable bidding credit) or risk forfeiting its bid deposit. A provisional winner will be disqualified if it is subsequently found to have violated auction rules or BOEM regulations, or otherwise engaged in conduct detrimental to the integrity of the competitive auction. If a bidder submits a bid that BOEM determines to be a provisionally winning bid, the bidder must sign the applicable lease documents, post financial assurance, and submit the outstanding balance of its winning bid (*i.e.,* winning bid minus the applicable bid deposit and any applicable credits) within 10-business days of receiving the lease copies, pursuant to 30 CFR 585.224. BOEM reserves the right to not issue the lease to the provisionally winning bidder if that bidder fails to: timely execute three copies of the lease and return them to BOEM, timely post adequate financial assurance, timely pay the balance of its winning bid, or otherwise comply with applicable regulations or the terms of the FSN. In any of these cases, the bidder will forfeit its bid deposit and BOEM reserves the right to offer a lease to the next highest eligible bidder as determined by BOEM.

BOEM will publish the names of the provisional winners of the Lease Areas and the associated prices shortly after the conclusion of the sale. Full bid results, including round-by-round results of the entire sale, will be published on BOEM's website after a review of the results and announcement of the provisional winners.

Additional information regarding the auction format:

i. *Authorized Individuals and Bidder Authentication:* An entity that is eligible to participate in the auction will identify on its BFF up to three individuals who will be authorized to bid on behalf of the company, including their names, business telephone numbers, and email addresses. All individuals will log into the auction system using login.gov. Prior to the auction, each individual listed on the BFF form must obtain a Fast Identity Online (FIDO)-compliant security key, and must register this security key on *login.gov* using the same email address that was listed in the BFF. The *login.gov* registration, together with the FIDO-compliant security key, will enable the individual to log into the auction system. BOEM will provide information on this process on its website.

After BOEM has processed the bid deposits, the auction contractor will send an email to the authorized individuals, inviting them to practice logging into the auction system on a specific day in advance of the mock auction. The *login.gov* login process, along with the authentication for the auction helpdesk, will also be tested during the mock auction.

If an eligible bidder fails to submit a bid deposit or does not participate in the first round of the auction, BOEM will deactivate that bidder's login information.

ii. *Timing of Auction:* The FSN will provide specific information regarding when bidders will be able to log into the auction system and when the auction will start.

iii. *Messaging Service:* BOEM and the auction contractors will use the auction system's messaging service to keep bidders informed on issues of interest during the auction. For example, BOEM could change the schedule at any time, including during the auction. If BOEM changes the schedule during the auction, it will use the messaging service to notify bidders that a revision has been made and will direct bidders to the relevant page. BOEM will also use the messaging service for other updates during the auction.

iv. *Bidding Rounds:* Bidders are allowed to place bids or to change their bids at any time during the round. At

[7] Bidders specify their demand for a lease area with either a 0 or 1 in the auction system. A demand of 1 indicates the lease area that they are bidding on. Processed demand is the demand, either 0 or 1, of a bidder for a lease area following the processing of the bids for the round.

[8] The Auction Procedures for Offshore Wind Lease Sales provides details on how bids are prioritized and processed.

the top of the bidding page, a countdown clock shows how much time remains in each round. Bidders will have until the end of the round to place bids. Bidders should do so according to the procedures described in the FSN and the Auction Procedures for Offshore Wind Lease Sales. Information about the round results will be made available only after the round has closed, so there is no strategic advantage to placing bids early or late in the round.

The Auction Procedures for Offshore Wind Lease Sales elaborate on the auction process described in this PSN. In the event of any inconsistency among the Auction Procedures for Offshore Wind Lease Sales, the Bidder Manual, and the FSN, the FSN is controlling.[9]

v. *Alternate Bidding Procedures:* Redundancy is the most effective way to mitigate technical and human issues during an auction. BOEM strongly recommends that bidders consider authorizing more than one individual to bid in the auction and confirming during the Mock Auction that each authorized individual is able to access the auction system. A mobile hotspot or other form of wireless access is helpful in case a company's main internet connection should fail. As a last resort, an authorized individual facing technical issues may request to submit its bid by telephone. To be authorized to place a telephone bid, an authorized individual must call the help desk number listed in the auction manual before the end of the round. BOEM will authenticate the caller's identity. The caller must also explain the reasons why a telephone bid is necessary. BOEM may, in its sole discretion, permit or refuse to accept a request for the placement of a bid using this alternate telephonic bidding procedure. The auction help desk requires codes from the Google Authenticator mobile application as part of its procedure for identifying individuals who call for assistance. Prior to the auction, all individuals listed on the BFF should download the Google Authenticator mobile application[10] onto their smartphone or tablet.[11] The first time the individual logs into the auction system, the system will provide a QR token to be read into the Google Authenticator application. This token is unique to the individual and enables the Google Authenticator application to generate time-sensitive codes that will be recognized by the auction system. When an individual calls the auction help desk, the current code from the application must be provided to the help desk representative as part of the user authentication process. BOEM will provide information on this process on its website.

d. *12.5 Percent Bidding Credit for Workforce Training or Supply Chain Development or a Combination of Both:* This proposed bidding credit will allow a bidder to receive a credit of 12.5 percent in exchange for a commitment to make a qualifying monetary contribution (''Contribution''), in the same amount as the bidding credit received, to programs or initiatives that support workforce training programs for the U.S. floating offshore wind industry or development of a U.S. domestic supply chain for the floating offshore wind industry, or both, as described in the BFF Addendum and the lease. To qualify for this credit, the bidder must commit to the bidding credit requirements on the BFF and submit a Conceptual Strategy as described in the BFF Addendum.

i. As proposed, the Contribution to workforce training must result in a better trained and/or larger domestic floating offshore wind workforce that will provide for more efficient operations via increasing the supply of fully trained personnel. Training of existing lessee employees, lessee contractors, or employees of affiliated entities will not qualify as an appropriate contribution toward fulfilling this bidding credit commitment.

ii. The Contribution to domestic supply chain development must result in overall benefits to the U.S. floating offshore wind supply chain available to all potential purchasers of floating offshore wind services, components, or subassemblies, not solely the lessee's project; and either: (i) the demonstrable development of new domestic capacity (including vessels) or the demonstrable buildout of existing capacity; or (ii) an improved floating offshore wind domestic supply chain by reducing the upfront capital or certification cost for manufacturing floating offshore wind components, including the building of facilities, the purchasing of capital equipment, and the certifying of existing manufacturing facilities.

iii. Contributions cannot be used to satisfy private cost shares for any Federal tax or other incentive programs where cost sharing is a requirement. No portion of the Contribution may be used to meet the requirements of any other bidding credits for which the lessee qualifies.

iv. Bidders interested in obtaining a bidding credit could choose to contribute to workforce training programs, domestic supply chain initiatives, or a combination of both. The Conceptual Strategy must describe verifiable actions that the lessee will take that will allow BOEM to confirm compliance once the lessee has submitted documentation that shows it has satisfied the bidding credit commitment. The Contribution must be tendered in full, and the lessee must provide documentation evidencing it has made the Contribution and complied with applicable requirements, no later than the date the lessee submits its first Facility Design Report (FDR).

v. As proposed, Contributions to workforce training must promote and support one or more of the following purposes: (i) Union apprenticeships, labor management training partnerships, stipends for workforce training, or other technical training programs or institutions focused on providing skills necessary for the planning, design, construction, operation, maintenance, or decommissioning of floating offshore wind energy projects in the United States; (ii) Maritime training necessary for the crewing of vessels to be used for the construction, servicing, and/or decommissioning of wind energy projects in the United States; (iii) Training workers in skills or techniques necessary to manufacture or assemble floating offshore wind components, subcomponents, or subassemblies (examples of areas involving these skills and techniques include welding; wind energy technology; hydraulic maintenance; braking systems; mechanical systems, including blade inspection and maintenance; or computers and programmable logic control systems); (iv) Tribal floating offshore wind workforce development programs or training for employees of an Indian Economic Enterprise[12] in skills necessary in the floating offshore wind industry; or (v) Training in any other job skills that the lessee can demonstrate are necessary for the planning, design, construction, operation, maintenance, or decommissioning of floating offshore wind energy projects in the United States.

vi. As proposed, Contributions to domestic supply chain development must promote and support one or more of the following: (i) Development of a

[9] The Bidder Manual is provided to the auction participants in advance of the auction.

[10] The Google Authenticator app must be installed from either the Apple App Store or the Google Play Store.

[11] Installing the Google Authenticator app is required only if the app has not already been installed on the smartphone or tablet.

[12] *https://www.bia.gov/sites/default/files/dup/assets/as-ia/ieed/Primer%20on%20Buy%20Indian%20Act%20508%20Compliant%202.6.18(Reload).pdf.*

domestic supply chain for the floating offshore wind industry, including manufacturing of components and sub-assemblies and the expansion of related services; (ii) Domestic Tier 2 and Tier 3 floating offshore wind component suppliers and domestic Tier-1 supply chain efforts, including quay-side fabrication; [13] (iii) Technical assistance grants to help U.S. manufacturers re-tool or certify (*e.g.,* ISO–9001) for floating offshore wind manufacturing; (iv) Development of Jones Act-compliant vessels for the construction, servicing, and/or decommissioning of wind energy projects in the United States; (v) Purchase and installation of lift cranes or other equipment capable of lifting or moving foundations, towers, and nacelles quayside, or lift cranes on vessels with these capabilities; (vi) Port infrastructure directly related to floating offshore wind component manufacturing or assembly of major floating offshore wind facility components; (vii) Establishing a new or existing bonding support reserve or revolving fund available to all businesses providing goods and services to offshore wind energy companies, including disadvantaged businesses and/or Indian Economic Enterprises; or (viii) Other supply chain development efforts that the lessee can demonstrate advance the manufacturing of floating offshore wind components or subassemblies or the provision of floating offshore wind services in the United States.

vii. Documentation: If a lease is issued pursuant to a winning bid that includes a bidding credit for workforce training or supply chain development, the lessee must provide documentation showing that the lessee has met the financial commitment before the lessee submits the first FDR for the lease. The documentation must allow BOEM to objectively verify the amount of the Contribution and the beneficiary(ies) of the Contribution.

At a minimum, the documentation must include: all written agreements between the lessee and beneficiary(ies) of the Contribution, which must detail the amount of the Contribution(s) and how it will be used by the beneficiaries of the Contribution(s) to satisfy the goals of the bidding credit for which the Contribution was made; all receipts documenting the amount, date, financial institution, and the account and owner of the account to which the Contribution was made; and sworn statements by the entity that made the Contribution and the beneficiary(ies) of the Contribution attesting that all information provided in the above documentation is true and accurate. The documentation would need to describe how the funded initiative or program has advanced, or is expected to advance, U.S. floating offshore wind workforce training or supply chain development. The documentation must also provide qualitative and/or quantitative information that includes the estimated number of trainees or jobs supported, or the estimated leveraged supply chain investment resulting or expected to result from the Contribution. The documentation must contain any information called for in the Conceptual Strategy that the lessee submitted with its BFF and to allow BOEM to objectively verify (i) the amount of the Contribution and the beneficiary(ies) of the Contribution, and (ii) compliance with the bidding credit criteria provided in Addendum ''C'' of the lease. If the lessee's implementation of its Conceptual Strategy changes due to market needs or other factors, the lessee must explain the changed approach. BOEM reserves all rights to determine that bidding credit criteria have not been satisfied if changes from the lessee's Conceptual Strategy result in the lessee not meeting the criteria for the bidding credit described in Addendum ''C'' of the lease.

viii. Enforcement: The commitment for the bidding credit must be made in the BFF and would be included in a lease addendum that would bind the lessee and all future assignees of the lease. If BOEM were to determine that a lessee or assignee had failed to satisfy the requirements of the bidding credit, or if a lessee were to relinquish or otherwise fail to develop the lease by the tenth anniversary date of lease issuance, the amount corresponding to the bidding credit awarded would be immediately due and payable to ONRR with interest from the lease Effective Date. The interest rate would be the underpayment interest rate identified by ONRR. The lessee would not be required to pay said amount if the lessee satisfied its bidding credit requirements but failed to develop the lease by the tenth Lease Anniversary. BOEM could, at its sole discretion, extend the documentation deadline beyond the first FDR submission or extend the lease development deadline beyond the 10-year timeframe.

e. *12.5 percent Bidding Credit for Fisheries Compensatory Mitigation Fund:* The second bidding credit proposed would allow a bidder to receive a credit of 12.5 percent of its bid in exchange for a commitment to establish and contribute to a Fisheries Compensatory Mitigation Fund, or to contribute to a similar existing fund, to compensate for potential negative impacts to commercial and for-hire recreational fisheries. The term ''commercial fisheries'' refers to commercial and processing businesses engaged in the act of catching and marketing fish and shellfish for sale from the Gulf of Maine. The term ''for-hire recreational fisheries'' refers to charter and headboat fishing operations involving vessels-for-hire engaged in recreational fishing in the Gulf of Maine that are hired for a charter fee by an individual or group of individuals for the exclusive use of that individual or group of individuals. Lessees are encouraged to contribute to a regional fund, such as the initiative by eleven East Coast states to establish a regional fund that would provide financial compensation for economic loss from offshore wind development off the Atlantic Coast. At a minimum, the compensation must address the following:

(1) Gear loss or damage; and

(2) Lost fishing income in Gulf of Maine wind energy Lease Areas.

The fisheries compensatory mitigation fund would assist commercial and for-hire recreational fisheries directly impacted by income or gear losses due to offshore wind activities on offshore wind leases or easements and is intended to address the impacts identified in BOEM's environmental and project reviews. The compensatory mitigation must cover impacts that result directly from the preconstruction, construction, operations and decommissioning of an offshore wind project being developed in the Gulf of Maine wind energy leases or easements. The fund must be established and the Contribution made before the lessee submits the lease's first FDR or before the fifth Lease Anniversary, whichever is sooner. To qualify for this credit, the bidder must commit to the bidding credit requirements on the BFF and submit a Conceptual Strategy as described in the BFF Addendum.

Bidders applying for the fisheries compensatory mitigation fund bidding credit must submit their Conceptual Strategy along with their BFF, further described below and in the BFF Addendum. The Conceptual Strategy would describe the actions that the lessee intends to take that would allow BOEM to verify compliance when the lessee seeks to demonstrate satisfaction

[13] Tier-1 denotes the primary floating offshore wind components such as the blades, nacelles, towers, foundations, and cables. Tier 2 subassemblies are the systems that have a specific function for a Tier 1 component. Tier 3 subcomponents are commonly available items that are combined into Tier 2 subassemblies, such as motors, bolts, and gears.

of the requirements for the bidding credit. The lessee would be required to provide documentation showing that the lessee has met the commitment and complied with the applicable bidding credit requirements before the lessee submits the lease's first FDR or before the fifth Lease Anniversary, whichever is sooner.

As proposed, gear loss, damage, and fishing income loss claims should be prioritized at each phase of offshore wind project development, including impacts from surveys conducted before the establishment of the fund. BOEM encourages lessees to coordinate with other lessees to establish or contribute to a regional fund. A regional fund should be flexible enough to incorporate future contributions from future lease auctions and actuarially sound enough to recognize the multi-decade life of offshore wind projects in the Gulf of Maine. While the fund's first priority is to compensate for gear loss or damage and income loss, funds that have been determined to be excess based on an actuarial accounting may be used to:

i. Promote participation of fishers and fishing communities in the project development process or other programs that better enable the fishing and offshore wind industries to co-exist;

ii. Offset the cost of gear upgrades and transitions for operating within a wind facility.

Any fund established or selected by the lessee to meet this bidding credit requirement must include a process for evaluating the actuarial status of funds at least every 5 years and publicly reporting information on fund disbursement and administrative costs at least annually.

The Fisheries Compensatory Mitigation Fund must be independently managed by a third party and designed with fiduciary governance and strong internal controls while minimizing administrative expenses. The Contribution may be used for fund startup costs, but the Fund should minimize costs by leveraging existing processes, procedures, and information from the BOEM Draft Fisheries Mitigation Guidance, the Eleven Atlantic States' Fisheries Mitigation Project, or other sources.

i. *Documentation:* As proposed, if a lease is awarded pursuant to a winning bid that includes a Fisheries Compensatory Mitigation Fund Bidding Credit, the lessee must provide written documentation to BOEM that demonstrates that it completed the fund Contribution before it submits the lease's first FDR or before the fifth Lease Anniversary, whichever is sooner. The documentation must enable BOEM to objectively verify the Contribution has met all applicable requirements as outlined in Addendum ''C'' of the lease.

ii. At a minimum, this documentation must include:

(1) The procedures established to compensate for gear loss or damage resulting from all phases of the project development on the Lease Area (pre-construction, construction, operation, and decommissioning);

(2) The Fisheries Compensatory Mitigation Fund charter, including the governance structure, audit and public reporting procedures, and standards for paying compensatory mitigation for impacts to fishers from development on wind energy Lease Areas in the Gulf of Maine;

(3) All receipts documenting the amount, date, financial institution, and the account and owner of the account to which the Contribution was made; and

(4) Sworn statements by the entity that made the Contribution, attesting to:

i. The amount and date(s) of the Contribution;

ii. That the Contribution is being (or will be) used in accordance with the bidding credit requirements in the lease; and

iii. That all information provided is true and accurate.

The documentation must contain any information specified in the Conceptual Strategy that was submitted with the BFF. If the lessee's implementation of its Conceptual Strategy changes due to market needs or other factors, the lessee must explain this change. BOEM reserves the right to determine that the bidding credit has not been satisfied if changes from the lessee's Conceptual Strategy result in the lessee not meeting the criteria for the bidding credit described in Addendum ''C'' of the lease.

iii. *Enforcement:* The commitment to the Fisheries Compensatory Mitigation Fund Bidding Credit will be made in the BFF. It will be included in Addendum ''C'' of the lease and will bind the lessee and all future assignees of the lease. If BOEM were to determine that a lessee or assignee had failed to satisfy the commitment at the time the first FDR is submitted, or by the fifth Lease Anniversary, whichever is sooner, the amount corresponding to the bidding credit awarded would be immediately due and payable to ONRR with interest from the lease effective date. The interest rate would be the underpayment interest rate identified by ONRR. The lessee would not be required to pay said amount if the lessee satisfied its bidding credit requirements by the time the first FDR is submitted, or the fifth Lease Anniversary, whichever is sooner. BOEM may, at its sole discretion, extend the documentation deadline beyond the first FDR or beyond the 5-year timeframe.

XIII. Rejection or Non-Acceptance of Bids

BOEM reserves the right and authority to reject any and all bids that do not satisfy the requirements and rules of the auction, the FSN, or applicable regulations and statutes.

XIV. Anti-Competitive Review

Bidding behavior in this sale is subject to Federal antitrust laws. Following the auction, but before the acceptance of bids and the issuance of the lease, BOEM must ''allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of [the] lease sale.'' 43 U.S.C. 1337(c)(1). If a provisional winner is found to have engaged in anti-competitive behavior in connection with this lease sale, BOEM may reject its provisionally winning bid. Compliance with BOEM's auction procedures and regulations is not an absolute defense against violations of antitrust laws.

Anti-competitive behavior determinations are fact specific. However, such behavior may manifest itself in several different ways, including, but not limited to:

1. An express or tacit agreement among bidders not to bid in an auction, or to bid a particular price;

2. An agreement among bidders not to bid against each other; or

3. Other agreements among bidders that have the potential to affect the final auction price.

Pursuant to 43 U.S.C. 1337(c)(3), BOEM may decline to award a lease if the Attorney General, in consultation with the Federal Trade Commission, determines that awarding the lease may be inconsistent with antitrust laws.

For more information on whether specific communications or agreements could constitute a violation of Federal antitrust law, please see *https://www.justice.gov/atr* and consult legal counsel.

XV. Process for Issuing the Lease

Once all post-auction reviews have been completed to BOEM's satisfaction, BOEM will issue three unsigned copies of the lease to the provisional winner. Within 10-business days after receiving the lease copies, the provisional winner must:

1. Execute and return the lease copies on the bidder's behalf;

2. File financial assurance as required under 30 CFR 585.515–537, as applicable; and

3. Pay by electronic funds transfer (EFT) the balance owed (the winning cash bid less the applicable bid deposit), if any. BOEM would require bidders to use EFT procedures (not *https://www.pay.gov,* the website bidders used to submit bid deposits) for payment of the balance, following the detailed instructions contained the ''Instructions for Making Electronic Payments'' available on BOEM's website at *https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/EFT-Payment-Instructions.pdf.*

BOEM will not execute the lease until the three requirements above have been satisfied, BOEM has accepted the provisionally winning bidder's financial assurance pursuant to 30 CFR 585.515, and BOEM has processed the provisionally winning bidder's payment. BOEM may extend the 10-business-day deadline for signing a lease, filing the required financial assurance, and paying the balance owed if BOEM determines, in its sole discretion, that the provisionally winning bidder's inability to comply with the deadline was caused by events beyond the provisionally winning bidder's control pursuant to 30 CFR 585.224(e).

If the provisional winner does not meet these requirements or otherwise fails to comply with applicable regulations or the terms of the FSN, BOEM reserves the right to not issue the lease to that bidder. In such a case, the provisional winner will forfeit its bid deposit. Also, in such a case, BOEM reserves the right to offer the lease to the next highest eligible bidder as determined by BOEM.

Within 45 days after receiving the lease copies, the provisional winner must pay the first year's rent using the ''ONRR Renewable Energy Initial Rental Payments'' form available at: *https://www.pay.gov/public/form/start/27797604.* Subsequent annual rent payments must be made following the detailed instructions available on ONRR's website at: *https://onrr.gov/paying/payment-options?tabs=rent-payments.*

XVI. Non-Procurement Debarment and Suspension Regulations

Pursuant to 43 CFR part 42, subpart C, an OCS renewable energy lessee must comply with the Department of the Interior's non-procurement debarment and suspension regulations at 2 CFR parts 180 and 1400. The lessee must also communicate this requirement to persons with whom the lessee does business relating to this lease by including this requirement as a term or condition in their contracts and other transactions.

XVII. Final Sale Notice

The development of the FSN will be informed through the EA, related consultations, and comments received during the PSN comment period. The FSN will provide the final details concerning the offering and issuance of an OCS commercial wind energy lease for the Lease Areas in the Gulf of Maine. The FSN will be published in the **Federal Register** at least 30 days before the lease sale is conducted and will provide the date and time of the auction.

XVIII. Changes to Auction Details

BOEM has the discretion to change any auction detail specified in the FSN, including the date and time, if events outside BOEM's control have been found to interfere with a fair and proper lease sale. Such events may include, but are not limited to, natural disasters (*e.g.,* earthquakes, hurricanes, floods, and blizzards), wars, riots, act of terrorism, fire, strikes, civil disorder, Federal Government shutdowns, cyberattacks against relevant information systems, or other events of a similar nature. In case of such events, BOEM will notify all qualified bidders via email, phone, and BOEM's website at *https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine.* Bidders should call BOEM's Auction Manager at (703) 787–1121 if they have concerns.

XIX. Appeals

Reconsideration of rejected bid procedures are provided for in BOEM's regulations at 30 CFR 585.225 and 585.118(c). BOEM's decision on a bid is the final action of the Department of the Interior, and is not subject to appeals to the Office of Hearings and Appeals, but an unsuccessful bidder may apply for reconsideration by the Director under 30 CFR 585.225 as follows:

1. If BOEM rejects a bid, BOEM will provide the bidder a written statement of the reasons for rejection and will refund any money deposited with the bid, without interest.

2. A bidder may ask the BOEM Director for reconsideration, in writing, within 15-business days of bid rejection. The Director will send the bidder a written response either affirming or reversing the rejection.

XX. Public Participation

BOEM will make all comments on the PSN publicly available on *https://www.regulations.gov* under the docket number and will consider each comment prior to publication of the FSN. BOEM discourages anonymous comments; please include your name, address, and telephone number or email address as part of your comment. You should be aware that your entire comment, including your name, address, and any other personally identifiable information (PII) included in your comment, may be made publicly available at any time.

For BOEM to consider withholding from disclosure your PII, you must identify, in a cover letter, any information contained in the submittal of your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm.

Even if BOEM withholds your information in the context of this PSN, your comment is subject to the Freedom of Information Act (FOIA). If your submission is requested under the FOIA, your information will only be withheld if a determination is made that one of the FOIA's exemptions to disclosure applies. Such a determination will be made in accordance with the Department of the Interior's FOIA regulations and applicable law.

Note that BOEM will make available for public inspection, in their entirety, all comments submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses.

XXI. Protection of Privileged and Confidential Information

BOEM will protect privileged and confidential information that you submit consistent with FOIA and 30 CFR 585.114. Exemption 4 of FOIA applies to ''trade secrets and commercial or financial information obtained from a person'' that is privileged or confidential. (5 U.S.C. 552(b)(4)). If you wish to protect the confidentiality of such information, clearly mark it ''Contains Privileged or Confidential Information'' and consider submitting such information as a separate attachment. BOEM will not disclose such information, except as required by FOIA. Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release. Further, BOEM will not treat as confidential aggregate summaries of otherwise non-confidential information.

a. *Access to Information (54 U.S.C. 307103):* BOEM may, after consultation with the Secretary of the Interior, withhold the location, character, or ownership of historic properties if the Secretary and BOEM determine that disclosure may, among other things, cause a significant invasion of privacy, risk harm to the historic resources, or impede the use of a traditional religious site by practitioners. Tribes and other interested parties should designate such information that they wish to be withheld as confidential and provide the reasons why BOEM should do so.

Authority: 43 U.S.C. 1337(p); 30 CFR 585.211 and 585.216.

Elizabeth Klein,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2024–09390 Filed 4–30–24; 8:45 am]

BILLING CODE 4340–98–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1341]

Certain Video Processing Devices and Products Containing the Same; Notice of a Commission Determination To Review in Part a Final Initial Determination, and on Review, To Find No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to review the Administrative Law Judge's (''ALJ'') final initial determination (''ID''), issued on February 5, 2024, and on review, to find no violation of section 337 in the above-referenced investigation. This investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5453. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 29, 2022, based on a complaint filed on behalf of VideoLabs, Inc. of Palo Alto, California (''VideoLabs''). 87 FR 73329 (Nov. 29, 2022). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain video processing devices and products containing the same by reason of infringement of claims of U.S. Patent Nos. 7,769,238 (''the '238 patent''), 8,139,878 (''the '878 patent''), and 8,208,542 (''the '542 patent''). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission's notice of investigation named as the sole respondent HP Inc. of Palo Alto, California (''HP''). *Id.* The Office of Unfair Import Investigations is not participating in the investigation. *Id.*

On July 27, 2023, and August 25, 2023, the ALJ issued Order No. 20 and Order No. 23, respectively, granting VideoLabs' motions to terminate the investigation with regards to the '238 patent and the '878 patent. Order No. 20 (July 11, 2023), *unreviewed by* Comm'n Notice (July 27, 2023); Order No. 23 (Aug. 7, 2023), *unreviewed by* Comm'n Notice (Aug. 25, 2023). Accordingly, the '542 patent is the sole remaining patent at issue.

The ALJ held a *Markman* hearing on June 7, 2023. On September 22, 2023, the ALJ issued Order No. 27, in which the ALJ construed certain claim terms while reserving construction of other terms until after the evidentiary hearing due to underlying fact issues. *See* Order No. 27 (Sept. 22, 2023).

The ALJ held an evidentiary hearing from October 23–26, 2023. The parties filed their post-hearing opening briefs and replies on November 13, 2023, and November 29, 2023, respectively.

On February 5, 2024, the ALJ issued the final ID in this investigation, which found no violation of section 337 as to any of the asserted claims of the '542 patent.

On February 20, 2024, VideoLabs petitioned for review of the final ID. On February 28, 2024, HP filed a response opposing VideoLabs' petition.

On March 25, 2024, the Commission determined to extend the date by which it must determine whether to review the final ID to April 25, 2024.

Having examined the record of this investigation, including the ID, the petition for review, and the response thereto, the Commission has determined not to review and thus adopts, the ID's claim construction findings and the ID's finding that the asserted claims are invalid as indefinite. Those findings are sufficient to support the ID's ultimate finding of no violation of section 337, which the Commission also adopts. Given the finding that the asserted claims are indefinite, the Commission cannot conduct a complete analysis of the other issues raised in this investigation, *e.g.,* infringement, obviousness, and domestic industry. Accordingly, the Commission has determined to review the remaining findings in the ID and on review take no position on those findings. This investigation is terminated.

The Commission vote for this determination took place on April 25, 2024.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 25, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–09362 Filed 4–30–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–688 and 731–TA–1612–1613 and 1615–1617 (Final)]

Brass Rod From Brazil, India, Mexico, South Africa, and South Korea; Scheduling of the Final Phase of the Antidumping and Countervailing Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: April 22, 2024

FOR FURTHER INFORMATION CONTACT: Julie Duffy ((202) 708–2579), 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 September 29, 2023, the Commission established a general schedule for the conduct of the final phase of its investigations on brass rod from Brazil, India, Israel, Mexico, South Africa, and South Korea [1] following preliminary determinations by the U.S. Department of Commerce (''Commerce'') that imports of brass rod from India, Israel, and South Korea were being subsidized by the governments of India, Israel, and South Korea.[2] Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 5, 2023 (88 FR 69229). All persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission subsequently issued its final determination that an industry in the United States is materially injured by reason of imports of brass rod from India that have been found by Commerce to be subsidized by the government of India.[3] On April 22, 2024, Commerce issued its final affirmative determinations that imports of brass rod from Brazil, India, Mexico, South Africa, and South Korea were being sold at less than fair value in the United States, and that imports of brass rod from South Korea were being subsidized by the government of South Korea.[4] Accordingly, the Commission currently is issuing a supplemental schedule for its antidumping duty investigations on imports of brass rod from Brazil, India, Mexico, South Africa, and South Korea and countervailing duty investigation on imports of brass rod from South Korea.

This supplemental schedule is as follows: the deadline for filing supplemental party comments on Commerce's final antidumping and countervailing duty determinations is 5:15 p.m. on May 3, 2024. Supplemental party comments may address only Commerce's final antidumping duty determinations regarding imports of brass rod from Brazil, India, Mexico, South Africa, and South Korea and countervailing duty determination regarding imports of brass rod from South Korea. 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 these investigations regarding subject imports from Brazil, India, Mexico, South Africa, and South Korea will be placed in the nonpublic record on May 15, 2024; and a public version will be issued thereafter.

For further information concerning these investigations 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).

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.

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 investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

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: April 26, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–09383 Filed 4–30–24; 8:45 am]

BILLING CODE 7020–02–P

[1] 88 FR 69229, October 5, 2023.

[2] 88 FR 67239, 88 FR 67240, and 88 FR 867233, September 29, 2023.

[3] 89 FR 8440, February 7, 2024.

[4] 89 FR 29303, 89 FR 29300, 89 FR 29305, 89 FR 29292, 89 FR 29298, and 89 FR 29290, April 22, 2024.

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–603–604 and 731–TA–1413–1415 (Review)]

Glycine From China, India, Japan, and Thailand; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the countervailing duty and antidumping duty orders on glycine from China, India, Japan, 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 May 1, 2024. To be assured of consideration, the deadline for responses is May 31, 2024. Comments on the adequacy of responses may be filed with the Commission by July 9, 2024.

FOR FURTHER INFORMATION CONTACT: Alexis Yim (202–708–1446), 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 June 21, 2019, the Department of Commerce (''Commerce'') issued countervailing duty orders on imports of glycine from China and India (84 FR 29173). On June 21, 2019, Commerce issued antidumping duty orders on imports of glycine from India and Japan (84 FR 29170). On October 18, 2019, Commerce issued an antidumping duty order on imports of glycine from Thailand (84 FR 55912). 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 reviews 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, India, Japan, 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 the *Domestic Like Product* as consisting of all glycine, regardless of grade or purity level, 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 determination, the Commission defined the *Domestic Industry* as producers of glycine of consisting of all domestic producers of glycine, regardless of grade or purity level.

(5) The *Order Date* is the date that the countervailing and antidumping duty orders under review became effective. In this review, the *Order Dates* are June 21, 2019 (the countervailing duty orders on imports of glycine from China and India, and the antidumping duty orders on imports of glycine from India and Japan), and October 18, 2019 (on the antidumping duty order on imports of glycine from Thailand).

(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 May 31, 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 an expedited or full review. The deadline for filing such comments is on or before 5:15 p.m. on July 9, 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. 24–5–599, 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 determination in the review.

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 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 1,000 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 the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in 1,000 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 1,000 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 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 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: April 25, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–09365 Filed 4–30–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–672–673 (Fifth Review)]

Silicomanganese From China and Ukraine; Scheduling of Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty orders on silicomanganese from China and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: April 25, 2024.

FOR FURTHER INFORMATION CONTACT: Charles Cummings (202–708–1666), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On February 5, 2024, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews should proceed (89 FR 13375, February 22, 2024); accordingly, full reviews are being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's website.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI

gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on August 19, 2024, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold an in-person hearing in connection with the reviews beginning at 9:30 a.m. on September 5, 2024. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before 5:15 p.m. on August 28, 2024. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the reviews, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3 p.m. the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.*

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on September 4, 2024. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than 4:00 p.m. on September 4, 2024. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is 5:15 p.m. on August 27, 2024. Parties shall also file written testimony in connection with their presentation at the hearing, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is 5:15 p.m. on September 13, 2024. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before 5:15 p.m. on September 13, 2024. On October 2, 2024, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before 5:15 p.m. on October 4, 2024, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: April 25, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–09358 Filed 4–30–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–601 and 731–TA–1411 (Review)]

Laminated Woven Sacks From Vietnam; 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 laminated woven sacks from Vietnam 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 May 1, 2024. To be assured of consideration, the deadline for responses is May 31, 2024. Comments on the adequacy of responses may be filed with the Commission by July 9, 2024.

FOR FURTHER INFORMATION CONTACT: Kenneth Gatten (202–708–1447), 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 June 4, 2019, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of laminated woven sacks from Vietnam (84 FR 25753). 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 Vietnam.

(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* to include all laminated woven sacks, 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 consist of all U.S. producers of laminated woven sacks. One Commissioner defined the *Domestic Industry* differently.

(5) The *Order Date* is the date that the orders under review became effective. In these reviews, the *Order Date* is June 4, 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 May 31, 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 July 9, 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. 24–5–597, 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 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 sacks 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 sacks 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 sacks 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.

Issued: April 25, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–09364 Filed 4–30–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1385]

Certain Furniture Products Finished With Decorative Wood Grain Paper and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on Withdrawal of the Complaint

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 8) issued by the presiding administrative law judge (''ALJ''), terminating the investigation in its entirety based on the withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Robert J. Needham, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 12, 2024, based on a complaint filed by Toppan Interamerica, Inc. of McDonough, Georgia (''Toppan''). 89 FR 2252–53 (Jan. 12, 2024). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain furniture products finished with decorative wood grain paper and components thereof by reason of infringement of one or more of U.S. Copyright Registration Nos. VA 2–142–287, VA 2–176–002, VA 2–142–295, and 2–142–292. *Id.* at 2252. The complaint further alleges that a domestic industry exists. *Id.* The Commission's notice of investigation named as respondent Whalen LLC d/b/a Whalen Furniture of San Diego, California. *Id.* at 2253. The Office of Unfair Import Investigations is not participating in the investigation. *Id.*

On April 4, 2024, Toppan filed an unopposed motion to terminate the investigation based on the withdrawal of the complaint. No party responded to the motion.

On April 5, 2024, the ALJ issued the subject ID pursuant to Commission Rule 210.21(a) (19 CFR 210.21(a)), granting the motion to terminate the investigation in its entirety. The ID finds that there are no extraordinary circumstances that would prevent the requested termination of the investigation. No party petitioned for review of the subject ID.

The Commission has determined not to review the subject ID. The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on April 26, 2024.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 26, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–09448 Filed 4–30–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–447 and 731–TA–1116 (Third Review)]

Circular Welded Carbon-Quality Steel Pipe From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the countervailing and antidumping duty

orders on circular welded carbon-quality steel pipe 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 May 1, 2024. To be assured of consideration, the deadline for responses is May 31, 2024. Comments on the adequacy of responses may be filed with the Commission by July 9, 2024.

FOR FURTHER INFORMATION CONTACT: Charles Cummings (202–708–1666), 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 July 22, 2008, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of circular welded carbon-quality steel pipe from China (73 FR 42545 and 42547). Commerce issued a continuation of the antidumping and countervailing duty orders on imports of circular welded carbon-quality steel pipe from China following Commerce's and the Commission's first five-year reviews, effective May 20, 2014 (79 FR 28894) and second five-year reviews, effective June 26, 2019 (84 FR 30086). The Commission is now conducting a third review 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 a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review 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, and its expedited first and second five-year reviews, the Commission defined the *Domestic Like Product* as circular welded carbon-quality steel pipe, 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, and its expedited first and second five-year reviews, the Commission defined the *Domestic Industry* as all domestic producers of circular-welded carbon-quality steel pipe.

(5) 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 5:15 p.m. on May 31, 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 an expedited or full review. The deadline for filing such comments is 5:15 p.m. on July 9, 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. 24–5–600, 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 determination in the review.

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 countervailing and antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 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 section 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 after 2018.

(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 and/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* after 2018, 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.

Issued: April 25, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–09366 Filed 4–30–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–929–931 (Fourth Review)]

Silicomanganese From India, Kazakhstan, and Venezuela; 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 duty orders on Silicomanganese from India, Kazakhstan, and Venezuela 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 May 1, 2024. To be assured of consideration, the deadline for responses is May 31, 2024. Comments on the adequacy of responses may be filed with the Commission by July 9, 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 May 23, 2002, the Department of Commerce (''Commerce'') issued antidumping duty orders on imports of silicomanganese from India, Kazakhstan, and Venezuela (67 FR 36149). Commerce issued a continuation of the antidumping duty orders on imports of silicomanganese from India, Kazakhstan, and Venezuela following Commerce's and the Commission's first five-year reviews, effective November 30, 2007 (73 FR 841, January 4, 2008), second five-year reviews, effective October 2, 2013 (78 FR 60846), and third five-year reviews,

effective June 12, 2019 (84 FR 27243). The Commission is now conducting fourth 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 India, Kazakhstan, and Venezuela.

(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, its expedited first five-year review determinations, its full second five-year review determinations, and its expedited third five-year review determinations, the Commission found a single *Domestic Like Product* consisting of all silicomanganese, except low-carbon silicomanganese, 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, its expedited first five-year review determinations, its full second five-year review determinations, and its expedited third five-year review determinations, the Commission found a single *Domestic Industry* consisting of all domestic producers of silicomanganese, except low-carbon silicomanganese.

(5) 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 5:15 p.m. on May 31, 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 5:15 p.m. on July 9, 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. 24–5–598, 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 duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 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 after 2017.

(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 any *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 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 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 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 short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping 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* after 2017, 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: April 25, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–09363 Filed 4–30–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0New]

Proposed Extension of Information Collection: Coal Respirator Program

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance, with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Coal Respirator Program.

DATES: All comments must be received on or before July 1, 2024.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that late comments received after the deadline will not be considered.

- *Federal E-Rulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2024–0004.
- *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, 4th Floor West, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.
- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977, as amended (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise, as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal, metal and nonmetal mines.

A final rule titled ''Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection'' (RIN 1219–AB36) amends 30 CFR 72.710 to incorporate by reference ASTM F3387–19, entitled ''*Standard Practice for Respiratory Protection,*'' because it is the most recent consensus standard developed by experts in government and professional associations on the selection, use, and maintenance for respiratory equipment. The final rule requires that approved respirators be selected, fitted, used, and maintained in accordance with the provisions of a written respiratory protection program consistent with the requirements of ASTM F3387–19.

Section 30 CFR 72.710 incorporates, by reference, requirements of ASTM F3387–19 related to respiratory protective equipment. These requirements mandate that coal mines

where miners must wear respirators have written standard operating procedures (SOPs) for their respiratory program, that such miners who must wear respirators are fit-tested in a medical evaluation to the respirators that they will use, and that mines perform emergency respirator inspections. Records are also required to be kept in connection with respirators, including revised written SOPs governing the selection and use of respirators; records relating to the respiratory programs according to ASTM requirements; medical evaluation/fit-test results; and records of emergency respirators inspection. Emergency respirator inspections are regular inspections of respirators reserved for use during emergencies; the inspections are used to ensure that respirators would properly function if needed during an emergency.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g., permitting electronic submission of responses.*

The information collection request will be available on *https://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *https://www.regulations.gov* and *https://www.reginfo.gov.*

The public may also examine publicly available documents at DOL–MSHA, Office of Standards, Regulations and Variances, 201 12th Street South, 4th Floor West, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the West elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This information collection request contains provisions for Coal Respirator Program. MSHA has provided the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: New collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0New.

Affected Public: Business or other for-profit.

Number of Annual Respondents: 1,106.

Frequency: Annual.

Number of Annual Responses: 19,908.

Annual Time Burden: 11,060 hours.

Annual Other Burden Cost: $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the proposed new information collection request; they will also become a matter of public record and will be available at *https://www.reginfo.gov.*

Song-ae Aromie Noe,

Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2024–09318 Filed 4–30–24; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0181]

Final Revision to Branch Technical Position 7–19, Guidance for Evaluation of Defense in Depth and Diversity To Address Common-Cause Failure Due to Latent Design Defects in Digital Instrumentation and Control Systems

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan-final section revision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final revision to the following section of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plans: LWR Edition'': Branch Technical Position (BTP) 7–19, ''Guidance for Evaluation of Defense in Depth and Diversity to Address Common-Cause Failure Due to Latent Design Defects in Digital Instrumentation and Control Systems.''

DATES: The Standard Review Plan update is effective on May 31, 2024.

ADDRESSES: Please refer to Docket ID NRC–2023–0181 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–2023–0181. 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: Carla P. Roque-Cruz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1455; email: *Carla.Roque-Cruz@nrc.gov.*

- The NRC posts its issued staff guidance on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800.*

SUPPLEMENTARY INFORMATION:

I. Background

This BTP provides the NRC staff with guidance for evaluating an applicant's assessment of the adequacy of defense in depth and diversity (D3) for a proposed digital instrumentation and

control (DI&C) system. On October 24, 2023 (88 FR 73051), the NRC published for public comment a proposed revision to BTP 7–19, ''Guidance for Evaluation of Defense in Depth and Diversity to Address Common-Cause Failure Due to Latent Design Defects in Digital Instrumentation and Control Systems'' of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.'' The public comment period closed on November 24, 2023. Thirty-five public comments were received regarding draft Revision 9 of BTP 7–19. The final Revision 9 to NUREG–0800, BTP 7–19, ''Guidance for Evaluation of Defense in Depth and Diversity to Address Common-Cause Failure Due to Latent Design Defects in Digital Instrumentation and Control Systems'' is available in ADAMS under Accession No. ML24005A077.

A summary of the public comments and the NRC staff's disposition of the comments are available in a separate document, ''Response to Public Comments on Draft Standard Review Plan Branch Technical Position 7–19, 'Guidance for Evaluation of Defense in Depth and Diversity to Address Common-Cause Failure Due to Latent Design Defects in Digital Instrumentation and Control Systems' '' (ADAMS Accession No. ML24005A115).

II. Backfitting, Forward Fitting, and Issue Finality

Chapter 7 of the SRP provides guidance to the staff for reviewing instrumentation and controls information provided in applications for licensing actions. Part of Chapter 7 provides guidance for the evaluation of defense-in-depth and diversity in digital computer-based instrumentation and control systems. Issuance of this BTP revision does not constitute backfitting as defined in section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Backfitting'' (the Backfit Rule), and as described in Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; does not constitute forward fitting as that term is defined and described in MD 8.4; and does not affect the issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certificates, and Approvals for Nuclear Power Plants.'' The NRC staff's position is based upon the following considerations.

First, the SRP provides guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal guidance intended for use by only the staff are not matters that constitute backfitting as that term is defined in 10 CFR 50.109(a)(1); does not constitute forward fitting as that term is defined and described in MD 8.4; and does not affect the issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certificates, and Approvals for Nuclear Power Plants.''

Second, the NRC staff does not intend to use the guidance in this SRP section to support NRC staff actions in a manner that would constitute backfitting or forward fitting. If, in the future, the NRC seeks to impose a position in this SRP section in a manner that constitutes backfitting, forward fitting, or affects the issue finality for a 10 CFR part 52 approval, then the NRC will address the Backfit Rule, the forward fitting provision of MD 8.4, or the applicable issue finality provision in 10 CFR part 52, respectively.

III. Congressional Review Act

This standard review plan section is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated: April 25, 2024.

For the Nuclear Regulatory Commission.

Undine Shoop,

Chief, Integrated Program Management and Beyond Design Basis Branch, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2024–09323 Filed 4–30–24; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100032; File No. SR–CboeBZX–2023–062]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Disapproving a Proposed Rule Change To Amend the Initial Period After Commencement of Trading of a Series of Exchange-Traded Fund Shares on the Exchange as It Relates to the Holders of Record and/or Beneficial Holders, as Provided in Exchange Rule 14.11(l)

April 25, 2024.

I. Introduction

On August 14, 2023, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the continued listing requirement applicable to Exchange-Traded Fund Shares (''ETF Shares'') relating to holders of record and/or beneficial holders pursuant to BZX Rule 14.11(l). The proposed rule change was published for comment in the **Federal Register** on September 1, 2023.[3]

On September 25, 2023, pursuant to Section 19(b)(2) of the Exchange Act, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[4] On November 14, 2023, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [5] to determine whether to approve or disapprove the proposed rule change.[6] On February 13, 2024, the Commission designated a longer period for Commission action on the proposed rule change.[7] The Commission has received no comments on the proposed rule change.

This order disapproves the proposed rule change because, as discussed below, BZX has not met its burden under the Exchange Act and the Commission's Rules of Practice to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5), and, in particular, the requirement that the rules of a national securities exchange be designed ''to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [8]

II. Description of the Proposal [9]

As described in detail in the Notice and OIP, a continued listing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98231 (August 28, 2023), 88 FR 60516 (''Notice'').

[4] *See* Securities Exchange Act Release No. 98497, 88 FR 67397 (September 29, 2023).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 98933, 88 FR 80783 (November 20, 2023) (''OIP'').

[7] *See* Securities Exchange Act Release No. 99530, 89 FR 12891 (February 20, 2024).

[8] 15 U.S.C. 78f(b)(5).

[9] On April 29, 2020, BZX filed a proposed rule change to extend the Non-Compliance Period (as defined herein) in the Beneficial Holders Rule (as defined herein) from 12 months after commencement of trading on the Exchange to 36 months after commencement of trading on the Exchange for certain exchange-traded products, including a series of ETF Shares. *See* Securities Exchange Act Release No. 88795 (May 1, 2020), 85 FR 27254 (SR–CboeBZX–2020–036) (''Prior PRC Notice'' or ''prior proposal''). The Commission disapproved the prior proposal, finding that the Exchange failed to satisfy its burden to demonstrate

requirement under BZX Rule 14.11(l) for ETF Shares [10] currently provides that, following the initial 12-month period after commencement of trading on the Exchange, the Exchange will consider the suspension of trading in, and will commence delisting proceedings for, a series of ETF Shares for which there are fewer than 50 beneficial holders for 30 or more consecutive trading days (''Beneficial Holders Rule''). The Exchange is proposing to change the date after which a series of ETF Shares must have at least 50 beneficial holders or be subject to delisting proceedings under the Beneficial Holders Rule (''Non-Compliance Period''). Specifically, the Exchange seeks to extend the Non-Compliance Period in the Beneficial Holders Rule from 12 months after commencement of trading on the Exchange to 36 months after commencement of trading on the Exchange.

The Exchange asserts that it would be appropriate to increase the Non-Compliance Period from 12 months to 36 months because: (1) it would bring the rule more in line with the life cycle of an exchange-traded product (''ETP''); [11] (2) the economic and competitive structures in place in the ETP ecosystem naturally incentivize issuers to delist products rather than continuing to list products that do not garner investor interest; and (3) extending the period from 12 to 36 months will not meaningfully impact the manipulation concerns that the Beneficial Holders Rule is intended to address.

According to the Exchange, the ETP space is more competitive than it has ever been, with more than 2,000 ETPs listed on exchanges. As a result, distribution platforms have become more restrictive about the ETPs they will allow on their systems, often requiring a minimum track record (*e.g.,* twelve months) and a minimum level of assets under management (*e.g.,* $100 million). Many larger entities also require a one-year track record before they will invest in an ETP. In the Exchange's view, this has slowed the growth cycle of the average ETP, with the result that the Exchange has seen a significant number of deficiencies with respect to the Beneficial Holders Rule over the last several years. Specifically, the Exchange states that it has issued deficiency notifications to 39 ETPs for non-compliance with the Beneficial Holders Rule since 2015. Of those 39 ETPs, 30 ultimately were able to achieve compliance while undergoing the delisting process. According to the Exchange, this data shows that a 12-month threshold is an inappropriately short time frame and only serves as a regulatory and administrative burden for issuers that must remediate if they fall out of compliance.

In addition, the Exchange believes that the economic and competitive structures in place in the ETP ecosystem naturally incentivize issuers to delist products with insufficient investor interest, and that the Beneficial Holders Rule has resulted in the forced termination of ETPs that issuers believed were still economically viable. The Exchange states that there are significant costs associated with the launch and continued operation of an ETP, and notes that the Exchange has had 148 products voluntarily delist since 2018. The Exchange also questions whether the number of beneficial holders is a meaningful measure of market interest in an ETP and believes that an ETP issuer is incentivized to have as many beneficial holders as possible.

The Exchange states that the proposal ''does not create any significant change in the risk of manipulation for ETF Shares listed on the Exchange.'' [12] The Exchange contends that a time extension to meet the requirement would present no new issues because any risk that is present during months 12 through 36 of initial listing would also be present during the first 12 months.[13] The Exchange also states that it has in place a robust surveillance program for ETPs that it believes is sufficient to deter and detect manipulation and other violative activity, and that the Exchange (or the Financial Industry Regulatory Authority on its behalf) communicates as needed with other members of the Intermarket Surveillance Group. The Exchange believes that its surveillance procedures will act to mitigate any manipulation concerns that arise from extending the compliance period for the Beneficial Holders Rule from 12 months to 36 months.[14]

Lastly, the Exchange takes the position that other continued listing standards (*e.g.,* the disclosure obligations applicable under Rule 6c–11 of the Investment Company Act of 1940 for series of ETF Shares) are generally sufficient to mitigate manipulation concerns associated with ETF Shares.[15]

III. Discussion and Commission Findings

The Commission must consider whether BZX's proposal is consistent with Section 6(b)(5) of the Exchange Act, which requires, in relevant part, that the rules of a national securities exchange be designed ''to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [16] Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [17]

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[18] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the

that the proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder. *See* Securities Exchange Act Release No. 90819 (December 29, 2020), 86 FR 332 (January 5, 2021) (SR–CboeBZX–2020–036) (''Prior Disapproval Order''). In the current proposed rule change, BZX proposes the same extension of the Non-Compliance Period in the Beneficial Holders Rule from 12 months after commencement of trading on the Exchange to 36 months after commencement of trading on the Exchange, but only with respect to ETF Shares.

[10] BZX Rule 14.11(l)(3)(A) defines ETF Shares as shares of stock issued by an Exchange-Traded Fund. The term ''Exchange-Traded Fund'' has the same meaning as the term ''exchange-traded fund'' defined in Rule 6c–11 under the Investment Company Act of 1940. *See* BZX Rule 14.11(l)(3)(B).

[11] A series of ETF Shares is a type of ETP.

[12] *See* Notice, *supra* note 3, 88 FR at 60518.

[13] *See id.*

[14] *See id.*

[15] *See id.*

[16] 15 U.S.C. 78f(b)(5). Pursuant to Section 19(b)(2) of the Exchange Act, 15 U.S.C. 78s(b)(2), the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act. Exchange Act Section 6(b)(5) states that an exchange shall not be registered as a national securities exchange unless the Commission determines that ''[t]he rules of the exchange are 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, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.'' 15 U.S.C. 78(f)(b)(5).

[17] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[18] *See id.*

applicable rules and regulations.[19] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[20]

The Commission has consistently recognized the importance of the Beneficial Holders Rule and other similar requirements, stating that such listing standards help ensure that exchange listed securities have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.[21] As stated by the Exchange, the Beneficial Holders Rule is intended to ensure that trading in ETF Shares is not susceptible to manipulation.[22]

As discussed above, the Exchange is proposing to increase the Non-Compliance Period from 12 months to 36 months, thereby extending by two years the length of time during which ETF Shares listed on the Exchange would have no requirement to have a minimum number of beneficial holders. In support of its proposal, the Exchange states that some ETPs have had difficulty complying with the Beneficial Holders Rule,[23] and that the existing Beneficial Holders Rule forces the delisting of ETPs that issuers believe may still be economically viable.[24] However, the Exchange does not sufficiently support its assertion that compliance with the Beneficial Holders Rule is especially difficult for ETF Shares or that any such compliance difficulties have led to the delisting of economically viable ETPs. For example, BZX states that it has issued deficiency notifications to 39 series of ETPs for noncompliance with the Beneficial Holders Rule since 2015 and, of those 39 series, 30 attained compliance after issuance of the deficiency notice.[25] These data indicate that, at most, the Exchange delisted nine series of ETPs over eight years for non-compliance with this requirement. However, BZX has not established how many (if any) of those nine series of ETPs were ETF Shares [26] or that they were delisted solely for non-compliance with the Beneficial Holders Rule.[27]

Additionally, the Exchange does not sufficiently explain why any such compliance difficulties, or the need to remediate the applicable deficiencies, justify tripling the Non-Compliance Period for this core quantitative listing standard from one year to three years, and permitting ETF Shares to trade on the Exchange for an additional two years without the protections described above that the Beneficial Holders Rule was designed to provide. For example, the Exchange states that no new manipulation concerns would arise with a longer Non-Compliance Period than a shorter one because any risk that is present during months 12 through 36 of initial listing would also be present during the first 12 months as provided under current rules.[28] However, the Exchange does not address why tripling the period during which the same regulatory risks posed by a Non-Compliance Period would be present is consistent with the Exchange Act. As discussed above, the Beneficial Holders Rule and other minimum number of holders requirements are important to ensure that trading in exchange listed securities is fair and orderly and not susceptible to manipulation, and the Exchange does not explain why it is consistent with the Exchange Act to permit ETF Shares to trade for two additional years without any of the protections of investors and the public interest provided by the Beneficial Holders Rule.

Finally, while the Exchange asserts that existing surveillances and other listing standards are sufficient to mitigate manipulation concerns, it does not offer a sufficient explanation of the basis for that view or provide supporting information or evidence to support its conclusion. Notably, although the Exchange acknowledges that the Beneficial Holders Rule is designed to ensure that trading in exchange-listed securities is not susceptible to manipulation, the Exchange does not explain how any of its specific existing surveillances or other listing requirements effectively address, in the absence of the Beneficial Holders Rule, those manipulation concerns and other regulatory risks to fair and orderly markets, investor protection and the public interest.[29] Accordingly, the Commission is unable to assess whether the Exchange's assertion has merit.

The Commission identified its concerns with this proposal in the OIP,[30] but the Exchange did not adequately respond or provide additional data addressing these concerns. As stated above, under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [31] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding, and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[32] The Commission concludes that, because BZX has not demonstrated that its proposal is designed to prevent fraudulent and manipulative acts and practices or to protect investors and the public interest, the Exchange has not met its burden to demonstrate that its proposal is consistent with Section

[19] *See id.*

[20] *Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 447 (D.C. Cir. 2017).

[21] *See, e.g.,* Securities Exchange Act Release No. 57785 (May 6, 2008), 73 FR 27597 (May 13, 2008)(SR–NYSE–2008–17) (stating that the distribution standards, which includes exchange holder requirements ''. . . should help to ensure that the [Special Purpose Acquisition Company's] securities have sufficient public float, investor base, and liquidity to promote fair and orderly markets''); Securities Exchange Act Release No. 86117 (June 14, 2019), 84 FR 28879 (June 20, 2018) (SR–NYSE–2018–46) (disapproving a proposal to reduce the minimum number of public holders continued listing requirement applicable to Special Purpose Acquisition Companies from 300 to 100). *See also* Prior Disapproval Order, *supra* note 9, 86 FR at 334.

[22] *See* Notice, *supra* note 3, 88 FR at 60518. *See also* Prior PRC Notice, *supra* note 9, 85 FR at 27255.

[23] Although the Exchange's proposed rule change is focused on ETF Shares, the Exchange's discussion refers to ETPs more generally.

[24] *See* Notice, *supra* note 3, 88 FR at 60518.

[25] *See id.* at 60517.

[26] As noted above, ETF Shares are a subset of ETPs. *See id.* at 60517, n.7. Additionally, BZX does not disclose how many of those 9 delistings occurred after April 6, 2020, when the Commission approved the adoption of BZX Rule 14.11(l), which permits the listing and trading of ETF Shares on the Exchange. *See* Securities Exchange Act Release No. 88566 (April 6, 2020), 85 FR 20312 (April 10, 2020) (SR–CboeBZX–2019–097).

[27] BZX did not establish that the nine delisted issues complied with all other applicable listing requirements, and therefore were delisted only because of their non-compliance with the Beneficial Holders Rule.

[28] *See* Notice, *supra* note 3, 88 FR at 60518.

[29] The Exchange states that its surveillances focus on detecting securities trading outside of their normal patterns, followed by surveillance analysis and investigations, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange also states that it or the Financial Industry Regulatory Authority, on behalf of the Exchange, or both, communicate as needed regarding ETP trading with other markets and the Intermarket Surveillance Group member entities, and may obtain trading information in ETPs from such markets and other entities.

[30] *See* OIP, *supra* note 6, 88 FR at 80784–5; *see also* Prior Disapproval Order, *supra* note 9.

[31] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[32] *See id.*

6(b)(5) of the Exchange Act.[33] For this reason, the Commission must disapprove the proposal.

IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Exchange Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that proposed rule change SR–CboeBZX–2023–062 is disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–09328 Filed 4–30–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100034; File No. SR–CboeBZX–2024–026]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Expand BZX Rule 14.11(l) To Permit the Generic Listing and Trading of Multi-class ETF Shares

April 25, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 15, 2024, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to amend Rule 14.11(l) to provide that the Exchange may approve a series of Exchange-Traded Fund (''ETF'') Shares for listing and/or trading on the Exchange that operates in reliance on exemptive relief to Rule 6c–11 under the Investment Company Act of 1940 (the ''Investment Company Act'') that permits the trust issuing the ETF Shares to offer an exchange-traded fund class in addition to classes of shares that are not exchange-traded. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 14.11(l) to provide that the Exchange may approve a series of ETF Shares for listing and/or trading on the Exchange where such series operates in reliance on exemptive relief to Rule 6c–11 under the Investment Company Act that permits the trust issuing the ETF Shares to offer ETF Shares in addition to classes of shares that are not exchange-traded (''Multi-class ETF Shares'') of an open-end fund. There are numerous applications for exemptive relief for Multi-class ETF Shares currently before the Commission.[3] This proposed amendment would provide for the ''generic'' listing and/or trading of Multi-class ETF Shares under Rule 14.11(l) on the Exchange immediately upon the Commission's applicable order granting exemptive relief. This proposal is not intended to amend any other part of Rule 14.11(l) and the Exchange submits this proposal only to prevent any unnecessary delay in listing Multi-Class ETF Shares when and if such requests are granted by the Commission.

Background

Starting in 2000, the Commission began granting limited relief for The Vanguard Group, Inc. (''Vanguard'') to offer certain index-based open-end management investment companies with Multi-class ETF Shares.[4] After this relief was granted, there was limited public discourse about Multi-class ETF Shares until 2019, when the prospect of providing blanket exemptive relief to Multi-class ETF Shares was addressed in the Commission's adoption of Rule 6c-11 under the Investment Company Act (the ''ETF Rule'').[5] The ETF Rule permits ETFs that satisfy certain conditions to operate without the expense or delay of obtaining an exemptive order. However, the ETF Rule did not provide blanket exemptive relief to allow for Multi-class ETF Shares as part of the final rule. Instead,

[33] In disapproving 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). Although the Exchange states that the regulatory and administrative burdens of the Beneficial Holders Rule makes it more difficult for smaller issuers to compete because they have limited resources to overcome legal, marketing, or other obstacles associated with this requirement (*see* Notice, 88 FR at 60517), as discussed above, BZX has failed to establish that its Beneficial Holders Rule is unnecessary or that smaller issuers of ETF Shares actually have been negatively impacted by it.

[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Perpetual US Services, LLC (filed February 7, 2023); DFA Investment Dimensions Group Inc. and Dimensional Investment Group Inc. (filed July 12, 2023); F/m Investments LLC (August 22, 2023); Fidelity Hastings Street Trust and Fidelity Management & Research Company (filed October 24, 2023); Morgan Stanley Institutional Fund Trust and Morgan Stanley Investment Management Inc. (filed January 29, 2024); First Trust Series Fund and First Trust Variable Insurance Trust (filed January 24, 2024); Guinness Atkinson Funds (filed February 27, 2024); and Metropolitan West Funds, TCW ETF Trust, and TCW Funds, Inc. (filed March 20, 2024).

[4] *See* Vanguard Index Funds, Investment Company Act Release Nos. 24680 (Oct. 6, 2000) (notice) and 24789 (Dec. 12, 2000) (order). The Commission itself, as opposed to the Commission staff acting under delegated authority, considered the original Vanguard application and determined that the relief was appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. In the process of granting the order, the Commission also considered and denied a hearing request on the original application, as reflected in the final Commission order. *See also* the Vanguard Group, Inc., Investment Company Act Release Nos. 26282 (Dec. 2, 2003) (notice) and 26317 (Dec. 30, 2003) (order); Vanguard International Equity Index Funds, Investment Company Act Release Nos. 26246 (Nov. 3, 2003) (notice) and 26281 (Dec. 1, 2003) (order); Vanguard Bond Index Funds, Investment Company Act Release Nos. 27750 (Mar. 9, 2007) (notice) and 27773 (April 2, 2007) (order) (collectively referred to as the ''Vanguard Orders'').

[5] *See* Securities Exchange Act Release No. 33–10695 (October 24, 2019) 84 FR 57162 (the ''ETF Rule Adopting Release'').

the Commission concluded that Multi-class ETF Shares should request relief through the exemptive application process so that the Commission may assess all relevant policy considerations in the context of the facts and circumstances of particular applicants. The Exchange adopted Rule 14.11(l)[6] shortly after the implementation of the ETF Rule and, because there were no exemptive applications before the Commission, did not propose to include any language comparable to what is being proposed herein.

As noted above, a number of applications for exemptive relief to permit the applicable fund to offer Multi-class ETF Shares (the ''Applications'') have been submitted to the Commission starting in early 2023. In general, the Applications state that the ability of a fund to offer Multi-class ETF Shares, *i.e.,* both a class of mutual fund shares (each such class, a ''Mutual Fund class'' and such shares ''Mutual Fund Shares'') and ETF Shares, could be beneficial to the fund and to shareholders of each type of class for various reasons, including more efficient portfolio management, better secondary market trading opportunities, and cost efficiencies, among others.[7]

Proposal

The Exchange proposes to amend Rule 14.11(l)(4) to explicitly provide that any series of ETF Shares that is eligible to operate under exemptive relief under the Investment Company Act that permits the fund to offer a class of ETF Shares in addition to classes of shares that are not-exchange traded (*i.e.,* Multi-class ETF Shares) may be approved by the Exchange for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b–4(e) under the Act. The Exchange also proposes to explicitly provide that the requirements of any exemptive relief applicable to Multi-class ETF Shares must be satisfied by a series of ETF Shares on an initial and continued listing basis. Last, the Exchange proposes to amend Rule 14.11(l)(4)(B)(i)(a) to provide that any series of Multi-class ETF Shares that fails to meet the requirements of the applicable exemptive relief will be subject to the suspension of trading or removal provisions of Rule 14.11(l)(4)(B)(i).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that permitting Multi-class ETF Shares to list on the Exchange is consistent with the applicable exemptive relief and will help perfect the mechanism of a free and open market and, in general, will protect investors and the public interest in that it will permit the listing and trading of Multi-class ETF Shares, consistent with the applicable exemptive relief, and in a manner that will benefit investors. Specifically, the Exchange believes that the relief proposed in the Applications and the expected benefits of the Multi-class ETF Shares described above would be to the benefit of investors. Eliminating any unnecessary delay for Multi-class ETF Shares listing on the Exchange will simply help accrue those benefits to investors more expeditiously. Further, the Exchange is only proposing to amend its rules to allow such a series of Multi-class ETF Shares to list on the Exchange pursuant to Rule 14.11(l), a change to its rules that will only be meaningful if and when the Commission grants such relief to an Applicant. To the extent that the Commission does not grant Multi-class ETF Shares relief, the proposed change to Rule 14.11(l) will have no impact on series of ETF Shares listed on the Exchange.

The Exchange also believes that amending Rule 14.11(l) to explicitly provide that the initial and continued listing standards applicable to ETF Shares, including the suspension of trading or removal standards, would be applicable to Multi-class ETF Shares operating under any applicable exemptive relief, are designed to promote transparency and clarity in the Exchange's Rules. The Exchange believes that with these changes, Rule 14.11(l)(4) would clearly allow for the listing and trading of Multi-class ETF Shares upon the Commission's order of exemptive relief.

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

[6] *See* Securities Exchange Act No. 88566 (April 6, 2020) 85 FR 20312 (April 10, 2020) (SRCboeBZX–2019–097) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Adopt BZX Rule 14.11(l) Governing the Listing and Trading of Exchange-Traded Fund Shares).

[7] Specifically, the Applicants believe that a Mutual Fund class would benefit ETF class shareholders because investor cash flows through a Mutual Fund class can be used for efficient portfolio rebalancing. To the extent that cash flows come into a fund through a Mutual Fund class, a portfolio manager may be able to deploy that cash strategically to rebalance the portfolio. Second, cash flows through a Mutual Fund class may allow for greater creation basket flexibility for creations and redemptions through the ETF class, which could promote arbitrage efficiency and smaller spreads on the trading of ETF Shares in the secondary market. With respect to existing funds, ETF classes would permit investors that prefer the ETF structure to gain access to established funds' investment strategies. Additionally, the establishment of an ETF class as part of an existing fund could lead to cost efficiencies. Specifically, in terms of fund expenses, an ETF class could have initial and ongoing advantages for its shareholders, where shareholders of an ETF class of a fund that already has substantial assets could immediately benefit from economies of scale. Finally, the tax-free conversion of shares from the Mutual Fund class to the ETF class may accelerate the development of an ETF shareholder base. Subsequent secondary market transactions by the ETF class shareholders could generate greater trading volume, resulting in lower trading spreads and/or premiums or discounts in the market prices of the ETF Shares to the benefit of ETF shareholders. The Applicants also believe that an ETF class would benefit Mutual Fund class shareholders because in-kind transactions through the ETF class may contribute to lower portfolio transaction costs and greater tax efficiency. Additionally, the conversion feature could allow Mutual Fund shareholders to convert Mutual Fund Shares for ETF Shares without adverse consequences to the Fund by allowing Mutual Fund shareholders to convert their shares into the ETF class of the same fund rather than redeeming their Mutual Fund Shares and buying shares of another ETF. In doing so, the converting shareholder could save on transaction costs and potential tax consequences that may otherwise be incurred in redeeming their existing shares and buying separate ETF Shares. The ETF class would also represent an additional distribution channel for a fund that could lead to additional asset grown and economies of scale; greater assets under management may lead to additional cost efficiencies and an improved tax profile for the fund may also assist the competitive position of the Fund for attracting prospective shareholders. Last, the class of ETF Shares could allow certain investors to engage in more frequent trading without disrupting the fund's portfolio.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change, by permitting the listing and trading of ETF Shares operating under Multi-class ETF Shares exemptive relief, would introduce additional competition among various ETF products to the benefit of investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2024–026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2024–026. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2024–026 and should be submitted on or before May 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–09330 Filed 4–30–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100028; File No. SR–MIAX–2024–21]

Self-Regulatory Organizations; Miami International Securities Exchange; Notice of Filing of a Proposed Rule Change To Amend Exchange Rule 313, Other Restrictions on Options Transactions and Exercises; and Rule 700, Exercise of Option Contracts

April 25, 2024

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 12, 2024, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Rule 313, Other Restrictions on Options Transactions and Exercises; and Rule 700, Exercise of Option Contracts.[3]

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 313, Other Restrictions on Options Transactions and Exercises; and Rule 700, Exercise of Option Contracts.

Background

Historically, standard expiration contracts expired at 11:59 p.m. Eastern Time, on the Saturday following the third Friday of the specified expiration month. In 2013 the Options Clearing Corporation (''OCC'') proposed a rule change to allow the OCC to change the expiration date for most option contracts to the third Friday of the expiration month instead of the Saturday following the third Friday.[4]

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that MIAX Rule 313 and MIAX Rule 700 are incorporated by reference to the Exchange's affiliates MIAX Pearl and MIAX Emerald.

[4] *See* Securities Exchange Act Release No. 69772 (June 17, 2013), 78 FR 37645 (June 21, 2013) (SR–OCC–2013–04) (Order Approving Proposed Rule Change to Change the Expiration Date For Most Option Contracts to the Third Friday of the Expiration Month Instead of the Saturday Following the Third Friday).

Since that time the industry has supplemented options that expire monthly by offering options that expire on Mondays and Wednesdays [5] and also on Tuesdays and Thursdays.[6]

Proposal

While the Exchange's rule that governs the listing of options, Rule 404, Series of Option Contracts Open for Trading, has been periodically amended to account for changes to the Short Term Options Series Program,[7] other tangentially related rules have not been simultaneously updated to adequately reflect these changes. Specifically, the Exchange now proposes to amend Exchange Rule 313, Other Restrictions on Options Transactions and Exercises, to adopt clarifying language and Rule 700, Exercise of Option Contracts, to adopt clarifying language and to amend paragraph (c) to adopt clarifying language and to also remove unnecessary rule text to align to current Rule 404.

The Exchange proposes to amend paragraph (a)(2) of Rule 313 to adopt rule text that will provide additional detail for options that expire on a business day and a non-business day. Currently, the first sentence of paragraph (a)(2) provides that, ''[n]otwithstanding the foregoing, during the ten (10) business days prior to the expiration date of a given series of options, other than index options, no restriction on exercise under this Rule may be in effect with respect to that series of options.'' The Exchange now proposes to amend the sentence to provide that, ''[n]otwithstanding the foregoing, during the ten (10) business days prior to the expiration date of a given series of options, which shall include such expiration date for an option contract that expires on a business day, other than index options, no restriction on exercise under this Rule may be in effect with respect to that series of options.'' The Exchange also proposes to amend the second sentence of paragraph (a)(2) of Rule 313. Currently, the second sentence provides that, ''[w]ith respect to index options, restrictions on exercise may be in effect until the opening of business on the last business day before the expiration date.'' The Exchange now proposes to amend the sentence to provide that, ''[w]ith respect to index options, restrictions on exercise that may be in effect until the opening of business on the business day of their expiration, or, in the case of an option contract expiring on a day that is not a business day, on the last business day before the expiration date.'' [8]

The Exchange also proposes to amend paragraph (a)(3)(ii) of Exchange Rule 313. Currently, paragraph (a)(3)(ii) provides that ''Exercises of expiring American-style, cash-settled index options shall not be prohibited on the last business day prior to their expiration.'' The Exchange now proposes to amend the sentence to provide that, ''[e]xercises of expiring American-style, cash-settled index options shall not be prohibited on the business day of their expiration, or, in the case of an option contract expiring on a day that is not a business day, on the last business day prior to their expiration.'' [9]

The Exchange proposes to amend Exchange Rule 700, Exercise of Option Contracts, to adopt new rule text related to expiring options. Currently, paragraph (b) provides that, ''[s]pecial procedures apply to the exercise of equity options on the last business day before their expiration ('expiring options').'' The Exchange now proposes to amend the sentence to provide that, ''[s]pecial procedures apply to the exercise of equity options on the business day of their expiration, or, in the case of an option contract expiring on a day that is not a business day, on the last business day before their expiration ('expiring options').'' [10]

The Exchange also proposes to amend paragraph (c) of Rule 700. Currently, paragraph (c) provides that, ''[o]ption holders have until 5:30 p.m. Eastern Time on the business day immediately prior to the expiration date or, in the case of Short Term Option Series and Quarterly Options Series, on the expiration date, to make a final decision to exercise or not exercise an expiring option.'' The Exchange now proposes to amend the sentence to provide that, ''[o]ption holders have until 5:30 p.m. Eastern Time on the business day of their expiration, or, in the case of an option contract expiring on a day that is not a business day, on the business day immediately prior to the expiration date, to make a final decision to exercise or not exercise an expiring option.'' The Exchange also proposes to remove unnecessary language from paragraph (c).[11] Specifically, the Exchange proposes to remove the text that provides, ''[r]especting options that expire after February 1, 2015, option holders have until 5:30 p.m. Eastern Time on the expiration date to make a final decision to exercise or not exercise an expiring option. Members may set earlier cutoff times for customers submitting exercise notices,'' as this text is made obsolete by the proposed changes to the first sentence of paragraph (c).

The Exchange proposes to amend paragraph (d)(iii) of Rule 700. Currently, paragraph (d)(iii) provides that, ''Members have until 7:30 p.m. Eastern Time on the business day immediately prior to the expiration date or, in the case of Short Term Option Series and Quarterly Options Series, on the expiration date, to submit a Contrary Exercise Advice to the Exchange if such Member employs an electronic submission procedure with time stamp for the submission of exercise instructions by option holders.'' The Exchange now proposes to amend this sentence to remove unnecessary language, such that the proposed sentence will provide, ''Members have until 7:30 p.m. Eastern Time to submit a Contrary Exercise Advice to the Exchange if such Member employs an electronic submission procedure with time stamp for the submission of exercise instructions by option holders.''

The Exchange proposes to amend paragraph (h) of Rule 700. Currently, paragraph (h) provides that, ''[i]n the event the Exchange provides advance notice on or before 5:30 p.m. Eastern Time on the business day immediately prior to the last business day before the expiration date indicating that a modified time for the close of trading in equity options on such last business day

[5] *See* Securities Exchange Act Release Nos. 82719 (February 15, 2018), 83 FR 7790 (February 22, 2018) (SR–MIAX–2018–05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange, LLC To Expand the Short Term Option Series Program); 91667 (April 23, 2021), 86 FR 22734 (April 29, 2021) (SR–MIAX–2021–16) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit Monday and Wednesday Expirations for Options Listed Pursuant to the Short Term Option Series Program on the Invesco QQQ Trust℠ Series (''QQQ'') ETF Trust); and 93251 (October 4, 2021), 86 FR 56308 (October 8, 2021) (SR–MIAX–2021–47) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit Monday and Wednesday Expirations for Options Listed Pursuant to the Short Term Option Series Program on the iShares Russell 2000 ETF (''IWM'').

[6] *See* Securities Exchange Act Release No. 96342 (November 17, 2022), 87 FR 71727 (November 23, 2022) (SR–MIAX–2022–41) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 404, Series of Option Contracts Open for Trading and the Short Term Option Series Program).

[7] *See* Interpretations and Policies .02 of Exchange Rule 404.

[8] The Exchange notes that the proposed rule text is substantively identical to BOX Rule 3170(a)(2).

[9] The Exchange notes that the proposed rule text is substantively identical to BOX Exchange Rule 3170(a)(3)(ii).

[10] The Exchange notes that the proposed rule text is substantively identical to BOX Exchange Rule 9000(b).

[11] The Exchange notes that the proposed rule text is substantively identical to BOX Rule 9000(c).

before expiration will occur, then the deadline to make a final decision to exercise or not exercise an expiring option shall be 1 hour 30 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. Eastern Time deadline found in Rule 700(c).'' The Exchange now proposes to amend the sentence to provide that, ''[i]n the event the Exchange provides advance notice on or before 5:30 p.m. Eastern Time on the business day immediately prior to the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, the business day immediately prior to the last business day before the expiration date indicating that a modified time for the close of trading in equity options on such business day or expiration, or, in the case of an option contract expiring on a day that is not a business day, such last business day before expiration will occur, then the deadline to make a final decision to exercise or not exercise an expiring option shall be 1 hour 30 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. Eastern Time deadline found in Rule 700(c).'' [12]

The Exchange proposes to amend paragraph (i)(2) of Rule 700. Currently, the last sentence of paragraph (i)(2) provides, ''[f]or purposes of this subparagraph (i)(2), an 'unusual circumstance' includes, but is not limited to, a significant news announcement concerning the underlying security of an option contract that is scheduled to be released just after the close on the business day immediately prior to expiration.'' The Exchange now proposes to amend the sentence to provide that, ''[f]or purposes of this subparagraph (i)(2), an 'unusual circumstance' includes, but is not limited to, a significant news announcement concerning the underlying security of an option contract that is scheduled to be released just after the close on the business day the option contract expires, or, in the case of an option contract expiring on a day that is not a business day, the business day immediately prior to expiration.'' [13]

Finally, the Exchange proposes to amend paragraph (l)(8)(ii) of Rule 700. Currently, paragraph (l)(8)(ii) provides, ''[e]xercises of expiring American-style, cash-settled index options shall not be prohibited on the last business day prior to their expiration.'' The Exchange now proposes to amend this sentence to provide, ''[e]xercises of expiring American-style, cash-settled index options shall not be prohibited on the business day of their expiration, or, in the case of option contracts expiring on a day that is not a business day, on the last business day prior to their expiration.'' [14]

2. Statutory Basis

The Exchange believes the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[15] Specifically, the Exchange believes the proposed rule changes are consistent with Section 6(b)(5) [16] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes its proposal to amend Rule 313 promotes just and equitable principles of trade and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest as the proposal provides additional detail and clarity to the Exchange's rules. Clear and concise rules benefit investors and the public interest by clearly describing Exchange processes which removes the potential for confusion.

The Exchange believes that its proposal to amend Rule 700 promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest as the proposal provides additional detail and clarity to the Exchange's rules. Additionally, the proposed changes to paragraph (c) harmonizes the Exchange's exercise cut-off time process to that of other options exchanges [17] providing consistency within the industry which benefits investors and the public interest. The Exchange believes that keeping its rules consistent with those of other option exchanges will protect all participants in the market by eliminating confusion. Finally, the proposed changes do not permit unfair discrimination between Members [18] as the rules of the Exchange apply to all Members equally.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rules changes would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes are not intended to address a competitive issue but rather would calrify the interaction of the Exchange's rules with one another and harmonize certain rule text regarding expiring options to that of other option exchanges. The proposal is not designed to address any aspect of competition, either between the Exchange and its competitors, or among market participants. Therefore, the Exchange does not believe the proposed rule change would impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) [20] thereunder.

[12] The Exchange notes that the proposed rule text is substantively identical to BOX Rule 9000(h).

[13] The Exchange notes that the proposed rule text is substantively identical to BOX Rule 9000(i)(2).

[14] The Exchange notes that the proposed rule text is substantively identical to BOX Rule 9000(l)(8)(ii).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *See, e.g.,* BOX Exchange Rule 9000, Nasdaq ISE Options 6B, Section 1, and NYSE Arca Rule 6.24–O(c).

[18] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the

Continued

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MIAX–2024–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MIAX–2024–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MIAX–2024–21 and should be submitted on or before May 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–09334 Filed 4–30–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100030; File No. SR–NYSE–2024–24]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE Pillar Depth Data Feed

April 25, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 24, 2024, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish the NYSE Pillar Depth (''Pillar Depth'') data feed. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 Exchange proposes to establish the Pillar Depth data feed. The Pillar Depth data feed is a frequency-based depth of book market data feed that would provide a consolidated view of the ten (10) best price levels on both the bid and offer sides across the NYSE Group's combined limit order books for securities traded on the NYSE Group equities markets, *i.e.,* New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), NYSE Chicago, Inc. (''NYSE Chicago'') and NYSE National, Inc. (''NYSE National''), for which the NYSE Group equities markets report quotes and trades under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan.

Background

The Exchange recently established the NYSE Aggregated Lite (''NYSE Agg Lite'') data feed.[4] The NYSE Agg Lite is a NYSE-only frequency-based depth of book market data feed of the NYSE's limit order book for up to ten (10) price levels on both the bid and offer sides of the order book for securities traded on NYSE and for which NYSE reports quotes and trades under the CTA Plan or the Nasdaq/UTP Plan.[5] The NYSE Agg Lite would be updated no less frequently than once per second. The NYSE Agg Lite would include depth of book order data as well as security status messages. The security status message would inform subscribers of changes in the status of a specific security, such as trading halts, short sale restriction, etc. In addition, the NYSE Agg Lite would also include order

Commission. The Exchange has satisfied this requirement.

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 99689 (March 7, 2024), 89 FR 18466 (March 13, 2024) (SR–NYSE–2024–12) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish the NYSE Aggregated Lite Market Data Feed) (''NYSE Agg Lite Filing''). The NYSE Agg Lite data feed is not yet available. In the NYSE Agg Lite Filing, the NYSE noted that it would publish a Trader Update to announce the date when the NYSE Agg Lite data feed would become available for subscribers and vendors.

[5] *Id.*

imbalance information prior to the opening and closing of trading.[6]

Additionally, NYSE American recently established the NYSE American Aggregated Lite (''NYSE American Agg Lite'') data feed.[7] The NYSE American Agg Lite is a NYSE American-only frequency-based depth of book market data feed of the NYSE American's limit order book for up to ten (10) price levels on both the bid and offer sides of the order book for securities traded on NYSE American and for which NYSE American reports quotes and trades under the CTA Plan or the Nasdaq/UTP Plan.[8] The NYSE American Agg Lite would be updated no less frequently than once per second. The NYSE American Agg Lite would include depth of book order data as well as security status messages. The security status message would inform subscribers of changes in the status of a specific security, such as trading halts, short sale restriction, etc. In addition, the NYSE American Agg Lite would also include order imbalance information prior to the opening and closing of trading.[9]

Additionally, NYSE Arca recently established the NYSE Arca Aggregated Lite (''NYSE Arca Agg Lite'') data feed.[10] The NYSE Arca Agg Lite is a NYSE Arca-only frequency-based depth of book market data feed of the NYSE Arca's limit order book for up to ten (10) price levels on both the bid and offer sides of the order book for securities traded on NYSE Arca and for which NYSE Arca reports quotes and trades under the CTA Plan or the Nasdaq/UTP Plan.[11] The NYSE Arca Agg Lite would be updated no less frequently than once per second. The NYSE Arca Agg Lite would include depth of book order data as well as security status messages. The security status message would inform subscribers of changes in the status of a specific security, such as trading halts, short sale restriction, etc. In addition, the NYSE Arca Agg Lite would also include order imbalance information prior to the opening and closing of trading.[12]

Further, NYSE Chicago recently established the NYSE Chicago Aggregated Lite (''NYSE Chicago Agg Lite'') data feed.[13] The NYSE Chicago Agg Lite is a NYSE Chicago-only frequency-based depth of book market data feed of the NYSE Chicago's limit order book for up to ten (10) price levels on both the bid and offer sides of the order book for securities traded on NYSE Chicago and for which NYSE Chicago reports quotes and trades under the CTA Plan or the Nasdaq/UTP Plan.[14] The NYSE Chicago Agg Lite would be updated no less frequently than once per second. The NYSE Chicago Agg Lite would include depth of book order data as well as security status messages. The security status message would inform subscribers of changes in the status of a specific security, such as trading halts, short sale restriction, etc. The NYSE Chicago Agg Lite would not include order imbalance information.[15]

Finally, NYSE National recently established the NYSE National Aggregated Lite (''NYSE National Agg Lite'') data feed.[16] The NYSE National Agg Lite is a NYSE National-only frequency-based depth of book market data feed of the NYSE National's limit order book for up to ten (10) price levels on both the bid and offer sides of the order book for securities traded on NYSE National and for which NYSE National reports quotes and trades under the CTA Plan or the Nasdaq/UTP Plan.[17] The NYSE National Agg Lite would be updated no less frequently than once per second. The NYSE National Agg Lite would include depth of book order data as well as security status messages. The security status message would inform subscribers of changes in the status of a specific security, such as trading halts, short sale restriction, etc. The NYSE National Agg Lite would not include order imbalance information.[18]

Proposed Pillar Depth Data Feed

In response to customer requests, the Exchange proposes to establish the Pillar Depth data feed, a data feed consisting of certain data elements from five market data feeds—NYSE Agg Lite, NYSE American Agg Lite, NYSE Arca Agg Lite, NYSE Chicago Agg Lite and NYSE National Agg Lite. The Exchange does not currently offer this product. As noted above, the Pillar Depth data feed would be a frequency-based depth of book market data feed that would provide a consolidated view of the ten (10) best price levels on both the bid and offer sides across the NYSE Group's combined limit order books for securities traded on the NYSE Group equities markets for which the NYSE Group equities markets report quotes and trades under the CTA Plan or the Nasdaq/UTP Plan. In other words, Pillar Depth would be a compilation of limit order data that the Exchange would provide to vendors and subscribers. As proposed, the Pillar Depth data feed would be updated no less frequently than once per second. In addition to depth of book order data, Pillar Depth would also include security status messages. The security status message would inform vendors and subscribers of changes in the status of a specific security, such as trading halts, short sale restriction, etc. In addition, Pillar Depth would publish imbalance messages no less frequently than once per second during auctions to update price and volume information, prior to the opening and closing of trading on NYSE, NYSE American and NYSE Arca.

For each security, Pillar Depth would only include the top ten (10) bids and top ten (10) offers from among the five NYSE Group equities markets. The resting interest at each price level would be aggregated across the five NYSE Group equities markets, and a market center ID will attribute the exchanges included in this interest. For example, if XYZ stock were traded on both NYSE and NYSE Arca, and one of the top 10 price levels on NYSE was 1,000 shares

[6] *Id.*

[7] *See* Securities Exchange Act Release No. 99690 (March 7, 2024), 89 FR 18445 (March 13, 2024) (SR–NYSEAMER–2024–14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish the NYSE American Aggregated Lite Market Data Feed) (''NYSE American Agg Lite Filing''). The NYSE American Agg Lite data feed is not yet available. In the NYSE American Agg Lite Filing, NYSE American noted that it would publish a Trader Update to announce the date when the NYSE American Agg Lite data feed would become available for subscribers and vendors.

[8] *Id.*

[9] *Id.*

[10] *See* Securities Exchange Act Release No. 99713 (March 12, 2024), 89 FR 19381 (March 18, 2024) (SR–NYSEArca–2024–22) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish the NYSE Arca Aggregated Lite Market Data Feed) (''NYSE Arca Agg Lite Filing''). The NYSE Arca Agg Lite data feed is not yet available. In the NYSE Arca Agg Lite Filing, NYSE Arca noted that it would publish a Trader Update to announce the date when the NYSE Arca Agg Lite data feed would become available for subscribers and vendors.

[11] *Id.*

[12] *Id.*

[13] *See* Securities Exchange Act Release No. 99691 (March 7, 2024), 89 FR 18468 (March 13, 2024) (SR–NYSECHX–2024–08) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish the NYSE Chicago Aggregated Lite Market Data Feed) (''NYSE Chicago Agg Lite Filing''). The NYSE Chicago Agg Lite data feed is not yet available. In the NYSE Chicago Agg Lite Filing, NYSE Chicago noted that it would publish a Trader Update to announce the date when the NYSE Chicago Agg Lite data feed would become available for subscribers and vendors.

[14] *Id.*

[15] *Id.*

[16] *See* Securities Exchange Act Release No. 99715 (March 12, 2024), 89 FR 19383 (March 18, 2024) (SR–NYSENAT–2024–06) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish the NYSE National Aggregated Lite Market Data Feed) (''NYSE National Agg Lite Filing''). The NYSE National Agg Lite data feed is not yet available. In the NYSE National Agg Lite Filing, NYSE National noted that it would publish a Trader Update to announce the date when the NYSE National Agg Lite data feed would become available for subscribers and vendors.

[17] *Id.*

[18] *Id.*

on offer at $10.00, and one of the top 10 price levels on NYSE Arca was 500 shares on offer at $10.00. If there were no shares of XYZ on offer on any of the remaining NYSE Group equities markets, then Pillar Depth would represent 1,500 shares on offer at $10.00. This type of aggregation would be repeated for each of the 10 best price levels on both the bid and offer sides across the five NYSE Group equities markets.

The Exchange proposes to offer Pillar Depth after receiving requests from vendors and subscribers that would like to receive the data described above in a consolidated fashion at a pre-defined publication interval, in this case updates no less than once per second. A consolidated data feed may provide greater efficiencies and reduce errors for vendors and subscribers that currently choose to consolidate the above data into a single offering after receiving it from the Exchange through existing products and adjust the publication frequency based on a subscriber's needs. The Exchange believes that providing vendors and subscribers with the option to subscribe to a market data product that consolidates a subset of data from existing products and where such consolidated data is published at a pre-defined interval, thus lowering bandwidth, infrastructure and operational requirements, would allow vendors and subscribers to choose the best solution for their specific business needs. The Exchange notes that publishing only the top ten price levels on both the bid and offer sides across the NYSE Group equities markets' order book where such data is communicated to subscribers at a pre-defined interval would reduce the overall volume of messages required to be consumed by subscribers when compared to a full order-by-order data feed or a full depth of book data feed. Providing data in this format and publication frequency would make Pillar Depth more easily consumable by vendors and subscribers, especially for display purposes.

The Exchange proposes to offer Pillar Depth through the Exchange's Liquidity Center Network (''LCN''), a local area network in the Exchange's Mahwah, New Jersey data center that is available to users of the Exchange's co-location services. The Exchange would also offer Pillar Depth through the ICE Global Network (''IGN''), through which all other users and members access the Exchange's trading and execution systems and other proprietary market data products.

The Exchange believes that Pillar Depth would provide high-quality, comprehensive depth of book order data for the Exchange, NYSE Arca, NYSE American, NYSE Chicago and NYSE National in a unified view and respond to subscriber demand for such a product. The Exchange notes that an anticipated end user might use Pillar Depth for purposes of identifying an indicative price of Tape A, B, and C securities through leveraging the depth and breadth of NYSE, NYSE Arca, NYSE American, NYSE Chicago and NYSE National without having to purchase consolidated data and thus it would not be a latency-sensitive product. The Exchange does not anticipate that an end user would, or could, use the Pillar Depth data for purposes of making order-routing or trading decisions. Rather, the Exchange notes that under Rule 603 of Regulation NMS, Pillar Depth could not be substituted for consolidated data in all instances in which consolidated data is used and certain subscribers would still be required to purchase consolidated data for trading and order-routing purposes.[19]

Exchange Not an Exclusive Distributor of Pillar Depth

The Exchange proposes to offer the Pillar Depth data feed in a capacity similar to that of a vendor. The Exchange, NYSE Arca, NYSE American, NYSE Chicago and NYSE National are the exclusive distributors of the five Agg Lite data feeds[20] from which certain data elements would be taken to create Pillar Depth. By contrast, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed Pillar Depth data feed. Other vendors would be able, if they chose, to create a data feed with the same information as proposed for inclusion in Pillar Depth, and to distribute it to clients with no greater latency than the Exchange would be able to distribute Pillar Depth. In addition, as discussed further below, the pricing the Exchange would charge clients for Pillar Depth would not be lower than the cost to a vendor of creating a comparable product, including the cost of receiving the underlying data feeds.

After creating Pillar Depth, the Exchange would distribute this data feed through IGN and market data vendors. The path for distribution by the Exchange of this data would not be faster than a vendor that independently created a Pillar Depth-like product could distribute its own product. As such, the proposed Pillar Depth data feed is a data product that a competing vendor could create and sell without being in a disadvantaged position relative to the Exchange. In recognition that the Exchange is the source of its own market data and is affiliated with NYSE Arca, NYSE American, NYSE Chicago and NYSE National, the Exchange represents that the source of the market data it uses to create the proposed Pillar Depth is the same as the source available to other vendors.

With respect to latency, the Exchange, NYSE Arca, NYSE American, NYSE Chicago and NYSE National are located in the same data center in Mahwah, New Jersey. The system creating and supporting the proposed Pillar Depth data feed would need to obtain the five underlying data feeds from these five exchanges before it could aggregate and consolidate information to create Pillar Depth and then distribute it to end users. The Exchange also offers third parties access to its data center through co-location. Accordingly, a competing market data vendor co-located in the Exchange's Mahwah, New Jersey facility offering a similar competing product would similarly need to obtain the five underlying data feeds.

The Exchange has designed the Pillar Depth data feed so that it would not have a competitive advantage over a competing vendor with respect to the speed of access to those five underlying data feeds. Likewise, the Pillar Depth data feed would not have a speed advantage vis-à-vis competing vendors co-located in the data center with respect to access to end user customers, whether those end users are also co-located or not. As such, a market data vendor could perform the aggregation and consolidation function in the Mahwah facility and redistribute a competing product from that location to similarly situated customers on a level playing field with respect to the speed that the Exchange could create and redistribute the Pillar Depth data feed.

With respect to cost, the Exchange will file a separate rule filing to establish the fees for Pillar Depth. To ensure that vendors could compete with the Exchange by creating the same product as Pillar Depth and sell it to their clients, the Exchange would charge its clients for the Pillar Depth data feed an amount that represents the cost to a market data vendor to obtain the five underlying Agg Lite data feeds, plus an additional amount to be determined that would reflect the value of the aggregation and consolidation function. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a

[19] 17 CFR 242.603(c).

[20] These other data feeds are offered pursuant to pre-existing and already effective rules filed with the Commission; those rules will not be altered by this filing.

competing product, which may incorporate passing through fees associated with co-location at the Mahwah, New Jersey data center. However, the incremental co-location costs to a particular vendor might be inconsequential if such vendor is already co-located and is able to allocate its co-location costs over numerous product and customer relationships. The Exchange therefore believes that a competing vendor could create and offer a product similar to the proposed Pillar Depth data feed at a similar cost. For these reasons, the Exchange believes that vendors could readily offer a product similar to Pillar Depth on a competitive basis.

The Exchange will announce the implementation date of this proposed rule change by Trader Update, which, subject to the effectiveness of this proposed rule change, is anticipated to be on May 13, 2024.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[21] of the Act (''Act''), in general, and furthers the objectives of Section 6(b)(5)[22] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of Pillar Depth to those interested in receiving it.

The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving market data as requested by market data vendors and subscribers. The proposed rule change would benefit investors by facilitating their prompt access to the frequency-based and consolidated depth of book information contained in the Pillar Depth market data feed.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act[23] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability of information with respect to quotations for and transactions in securities to brokers, dealers, and investors. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[24] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. The Pillar Depth market data feed would be accessed and subscribed to on a voluntary basis, in that neither the Exchange nor market data vendors are required by any rule or regulation to make this data available. Accordingly, vendors and subscribers can discontinue their use at any time and for any reason.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that Pillar Depth is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS would itself further the Act's goals of facilitating efficiency and competition:

> Efficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[25]

In addition, Pillar Depth removes impediments to and perfects the mechanism of a free and open market and a national market system by providing investors with alternative market data and would compete with similar market data products currently offered by the four U.S. equities exchanges operated by Cboe Exchange, Inc.—Cboe BZX Exchange, Inc. (''BZX''), Cboe BYX Exchange, Inc. (''BYX''), Cboe EDGA Exchange, Inc. (''EDGA''), and Cboe EDGX Exchange, Inc. (''EDGX''), each of which offers a market data product called Cboe One Feed.[26] Similar to Cboe One Premium Feed, Pillar Depth can be utilized by vendors and subscribers to quickly access and distribute aggregated order book data. As noted above, Pillar Depth, similar to Cboe One Premium Feed, would provide aggregated depth per security, including the bid, ask and share quantity for orders received by the NYSE Group markets, except unlike Cboe One Premium Feed, which provides aggregated depth per security for up to five (5) price levels, Pillar Depth would provide a consolidated view of the ten (10) best price levels on both the bid and offer sides across the NYSE Group's combined limit order books for securities traded on the NYSE Group equities markets.

The Exchange notes that the existence of alternatives to the Exchange's proposed product, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, as well as the continued availability of the Exchange's separate data feeds, ensures that the Exchange is not unreasonably discriminatory because vendors and subscribers can elect these alternatives as their individual business cases warrant.

As noted above, the Exchange would be acting in the capacity of a vendor with respect to the proposed Pillar Depth data feed. The proposed Pillar Depth data feed is a product that relies on the Exchange's receipt of underlying data, which is available to all market participants, before it can aggregate and consolidate information to create Pillar Depth; this is a process that a competing vendor could also perform. Accordingly, although the Exchange might be the only distributor of the Pillar Depth data feed initially, it is not in an exclusive position to provide a product like the Pillar Depth data feed. Therefore, the Exchange believes that the proposed

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78k–1.

[24] *See* 17 CFR 242.603.

[25] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (Regulation NMS Adopting Release).

[26] *See* BZX Rule 11.22(j); BYX Rule 11.22(i); EDGA Rule 13.8(b); and EDGX Rule 13.8(b). The Cboe One Feed offered by BZX, BYX, EDGA and EDGX is a data feed that contains the aggregate best bid and offer of all displayed orders for securities traded on the Cboe exchanges. The Cboe One Feed also contains the individual last sale information, consolidated volume, the primary listing market's official opening and closing price, and the current day consolidated high and low price for all listed equity securities. Cboe One Feed recipients may also elect to receive aggregated two-sided quotations from the Cboe exchanges for five (5) price levels (''Cboe One Premium Feed'').

rule change is consistent with Section 6(b) [27] of the Act, in general, and furthers the objectives of Section 6(b)(5) [28] of the Act, in particular, in that it is designed 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 it is not designed to permit unfair discrimination among customers, brokers, or dealers.

Specifically, the Exchange has taken into consideration its affiliated relationship with NYSE Arca, NYSE American, NYSE Chicago and NYSE National in its design of the Pillar Depth data feed to assure that similarly situated competing vendors would be able to offer a similar product on the same terms as the Exchange, both from the perspective of latency and cost. As discussed in detail above, the Exchange proposes to begin offering the Pillar Depth data feed voluntarily in response to demand from vendors and subscribers that are interested in receiving consolidated depth of order book information from the Exchange, NYSE Arca, NYSE American, NYSE Chicago and NYSE National in a unified view. Specifically, portfolio managers, wealth managers, back-office employees, and others are looking for a cost-effective, easy-to-administer, high-quality market data product with the characteristics of the Pillar Depth data feed. The Pillar Depth data feed will help to protect a free and open market by providing vendors and subscribers with additional choices in receiving this type of market data, thus promoting competition and innovation.

As noted above, the Exchange believes that Pillar Depth will offer an alternative to the use of consolidated data products and proprietary data products such as the Cboe One Premium Feed offered by BZX, BYX, EDGX and EDGA. The Exchange believes that Pillar Depth will offer a competitive alternative to the market data products currently offered by the Cboe family of exchanges.

In addition, the proposal would not permit unfair discrimination because the data feed would be available to all vendors and subscribers through both the LCN and IGN on an equivalent basis. In addition, any customer that wishes to continue to be able to purchase one or more of the individual underlying data feeds would be able to do so.

The Exchange does not believe that the proposal would permit unfair discrimination among customers, brokers, or dealers and thus is consistent with the Act because the Exchange will be offering the product on terms that a competing vendor could offer a competing product. Specifically, the proposed data feed does not represent Exchange core data, but rather a new product that represents an aggregation and consolidation of existing, previously filed market data products of the Exchange, NYSE Arca, NYSE American, NYSE Chicago and NYSE National. As such, a competing vendor could similarly obtain the five underlying data feeds and perform a similar aggregation and consolidation function to create the same data product with the same latency. More specifically, a competing vendor that is co-located in the Exchange's Mahwah, New Jersey data center could obtain the five underlying data feeds from the Exchange, NYSE Arca, NYSE American, NYSE Chicago and NYSE National on the same latency basis as the system that would be performing the aggregation and consolidation of the proposed Pillar Depth data feed and provide the same type of product to its customers with the same latency they could achieve by purchasing Pillar Depth from the Exchange. As such, the Exchange would not have any unfair advantage over competing vendors with respect to obtaining data from NYSE Arca, NYSE American, NYSE Chicago and NYSE National; in fact, the technology supporting the Pillar Depth data feed would similarly need to obtain the Exchange's data feed as well and even this connection would be on a level playing field with a competing vendor co-located at the data center. In addition, the Exchange would be charging for the proposed Pillar Depth data feed competitively with the price that a competing vendor could assess for a competing product.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[29] 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. As noted above, the Exchange proposes to offer the Pillar Depth data feed in a capacity similar to that of a vendor. Although the Exchange, NYSE Arca, NYSE American, NYSE Chicago and NYSE National are the exclusive distributors of the five Agg Lite feeds from which certain data elements would be taken to create Pillar Depth, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed Pillar Depth data feed. Vendors would be able, if they chose, to create a data feed with the same information as Pillar Depth and distribute it to their clients on a level-playing field with respect to latency and cost as compared to the Exchange's proposed data feed. In addition, the pricing the Exchange would charge clients for Pillar Depth would not be lower than the cost to a vendor of receiving the underlying data feeds and of maintaining co-located operations to receive and distribute such data feeds with no greater latency than the Exchange.

The Exchange has designed the Pillar Depth data feed so that it would not have a competitive advantage over a competing vendor with respect to the speed of access to those five underlying data feeds. Likewise, the Pillar Depth data feed would not have a speed advantage vis-à-vis competing vendors co-located in the data center with respect to access to end user customers, whether those end users are also co-located or not. As such, a market data vendor could perform the aggregation and consolidation function in the Mahwah facility and redistribute a competing product from that location to similarly situated customers on a level-playing field with respect to the speed that the Exchange could create and redistribute the Pillar Depth data feed.

With respect to cost, the Exchange will file a separate rule filing to establish the fee for Pillar Depth. To ensure that vendors could compete with the Exchange by creating the same product as Pillar Depth and sell it to their clients, the Exchange would charge its clients for the Pillar Depth feed an amount that represents the cost to a market data vendor to obtain the five underlying data feeds, plus an additional amount to be determined that would reflect the value of the aggregation and consolidation function. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a competing product, which may incorporate passing through fees associated with co-location at the Mahwah, New Jersey data center. However, the incremental co-location costs to a particular vendor may be inconsequential if such vendor is already co-located and is able to allocate its co-location costs over numerous product and customer relationships. The Exchange therefore believes that a competing vendor could create and offer a product similar to the proposed Pillar Depth data feed at a similar cost. For

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78f(b)(8).

these reasons, the Exchange believes that vendors could readily offer a product similar to Pillar Depth on a competitive basis.

The Exchange further believes that Pillar Depth will promote competition among exchanges by offering an alternative to the CBOE One Premium Feed offered by BZX, BYX, EDGA and EDGX. Because other exchanges already offer similar products, the Exchange's proposed Pillar Depth data feed will enhance competition. The Pillar Depth data feed will foster competition by providing an alternative to similar products offered by other exchanges, including the Cboe One Premium Feed.[30] The Pillar Depth data feed would provide investors with a new option for receiving market data, which was a primary goal of the market data amendments adopted by Regulation NMS.[31] Thus, the Exchange believes the proposed rule change is necessary to permit fair competition among national securities exchanges. For these reasons, the Exchange believes that offering Pillar Depth will promote, rather than unnecessarily or inappropriately burden, competition for market data products that are offered in the capacity as a vendor and are not core exchange market data products.

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[32] and Rule 19b–4(f)(6) thereunder.[33] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[34]

A proposed rule change filed under Rule 19b–4(f)(6)[35] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[36] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposal raises no novel issues and that waiver of the operative delay will permit the Exchange to make the Pillar Depth data feed available to subscribers, with an anticipated launch date of May 13, 2024, as an alternative to similar products offered by BZX, BYX, EDGA and EDGX, as well the Cboe One Premium Feed. For these reasons, the Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[37]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[38] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2024–24 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–2024–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2024–24 and should be submitted on or before May 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–09326 Filed 4–30–24; 8:45 am]

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[30] *See supra,* note 26.

[31] *See supra,* note 25, at 37503.

[32] 15 U.S.C. 78s(b)(3)(A)(iii).

[33] 17 CFR 240.19b–4(f)(6).

[34] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[35] 17 CFR 240.19b–4(f)(6).

[36] 17 CFR 240.19b–4(f)(6)(iii).

[37] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[38] 15 U.S.C. 78s(b)(2)(B).

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35181]

Deregistration Under Section 8(f) of the Investment Company Act of 1940

April 26, 2024.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of Applications for Deregistration under Section 8(f) of the Investment Company Act of 1940.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of April 2024. A copy of each application may be obtained via the Commission's website by searching for the applicable file number listed below, or for an applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on May 21, 2024, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.*

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

ETF Managers Trust [File No. 811–22310]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Amplify ETF Trust, and on January 29, 2024, made a final distribution to its shareholders based on net asset value. Expenses of $9,282,629.85 incurred in connection with the reorganization were paid by the applicant's investment adviser and the acquiring fund's investment adviser.

Filing Date: The application was filed on March 5, 2024.

Applicant's Address: 350 Springfield Avenue, Suite #200, Summit, New Jersey 07901.

Greenspring Fund Inc [File No. 811–03627]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Cromwell Greenspring Mid Cap Fund, and on August 14, 2023, made a final distribution to its shareholders based on net asset value. Expenses of $245,228 incurred in connection with the reorganization were paid by the applicant's investment adviser and the acquiring fund's investment adviser.

Filing Dates: The application was filed on August 30, 2023, and amended on October 4, 2023, November 22, 2023, February 20, 2024 and April 23, 2024.

Applicant's Address: 2330 West Joppa Road, Suite 110, Lutherville, Maryland 21093–4641.

Invesco Dynamic Credit Opportunities Fund [File No. 811–22043]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Invesco Dynamic Credit Opportunity Fund, and on October 29, 2021 made a final distribution to its shareholders based on net asset value. Expenses of $500,176.86 incurred in connection with the reorganization were paid by the applicant.

Filing Dates: The application was filed on May 12, 2023 and amended on March 15, 2024.

Applicant's Address: 1331 Spring Street Northwest, Suite 2500, Atlanta, Georgia 30309.

Lee Financial Mutual Fund, Inc. [File No. 811–05631]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Bishop Street Funds, and on December 4, 2023, made a final distribution to its shareholders based on net asset value. Expenses of $71,612.13 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Date: The application was filed on March 29, 2024.

Applicant's Address: 3113 Olu Street, Honolulu, Hawaii 96816.

Savos Investments Trust [File No. 811–08977]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 27, 2022, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $24,436.75 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Date: The application was filed on April 17, 2024.

Applicant's Address: 1655 Grant Street, 10th Floor, Concord, California 94520.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–09444 Filed 4–30–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100026; File No. SR–BOX–2024–10]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule for Trading on the BOX Options Market LLC Facility (''BOX'')

April 25, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2024, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III, below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule on the BOX Options Market LLC (''BOX'') options facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *https://rules.boxexchange.com/rulefilings.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section VI.A, Complex Order Transaction Fees, of the BOX Fee Schedule, to establish a separate category within the fee structure for fees and rebates on Complex Order transactions for options overlying the Standard and Poor's Depositary Receipts Trust (''SPY''), the INVESCO QQQ Trust℠, Series 1 (''QQQ''), and iShares Russell 2000 Index Fund (''IWM''). The Exchange notes that the fees for SPY, QQQ, and IWM in Section VI.A will remain the same as those currently assessed. The Exchange also proposes to amend the fees in Section VI.B to change how certain Complex Orders are assessed within the fee structure, specifically each leg of Public Customer Complex Orders in SPY, QQQ, and IWM that executes against the BOX Book [5] instead of the Complex Order Book.[6]

Currently, in Section VI of the BOX Fee Schedule, fees and credits for Complex Order transactions in Penny Interval Classes and Non-Penny Interval Classes are assessed depending on three factors: (i) the account type of the Participant submitting the order; (ii) whether the Participant is a liquidity provider or liquidity taker; and (iii) the account type of the contra party. The Exchange proposes to assess separate fees for SPY, QQQ, and IWM Complex Order Transaction Fees in Section VI.A of the Fee Schedule. The Exchange notes that it is not changing the amount of the fees currently assessed for these transactions but is simply carving out SPY, QQQ, and IWM into a separate category within the fee structure.

As proposed, the SPY, QQQ, and IWM fees will continue to be the same as the current fees assessed to transactions in Penny Interval Classes. Specifically, when a Public Customer SPY, QQQ, or IWM Complex Order interacts with a Public Customer, the Exchange will not assess a fee or offer a rebate. When a Public Customer SPY, QQQ, or IWM Complex Order interacts with a non-Public Customer, the Exchange will offer a rebate of $0.50. Further, when a Professional Customer or Broker Dealer SPY, QQQ, or IWM Complex Order interacts with a Public Customer Complex Order, the Exchange proposes to assess a $0.50 fee when making liquidity or a $0.50 fee when taking liquidity. When a Professional Customer or Broker Dealer SPY, QQQ, or IWM Complex Order interacts with a Professional Customer, Broker Dealer, or Market Maker Complex Order, the Exchange proposes to offer a rebate of $0.30 for making liquidity or to assess a fee of $0.50 for taking liquidity. When a Market Maker SPY, QQQ, or IWM Complex Order interacts with a Public Customer Complex Order, the Exchange proposes to assess $0.50 when making liquidity or $0.50 when taking liquidity. When a Market Maker SPY, QQQ, or IWM Complex Order interacts with a Professional Customer, Broker Dealer, or Market Maker Complex Order, the Exchange proposes to offer a rebate of $0.30 when making liquidity or to assess a fee of $0.50 when taking liquidity. The Exchange again notes that these fees are currently assessed to SPY, QQQ, and IWM transactions today as SPY, QQQ, and IWM are Penny Interval Classes.[7]

The proposed fee structure for SPY, QQQ, and IWM Complex Order transactions will be as follows:

Account type	Contra party	SPY, QQQ, and IWM	
		Maker	Taker
Public Customer	Public Customer	$0.00	$0.00
	Professional Customer/Broker Dealer	(0.50)	(0.50)
	Market Maker	(0.50)	(0.50)
Professional Customer or Broker Dealer	Public Customer	0.50	0.50
	Professional Customer/Broker Dealer	(0.30)	0.50
	Market Maker	(0.30)	0.50
Market Maker	Public Customer	0.50	0.50
	Professional Customer/Broker Dealer	(0.30)	0.50
	Market Maker	(0.30)	0.50

For example, under the proposal, if a Public Customer submitted a SPY order to the Complex Order Book (making liquidity), the Public Customer would be provided a rebate of $0.50 if the order interacted with a Market Maker's SPY order and the Market Maker (taking liquidity) would be charged $0.50.

In addition to the above changes to Section VI.A of the Fee Schedule, the Exchange now proposes to amend the fees in Section VI.B to change how

[5] The term ''Central Order Book'' or ''BOX Book'' means the electronic book of orders on each single option series maintained by the BOX Trading Host. *See* BOX Rule 100(a)(10).

[6] The term ''Complex Order Book'' means the electronic book of Complex Orders maintained by the BOX Trading Host. *See* BOX Rule 7240(a)(8).

[7] *See* BOX Options Notice 2024–015 available at *Notice-2024-015-Penny-Program-Class-Removals.pdf (boxexchange.com).*

certain Complex Orders are assessed within the fee structure. By way of background, a Participant may enter a Complex Order with the intent of that order executing against another Complex Order on the Complex Order Book, however, Complex Orders will execute against Complex Orders only after bids and offers at the same net price on the BOX Book for the individual legs have been executed.[8] Currently, under the BOX Fee Schedule, each leg of a Complex Order executed against the BOX Book will be treated as a standard order for purposes of the Fee Schedule and is subject to Section IV (Electronic Transaction Fees). The Exchange now proposes to assess $0.00 for Public Customer Complex Orders in SPY, QQQ, and IWM executed against the BOX Book. Specifically, the Exchange proposes to amend Section VI.B as follows:

''Each order on the BOX Book executed against a Complex Order and each leg of a Complex Order executed against the BOX Book will be treated as a standard order for purposes of the Fee Schedule and subject to Section IV.A (Electronic Transaction Fees for Non-Auction Transactions), except that each leg of a Public Customer Complex Order in SPY, QQQ, and IWM executed against the BOX Book will be assessed $0.00.''

For example, if a SPY, QQQ, or IWM Public Customer Complex Order interacts with the BOX Book, the legs are currently assessed $0.10 for taking liquidity against Professional Customers, Broker Dealers, and Market Makers.[9] The proposed change would effectively decrease the fee assessed in this case from $0.10 to $0.00.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange's proposal to establish a separate category within the fee structure for SPY, QQQ, and IWM Complex Order transactions is reasonable, equitable, and not unfairly discriminatory because pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in the most actively traded options classes. The Exchange notes that it currently assesses separate fees and rebates for SPY, QQQ, and IWM Non-Auction Transactions.[11] The Exchange also notes that SPY, QQQ, and IWM are among the most actively traded options [12] and therefore the Exchange believes that creating a separate category within the fee structure for these classes is appropriate to more effectively attract order flow to BOX. The Exchange again notes that it is not changing the amount of the fees currently assessed for SPY, QQQ, and IWM Complex Order Transaction Fees in Section VI.A of the Fee Schedule, but is simply carving out SPY, QQQ, and IWM into a separate category within the fee structure. As proposed, the SPY, QQQ, and IWM fees will continue to be the same as the current fees assessed to transactions in Penny Interval Classes.

Additionally, the Exchange believes the proposed change to amend the fees in Section VI.B to change how each leg of a Public Customer Complex Order in SPY, QQQ, and IWM that executes against the BOX Book is assessed within the fee structure is reasonable because it is designed to incentivize Public Customer Complex order flow. Specifically, when a Complex Order interacts with the BOX Book, the orders in the BOX Book are assessed electronic transaction fees for non-auction transactions.[13] Currently, in the case of a Public Customer Complex Order interacting with the BOX Book, the legs are assessed $0.00 for making liquidity against all account types, $0.00 for taking liquidity against another Public Customer, and $0.10 for taking liquidity against Professional Customers, Broker Dealers, and Market Makers. The proposed change would effectively decrease the fee assessed in the latter case from $0.10 to $0.00. Further, the Exchange believes it is equitable and not unfairly discriminatory that Public Customers be charged lower fees than Professional Customers, Broker Dealers, and Market Makers on BOX. The Exchange believes it promotes the best interests of investors to have lower transaction costs for Public Customers and will attract Public Customer order flow. The Exchange believes further that increased opportunities to interact with Public Customer order flow benefits all market participants. As such, the industry in general and the Exchange in particular have historically created fee structures to benefit Public Customers because increased Public Customer order flow benefits all market participants.

The Exchange notes that the BOX Fee Schedule, including Section VI (Complex Order Transaction Fees), assesses fees and credits according to the account type of the Participant originating the order and the contra party.[14] The result of this structure is that a Participant does not know the fee it will be charged when submitting certain orders. Specifically, Participants who submit a Complex Order to BOX may not know ahead of time whether their Complex Order will interact with the Complex Order Book or the BOX Book. As a result, Participants must recognize when submitting a Complex Order to BOX that they could be assessed a range of fees or rebates and must expect the highest applicable fee or lowest applicable rebate such that fees(rebates) may be higher(lower) than their expectations. The Exchange notes that under the proposal, SPY, QQQ, and IWM Public Customer Complex Orders will not be assessed a fee regardless of whether the Complex Order executes in the Complex Order Book or the BOX Book. Further, the Exchange believes the proposed changes are equitable and not unfairly discriminatory as the proposed fee structure will apply uniformly to all Participants.

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 not necessary or appropriate in furtherance of the purposes of the Act.

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal to decrease fees for SPY, QQQ, and IWM Public Customer Complex Orders that execute against the BOX Book will allow BOX to compete with other options markets. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges. Because competitors are free to modify their own fees and rebates in

[8] *See* BOX Rule 7240(b)(3)(i).

[9] *See* BOX Fee Schedule, Section IV.A (Non-Auction Transactions).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See* BOX Fee Schedule, Section IV.A (Non-Auction Transactions).

[12] *See https://www.optionseducation.org/toolsoptionquotes/today-s-most-active-options* (providing a daily list of the most active options by type).

[13] *See* BOX Fee Schedule Section VI.B.

[14] *See* BOX Fee Schedule Sections IV.A (Electronic Non-Auction Transactions) and VI.A (Complex Order Transaction Fees).

response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The Exchange believes that the proposed changes do not impose an undue burden on intra-market competition because the proposal will not place any category of market participant at a competitive disadvantage. Specifically, the Exchange believes that assessing no fees to the legs of SPY, IWM, or QQQ Public Customer Complex Orders that trade against the BOX Book does not impose an undue burden on intra-market competition because the proposed change is designed to attract Public Customer order flow which increases the number of executions on BOX, thus benefiting all market participants. The Exchange believes further that separating SPY, IWM, and QQQ Complex Order transaction fees from Penny Interval Classes does not impose an undue burden on competition because the proposal changes the structure of the Fee Schedule but does not change the fees assessed or rebates offered.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [15] and Rule 19b–4(f)(2) thereunder,[16] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–BOX–2024–10 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–BOX–2024–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BOX–2024–10 and should be submitted on or before May 22, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–09332 Filed 4–30–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100031; File No. SR–FICC–2024–005]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change, as Modified by Partial Amendment No. 1, To Modify the GSD Rules To Facilitate Access to Clearance and Settlement of All Eligible Secondary Market Transactions in U.S. Treasury Securities

April 25, 2024.

On March 11, 2024, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–FICC–2024–005 pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to modify FICC's Government Securities Division (''GSD'') Rulebook (''GSD Rules'') to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities.[3] On March 19, 2024, FICC filed Partial Amendment No. 1 to make clarifications and corrections [4] to the proposed rule change. The proposed rule change, as modified by Partial Amendment No. 1, is referred to herein as the ''Proposed Rule Change.'' The Proposed Rule Change was published for public comment in the **Federal Register** on

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 5, at 89 FR 21363.

[4] Partial Amendment No. 1 made clarifications and corrections to the description of the proposed rule change and Exhibit 5. Specifically, as originally filed, the description of the proposed rule change made a reference to an incorrect section of the GSD Rules. Partial Amendment No. 1 corrects that reference. Additionally, as originally filed, the description of the proposed rule change and Exhibit 5 contained inconsistent references regarding whether FICC or its Board would be responsible for approving membership applications and related membership matters. Partial Amendment No. 1 clarifies and corrects those references. These clarifications and corrections have been incorporated, as appropriate, into the description of the proposed rule change.

March 27, 2024.[5] The Commission has received comments regarding the substance of the changes proposed in the Proposed Rule Change.[6]

Section 19(b)(2)(i) of the Exchange Act[7] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved unless the Commission extends the period within which it must act as provided in Section 19(b)(2)(ii) of the Exchange Act.[8] Section 19(b)(2)(ii) of the Exchange Act allows the Commission to designate a longer period for review (up to 90 days from the publication of notice of the filing of a proposed rule change) if the Commission finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents.[9]

The 45th day after publication of the Notice of Filing is May 11, 2024. In order to provide the Commission with sufficient time to consider the Proposed Rule Change, the Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change and therefore is extending this 45-day time period.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,[10] designates June 25, 2024, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–FICC–2024–005.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–09327 Filed 4–30–24; 8:45 am]

BILLING CODE 8011–01–P

[5] Securities Exchange Act Release No. 99817 (March 21, 2024), 89 FR 21362 (March 27, 2024) (File No. SR–FICC–2024–005) (''Notice of Filing'').

[6] Comments on the Proposed Rule Change are available at *https://www.sec.gov/comments/sr-ficc-2024-005/srficc2024005.htm.*

[7] 15 U.S.C. 78s(b)(2)(i).

[8] 15 U.S.C. 78 s(b)(2)(ii).

[9] *Id.*

[10] *Id.*

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100033; File No. SR–NYSEAMER–2024–24]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Adopt Rule 971.2NYP Regarding the Operation of the Customer Best Execution Auction for Complex Orders on the NYSE American Pillar Trading Platform

April 25, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 10, 2024, NYSE American LLC (''NYSE American'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Rule 971.2NYP regarding the operation of its Customer Best Execution (''CUBE'') Auction for Complex Orders on the Exchange's Pillar trading technology platform and to modify and make conforming changes to Rules 900.2NY, 971.2NY, 980NYP, and 935NY. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt Rule 971.2NYP (the ''proposed Rule'') to reflect the operation of its Complex CUBE Auction (the ''Complex CUBE Auction''; ''Complex CUBE''; or the ''Auction'') on the Exchange's Pillar trading technology platform and to modify and make conforming changes to Rules 900.2NY, 971.2NY, 980NYP, and 935NY.

Background

In October 2023, the Exchange completed its transition to its Pillar trading technology platform (''Pillar'').[4] Co-incident with this transition, the Exchange implemented new rules applicable to options trading on Pillar, each of which—like the proposed Rule—includes the modifier ''P'' appended to the rule number.[5] For example, the Exchange has adopted Pillar rules that govern options trading regarding: the priority, ranking, and allocation of single-leg interest, including Rule 964NYP (''Pillar Rule 964NYP'');[6] the operation of order types, Market Maker quotations, opening auctions, and risk controls;[7]

[4] *See* Trader Update, NYSE American Options: NYSE Pillar Final Migration Tranche, dated October 30, 2023, *available here: https://www.nyse.com/trader-update/history#110000748137* (announcing the last phase of the Pillar migration). Now that the Exchange has completed its migration to Pillar, it plans to file a rule proposal to delete rules that are no longer operative because they applied only to pre-Pillar trading on the Exchange (including pre-Pillar Rule 971.2NY). In the meantime, for the sake of clarity, the Exchange proposes to add a preamble to pre-Pillar Rule 971.2NY specifying that it is no longer applicable to Complex CUBE Auctions on Pillar, which would add clarity, transparency, and internal consistency to Exchange rules.

[5] *See, e.g.,* proposed Rule 971.2NYP. Upon migration, the Pillar rules replaced and superseded the corollary pre-Pillar rules—most of which have the same rule number without the ''P'' modifier. *See, e.g., infra* note 5 [sic], Pillar Priority Filing (adopting, among other rules, Pillar Rule 964NYP, which replaced and superseded pre-Pillar Rule 964NY when the Exchange migrated to Pillar).

[6] *See* Rules 964NYP (Order Ranking, Display, and Allocation), 964.1NYP (Directed Orders and DOMM Quoting Obligations) and 964.2NYP (Participation Entitlement of Specialist Pool and Designation of Primary Specialist) (collectively, the ''Pillar Priority Rules''). *See also* Securities Exchange Act Release No. 97297 (April 13, 2023), 88 FR 24225 (April 19, 2023) (SR–NYSEAMER–2023–16) (adopting the Pillar Priority Rules on an immediately effective basis, which rules utilize Pillar concepts and incorporate the Exchange's pre-Pillar Customer priority and pro rata allocation model) (the ''Pillar Priority Filing'').

[7] *See* Securities Exchange Act Release No. 97869 (July 10, 2023), 88 FR 45730 (July 17, 2023) (SR–NYSEAMER–2023–34) (adopting, on an immediately effective basis new Rules 900.3NYP

and the trading of Electronic Complex Orders (''ECOs'') (''Pillar Rule 980NYP'').[8]

In addition, as discussed herein, the Exchange adopted a new rule to describe the operation of single-leg CUBE Auctions on Pillar (''Pillar Rule 971.1NYP''). The CUBE Auction is the Exchange's electronic crossing mechanism with a price improvement auction for single-leg and complex trading interest.[9] Since the migration, Pillar Rule 971.1NYP governs single-leg CUBE Auctions.[10] The purpose of this filing is to adopt a Pillar rule that governs the operation of Complex CUBE Auctions on Pillar—*i.e.,* proposed Rule 971.2NYP.[11]

As detailed below, the proposed Rule would maintain the core aspects of pre-Pillar Complex CUBE Auction functionality, but would incorporate applicable Pillar rules (*e.g.,* regarding priority and allocation of Auction interest) and would include modifications and functionality enhancements that are available on Pillar.[12] One such modification is a competitive change to the pricing requirements to initiate (and participate in) Complex CUBE Auctions on Pillar, which is designed to enable the Exchange to better compete for complex auction order flow.[13] Similarly, to the extent that the proposed Rule differs from pre-Pillar Complex CUBE functionality, the Exchange believes that such changes are consistent with existing Pillar functionality for single-leg CUBE Auctions or with functionality offered on a competing options exchange and are therefore not new or novel.[14]

Summary of Proposed Modifications to Complex CUBE Auction Functionality

In addition to retaining the fundamental aspects of pre-Pillar Complex CUBE functionality, the proposed Rule would: incorporate existing Pillar functionality that would determine the pricing, priority, and allocation of interest in Complex CUBE Auctions; include competitive changes to pricing requirements to initiate an Auction; and adopt enhancements to Auction functionality that are identical (or substantively identical) to existing Pillar functionality for single-leg CUBE Auctions, which functionality is also available on another options exchange as noted herein. Specifically, and as described in detail below, the Exchange proposes to modify the Complex CUBE Auction on Pillar as follows:

• *CUBE BBO, Initiating Price, and Range of Permissible Executions.* Adopt a revised definition of CUBE BBO, which incorporates Pillar priority rules regarding displayed Customer interest[15] as well as the Pillar concept of a Derived BBO (or ''DBBO'').[16] Consistent with the proposed CUBE BBO, the Exchange also proposes to update the requirements for the initiating price and range of permissible executions. Further, to the extent that the proposed requirements to initiate and participate in a Complex CUBE Auction differ from pre-Pillar Complex CUBE functionality, the Exchange believes that such changes are consistent (and competitive) with another options exchange that offers a complex price improvement auction.[17]

• *Response Time Interval.* Modify the Response Time Interval for a Complex CUBE Auction to be for a set duration as opposed to the random duration that currently applies to Auctions, which would align the proposed Rule with Pillar Rule 971.1NYP for single-leg CUBE Auctions on Pillar.[18]

• *Complex GTX Order Handling.* Update Complex GTX Order functionality to reflect handling on Pillar, including how such orders will be prioritized per Pillar Rule 964NYP(e), that such orders may include a specific CUBE ''AuctionID'', and that such orders will cancel (rather than continue to trade) after executing with the Complex CUBE Order, if at all, which order handling would align the proposed Rule with Pillar Rule 971.1NYP for single-leg CUBE Auctions on Pillar.[19]

• *Early End Scenarios based on market updates.* Reduce and streamline the number of circumstances that would cause an Auction to end early, which remaining early end scenarios are consistent with the early end scenarios set forth in its pre-Pillar Rule 971.2NY(c)(3)(C)–(D) and (c)(3)(F).[20] This proposed change does not impact nor alter the requirement that a Complex CUBE Auction end early if there is a trading halt in any of the component series, which early termination reason is distinct from

(Orders and Modifiers), 925.1NYP (Market Maker Quotations), 928NYP (Pre-Trade and Activity-Based Risk Controls), 928.1NYP (Price Reasonability Checks—Orders and Quotes), and 952NYP (Auction Process)).

[8] *See* Securities Exchange Act Release No. 97739 (June 15, 2023), 88 FR 40893 (June 22, 2023) (SR–NYSEAMER–2023–17) (order approving Pillar Rule 980NYP (Electronic Complex Order Trading) (the ''Pillar Complex Approval Order''). Pillar Rule 980NYP(a)(7) defines an ''Electronic Complex Order'' or ''ECO'' to mean any Complex Order, as defined in Pillar Rule 900.3NYP(f).

[9] In 2014, the Exchange introduced its CUBE Auction functionality for single-leg trading interest pursuant to Rule 971.1NY and, in 2018, the Exchange introduced Complex CUBE Auction functionality pursuant to Rule 971.2NY. *See, e.g.,* Securities Exchange Act Release Nos. 72025 (April 25, 2014), 79 FR 24779 (May 1, 2014) (SR–NYSEMKT–2014–17) (order approving single-leg CUBE Auctions per Rule 971.1NY); and 83384 (June 5, 2018), 83 FR 27061 (June 11, 2018) (SR–NYSEAMER–2018–05) (order approving Complex CUBE Auctions per Rule 971.2NY).

[10] *See* Securities Exchange Act Release No. 97938 (July 18, 2023), 88 FR 47536 (July 24, 2023) (NYSEAMER–2023–35) (adopting, on an immediately effective basis, Pillar Rule 971.1NYP (the ''Pillar Single-Leg CUBE Filing''). Pillar Rule 971.1NYP replaced and superseded pre-Pillar Rule 971.1NY, which does not apply to trading on Pillar.

[11] As discussed *infra,* prior to the Exchange's migration to Pillar, Rule 971.2NY governed Complex CUBE Auctions (referred to herein as the ''pre-Pillar Rule' ''pre-Pillar Rule 971.2NY''; or ''pre-Pillar Complex CUBE functionality''). On Pillar, however, Rule 971.2NY is no longer applicable. As such, since completing the Pillar migration, the Exchange has not conducted Complex CUBE Auctions.

[12] Although the Exchange describes CUBE Auction functionality for single-leg and complex interest in two separate rules (*i.e.,* Pillar Rule 971.1NYP and proposed Rule 971.2NYP, respectively), the Exchange utilizes the same mechanism to process all CUBE Auctions.

[13] *See* Cboe Exchange, Inc. (''Cboe'') Rule 5.38(b)(1) and (c)(5)(B) (describing Cboe's Complex Automated Improvement Mechanism (''C–AIM''), which includes pricing requirements to both initiate and participate in a C–AIM that are substantially similar those proposed herein, as discussed, *infra.*).

[14] *See generally* Pillar Rule 971.1NYP and the Single-Leg Pillar Filing (as discussed, *infra,* includes the same functionality enhancements as proposed herein). *See generally* Cboe Exchange, Inc. (''Cboe'') Rule 5.38 (describing Cboe's C–AIM, which, as discussed, *infra,* includes substantially the same functionality as certain of the modifications and enhancements in the proposed Rule as noted herein).

[15] *See, e.g.,* Pillar Rule 964NYP(e) (providing that, at each price, displayed Customers have first priority followed by displayed non-Customers, and followed (last) by non-displayed interest (with non-displayed Customers having priority over non-displayed, non-Customers). *See generally* Rule 980NYP (requiring that when an ECO trades with another ECO (*i.e.,* cannot trade with the leg markets—like a Complex CUBE Order—the ECO must, in certain circumstances, trade at a price that improves (is better than) the displayed Customer interest to yield priority to such interest, including for: ECO Auction Collars (*see* Rule 980NYP(d)(3)), ECOs designated as Complex Only Orders (*see* Rule 980NYP(e)(1)(C)); and ECOs initiating or participating in a Complex Order Auction (*see* Rule 980NYP(f)(1) and (f)(2)(A)).

[16] For a more detailed discussion of the DBBO, *see* the Pillar Complex Approval Order, 88 FR, at 40896–98. *See also* Pillar Rule 980NYP(a)(5) (defining the DBBO).

[17] *See* Cboe Rule 5.38(b)(1) and (e)(5)(B) (regarding pricing requirements for participation in C–AIM, as discussed *infra*).

[18] *See* Pillar Rule 971.1NYP(c)(1)(B). As described herein, on Pillar, the proposed Response Time Interval would continue to be no less than 100 milliseconds and no more than one (1) second. *Compare* proposed Rule 971.2NYP(c)(1)(B) *with* pre-Pillar Rule 971.2NY(c)(1)(B).

[19] *See* Pillar Rule 971.1NYP(c)(1)(C)(i) (describing the same GTX Order functionality for single-leg CUBE Auctions on Pillar).

[20] *See* pre-Pillar Rule 971.2NY(c)(3)(A)–(F) (which sets forth the pre-Pillar early end scenarios).

ending an Auction early based on incoming options trading interest.[21]

• *Surrender Quantity.* Provide Complex Contra Orders that guarantee Complex CUBE Orders with a stop price the option of requesting to receive a lesser participant guarantee than the standard 40% (*i.e.,* the Surrender Quantity), which would align the proposed Rule with Pillar Rule 971.1NYP for single-leg CUBE Auctions on Pillar.[22]

• *Concurrent Auctions.* Permit multiple Complex CUBE Auctions in the same complex strategy [23] to occur at the same time and specify how such Auctions are processed and, to correspond with this functionality change, add ''AuctionID'' functionality to allow auction responses (*i.e.,* Complex GTX Orders) to specify the Complex CUBE Order with which they would like to trade, which would align the proposed Rule with Pillar Rule 971.1NYP for single-leg CUBE Auctions on Pillar.[24]

• *Complex CUBE Order Allocation.* Update Auction functionality to reflect the allocation of Complex CUBE Orders against RFR Responses in alignment with Pillar Rule 964NYP (Order Ranking, Display, and Allocation), which would align the proposed Rule with Pillar Rule 971.1NYP for single-leg CUBE Auctions on Pillar.[25]

In addition to the foregoing modifications and enhancements, the proposed Rule includes descriptions of pre-Pillar Complex CUBE functionality that will persist on Pillar. However, the Exchange proposes to streamline, clarify, or relocate certain of these descriptions (as indicated herein) to make the proposed Rule more succinct and easier to understand.[26]

Proposed Rule 971.2NYP: Complex CUBE Auctions on Pillar [27]

Complex CUBE Auctions on Pillar will function in a manner that is substantively identical to pre-Pillar Complex CUBE Auctions, with proposed modifications and enhancements specified herein.[28]

Initiating and Pricing of Complex CUBE Auctions Based on the CUBE BBO

Proposed Rule 971.2NYP would begin by describing the general requirements for initiating a Complex CUBE Auction.

• Proposed Rule 971.2NYP(a) is substantively identical to Rule 971.2NY(a) and would provide that a ''Complex CUBE Order'' is a Complex Order, as defined in Pillar Rule 900.3NYP(f), submitted electronically by an ATP Holder (''Initiating Participant'') into the Complex CUBE Auction, that the Initiating Participant represents as agent on behalf of a public customer, broker dealer, or any other entity. The Exchange notes that this provision includes the updated reference to the definition of Complex Orders set forth in Rule 900.3NYP(f) (rather than pre-Pillar Rule 900.3NY(e)), which difference is immaterial because the definition in both rules is substantively identical.[29]

○ Proposed Rule 971.2NYP(a)(1) is substantively identical to Rule 971.2NY(a)(1)(A)–(B) insofar as it would provide that the Initiating Participant would guarantee the execution of the Complex CUBE Order by submitting a contra-side order (''Complex Contra Order'') representing principal interest or non-Customer interest it has solicited to trade solely with the Complex CUBE Order at a specified price (''stop price'') or by utilizing auto-match limit features (as described in proposed paragraph (b)(1) of the Rule).[30] The proposed Rule also specifies that neither the stop price nor the auto-match limit price would be displayed, which detail is consistent with (although not specified in) the pre-Pillar Rule and would therefore add clarity, transparency and internal consistency to Exchange rules.[31]

Next, the Exchange proposes to add a ''Definitions'' section to describe concepts applicable to the proposed Rule. As described below, the proposed terms are the same in name as those used to describe pre-Pillar Complex CUBE functionality but are not necessarily the same in substance.[32] As such, the requirements for starting a Complex CUBE Auction on Pillar are not identical to the requirements set forth in the pre-Pillar Rule. Because most of the proposed definitions cross-reference other defined concepts, the Exchange has organized its discussion of these terms not alphabetically (as is done in the proposed Rule) but instead in a manner that is designed to make the proposed functionality easier to comprehend.

• *DBBO.* The Exchange proposes that DBBO would have the meaning set forth in Pillar Rule 980NYP(a)(5).[33] The Pillar concept of the DBBO refers to the derived best net bid (''DBB'') and derived best net offer (''DBO'') [34] for a complex strategy. As described in the Pillar Complex Approval Order, the concept of the DBBO was based on the

[21] *Compare* proposed Rule 971.2NYP(c)(2) with pre-Pillar Rule 971.2NY(c)(2) (both providing that an Auction will end early if there is a trading halt in any of the component series).

[22] *See* Pillar Rule 971.1NYP(c)(4)(C) (describing the same optional Surrender Quantity functionality for single-leg CUBE Auctions on Pillar).

[23] The Exchange notes that ''complex strategy'' means a particular combination of leg components and their ratios to one another. Pillar Rule 980NYP(a)(4). New complex strategies can be created when the Exchange receives either a request to create a new complex strategy or an ECO with a new complex strategy. *See id.*

[24] *See* Pillar Rule 971.1NYP(c), (c)(1)(A) (describing the same concurrent auction functionality for single-leg CUBE Auctions on Pillar).

[25] *See* Pillar Rule 971.1NYP(c)(4) (describing the same order allocation functionality for single-leg CUBE Auctions on Pillar—*i.e.,* the rule likewise incorporates the priority scheme set forth in Pillar Rule 964NYP).

[26] For example, the Exchange proposes to replace reference to ''$0.01'' with ''one cent ($0.01),'' which the Exchange believes would add clarity and transparency to the proposed Rule. *See* proposed Rule 971.2NYP(a)(1) (A)(ii) and (iv).

[27] As noted herein, pre-Pillar Rule 971.2NY is not applicable on Pillar and the Exchange is not currently conducting Complex CUBE Auctions on Pillar. *See supra* note 11.

[28] *Compare* proposed Rule 971.2NYP *with* pre-Pillar Rule 971.2NY. The proposed Rule updates certain internal (and external) cross-references to reflect the (re)organization of the proposed Rule and to reflect the applicable Pillar rule(s), which differences are not material because they do not impact functionality. The Exchange has also made the stylistic choice to reorganize certain provisions in the proposed Rule to better align with corollary provisions in Pillar Rule 971.1NYP.

[29] *See also* Pillar Rule 900.3NYP(f) (providing a Complex Order is any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy). As discussed *infra,* the Exchange proposes to modify Pillar Rule 980NYP, which governs Electronic Order Trading, to include ''Complex CUBE Orders'' as a type of ECO available for trading on the Exchange. *See* proposed Rule 980NYP(b)(1).

[30] The Exchange notes that the internal cross-reference in the proposed Rule has been updated and expanded to include descriptions of the stop price and auto-match limit price, which difference from pre-Pillar Complex CUBE functionality is not material because it does not impact functionality.

[31] *See* proposed Rule 971.2NYP(a)(1). The Exchange notes that including the proposed rule text would also align with the Pillar rule for single-leg CUBE Auctions. *See* Pillar Rule 971.1NYP(a)(1) (specifying that in a single-leg CUBE Auction neither the stop price nor auto-match limit price are displayed).

[32] *See* proposed Rule 971.2NYP(a)(1)(A) (setting forth ''Definitions'' for purposes of the proposed Rule). The Exchange notes that this proposed section obviates the need for pre-Pillar Commentary .02 (setting forth ''Definitions'' for purposes of the pre-Pillar Rule). As discussed *infra,* the omission of this Commentary does not alter the functionality of the proposed Rule and is therefore immaterial.

[33] *See* proposed Rule 971.2NYP(a)(1)(A)(iii) (defining DBBO).

[34] The DBBO provides for the establishment of a derived (theoretical) bid or offer for a particular complex strategy. *See* Pillar Rule 980NYP(a)(5) (defining the DBBO and providing that the bid (offer) price used to calculate the DBBO on each leg will be the Exchange BB (BO) (if available), bound by the maximum allowable Away Market Deviation). The Away Market Deviation, as defined in Pillar Rule 980NYP(a)(1), ensures that an ECO does not execute too far away from the prevailing market. Pillar Rule 980NYP(a)(5) also provides for the establishment of the DBBO in the absence of an Exchange BB (BO), or ABB (ABO), or both.

definition of Derived BBO set forth in Rule 900.2NY [35] but is more expansive in that it ensures that Electronic Complex Orders (ECOs) do not execute too far away from the prevailing market (*i.e.,* is bound by the Away Market Deviation) and provides alternative means of calculating the DBBO (*e.g.,* by looking to the contra-side best bid (offer) in the absence of same-side interest).[36]

• *Complex BBO.* The Exchange proposes to define the Complex BBO as ''the best-priced complex order(s) in the same complex strategy to buy (sell)'' and would provide that ''[t]he Complex BB cannot exceed the DBO and the Complex BO cannot exceed the (DBB).'' [37] The proposed definition is substantively the same as the definition of Complex BBO set forth in Rule 900.2NY,[38] except that the proposed definition incorporates the Pillar concept of DBBO (described above). Specifically, if the best-priced complex order to buy (sell) crosses the best-priced leg market interest to sell (buy) (*i.e.,* the DBBO), the Exchange would ensure that the Complex BBO honors the leg market prices.[39]

• *CUBE BBO.* The CUBE BBO would refer to the CUBE BB and the CUBE BO.[40] Specifically, as proposed:

○ The CUBE BB for a Complex CUBE Order to buy would be comprised of the higher of: the Complex BB or the Complex BB plus one cent ($0.01) if there is a Customer Complex Order on the Complex BB; or the DBB or the DBB plus one cent ($0.01) if there is displayed Customer interest on the Exchange BBO and the DBB is calculated using the Exchange BBO; and

○ The CUBE BO for a Complex CUBE Order to sell would be comprised of the lower of: the Complex BO or the Complex BO minus one cent ($0.01) if there is a Customer Complex Order on the Complex BO; or the DBO or the DBO minus one cent ($0.01) if there is displayed Customer interest on the Exchange BBO and the DBO is calculated using the Exchange BBO.[41]

Pre-Pillar Rule 971.2NY(a)(2) provided that the CUBE BBO was ''the more aggressive of (i) the Complex BBO improved by $0.01, or (ii) the Derived BBO improved by: $0.01 multiplied by the smallest leg of the complex order strategy.'' [42] Like the pre-Pillar CUBE BBO, the proposed CUBE BBO relies on the best-priced interest on the complex order book or in the leg markets—though, as noted herein, the CUBE BBO incorporates the Pillar concept of DBBO. Unlike pre-Pillar Complex CUBE functionality, the proposed CUBE BBO does not automatically improve the Complex BBO or DBBO, as applicable, nor does it account for the smallest leg ratio if the leg markets make up the CUBE BBO.[43] Instead, as proposed, the CUBE BBO would price improve the best-priced interest on the Exchange only if such interest represents displayed Customer interest, which incorporates the Exchange's Customer-centric priority scheme.

The Exchange's priority and allocation procedures are set forth in Pillar Rule 964NYP. Pillar Rule 964NYP(e) specifies that, at each price, and within each priority category, Customer interest has priority over non-Customer interest and (also at each price) displayed Customer interest has priority over non-displayed Customer interest.[44] Thus, the proposal to require that the CUBE BBO price improve only displayed Customer interest is consistent with the Pillar priority scheme. Moreover, the proposed Rule would align with Pillar Rule 980NYP, which requires that when an ECO trades with another ECO (*i.e.,* not with the leg markets) the transaction price must improve certain ''displayed Customer interest'' to yield priority to such interest.[45] Therefore, the proposed CUBE BBO would align the proposed Rule with existing Pillar rules.

In addition, the proposal to require the CUBE BBO to price improve by one penny the best-priced interest on the Exchange when it includes displayed Customer interest, while different from pre-Pillar functionality, is a competitive change designed to help the Exchange better compete for complex auction order flow. Specifically, Cboe offers a Complex Automated Improvement Mechanism (''C–AIM''), which is analogous to the Complex CUBE Auction. Like the proposed CUBE BBO, Cboe requires C–AIM participants to price improve interest resting on Cboe only when such interest represents a ''Priority Customer'' on the SBBO (which is analogous to the DBBO).[46] While the Cboe C–AIM Rule does not specify that the Priority Customer interest must be displayed interest, the Exchange believes this is a reasonable inference based on requirements set forth in other Cboe rules as well as the fact that Cboe, like the Exchange, must also comply with the Options Order Protection and Locked/Crossed Market Plan.[47] As such, the Exchange believes

[35] *See* Rule 900.2NY (defining Derived BBO as being ''calculated using the BBO from the Consolidated Book for each of the options series comprising a given complex order strategy'').

[36] *See* Pillar Complex Approval Order, 88 FR, at 40896–98.

[37] *See* proposed Rule 971.2NYP(a)(1)(A)(i) (defining Complex BBO).

[38] *See* Rule 900.2NY (defining the ''Complex BBO'' as ''the complex orders with the lowest-priced (*i.e.,* the most aggressive) net debit/credit price on each side of the Consolidated Book for the same complex order strategy'').

[39] The terms ''leg'' or ''leg market'' refers to each of the component option series that comprise an ECO and ''ratio'' refers to the quantity of each leg of an ECO broken down to the least common denominator such that the ''smallest leg ratio'' is the portion of the ratio represented by the leg with the fewest contracts. *See* Pillar Rule 980NYP(a)(8), (a)(9), respectively.

[40] *See* proposed Rule 971.2NYP(a)(1)(A)(ii) (defining CUBE BBO).

[41] *See* proposed Rule 971.2NYP(a)(1)(A)(ii)(a)–(b).

[42] *See* pre-Pillar Rule 971.2NY(a)(2).

[43] The Exchange notes that, pre-Pillar, if the CUBE BBO was based on the Derived BBO and the leg ratio of the complex strategy is 2x3 leg ratio, the CUBE BBO would improve the Derived BBO by two cents ($0.02)—regardless of the presence of Customer interest on the Derived BBO. As discussed herein, although the requisite price improvement to the CUBE BBO is never more than one penny, the Exchange believes this pricing change is competitive and would enable the Exchange to better compete for Complex CUBE Auction flow.

[44] *See* Rule 964NYP(e)(1)–(3) (setting forth three categories in order of first priority—Priority 1—Market Orders; Priority 2—Displayed Orders; and Priority 3—Non-Display Orders; providing that, within each priority category, at a price, Customers have priority over non-Customers; and that ''[i]f, at a price, there are no remaining orders or quotes in a priority category, then same-priced interest in the next priority category has priority).

[45] *See, e.g.,* Pillar Rules 980NYP(d)(3) (providing that the ECO Auction Collars, within which ECOs trade in the ECO Opening Auction, account for (and price improve) ''displayed Customer interest'' on the Exchange BBO(s)); 980NYP(e)(1)(C) (requiring that ECOs designated as ''Complex Only Orders'' trade at a price that improves ''displayed Customer interest'' on the Exchange BBO(s)); and 980NYP(f)(2) (requiring that ECOs may only trade in a Complex Order Auction (COA) at a price that improves ''displayed Customer interest'' on the Exchange BBO(s)).

[46] *See* Cboe Rule 5.38(b)(1) (requiring that, to initiate a C–AIM, the ''Initiating Order'' (akin to Complex Contra Order) must be guaranteed by the ''Agency Order'' (akin to Complex CUBE Order) at a price that improves by at least one MPV the best-priced interest on the complex order book or in the leg markets when such interest represents a ''Priority Customer''). *See also* Cboe Rule (e)(5)(B) (providing that responses to a C–AIM must execute with the Agency Order at a price that is ''(i) the better of the SBO (SBB) [Synthetic Offer (Synthetic Bid] or the offer (bid) of a resting complex order at the top of the COB [Complex Order Book]; or (ii) one minimum increment lower (higher) than the better of the SBO (SBB) or the offer (bid) of a resting complex order at the top of the COB if the BBO of any component of the complex strategy or the resting complex order, respectively, is a Priority Customer order''). Cboe defines a Priority Customer as ''a person or entity that is a Public Customer and is not a Professional,'' which is analogous with the Exchange's definition of Customer. *Compare* Cboe Rule 1.1 *with* Rule 900.2NY (defining Customer and Professional Customer).

[47] The C–AIM pricing requirement that the Exchange proposes to copy is based on the presence of a Priority Customer on the SBBO. The definition of SBBO incorporates Cboe's definition of the BBO, is ''the best bid or offer *disseminated* on the Exchange'' (Cboe Rule 1.1 (emphasis added)). The SBBO represents ''the best net bid and net offer'' on Cboe as calculated using, for complex orders,

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that making price improvement for the CUBE BBO contingent on the presence of displayed Customer interest (as opposed to automatic) may increase Complex CUBE Orders directed to the Exchange (as a result of the more competitive requirements), while maintaining the Exchange's Customer-centric priority scheme.[48] In addition, the proposed CUBE BBO would continue to protect same-priced, displayed Customer interest and would ensure that Complex CUBE Orders do not trade ahead of such displayed Customer interest, whether in the leg markets or as Customer Complex Orders.

• *Initiating Price.* The ''initiating price'' for a Complex CUBE Order to buy (sell) would be the lower (higher) of the Complex CUBE Order's net price or the price that locks the DBO (DBB) or, if the DBO (DBB) includes displayed Customer interest on the Exchange, the DBO (DBB) minus (plus) one cent ($0.01).[49] The pre-Pillar Rule 971.2NY(a)(3) provides that the initiating price for a Complex CUBE Order is ''the less aggressive of the net debit/credit price of such order or the price that locks the contra-side CUBE BBO, which is consistent with the proposed Rule insofar as it relies on the limit price of the Complex CUBE Order as one boundary.'' [50] [sic] The proposed concept relies on the Pillar concept of the DBBO rather than the (pre-Pillar) CUBE BBO, which distinction ensures that the Complex CUBE Order can be priced equal to prices available in the leg markets but must improve such prices in the presence of displayed Customer interest.[51] The Exchange notes that this distinction was not necessary in the pre-Pillar Rule because, as noted herein, the CUBE BBO always price improved the best-priced interest on the Exchange (including on the leg markets) regardless of the presence of Customer interest. As such, the Exchange believes that the proposed ''initiating price'' would continue to respect leg market prices and improve leg market prices in the presence of displayed Customer interest. The Exchange notes that the proposed ''initiating price'' definition would align the Exchange with the price parameters in place on at least one competing options exchange.[52]

• *Range of Permissible Executions.* The ''range of permissible executions'' of a Complex CUBE Order to buy (sell) would include prices equal to or between the initiating price as the upper (lower) bound and the CUBE BB (BO) as the lower (upper) bound, which range is consistent with the pre-Pillar range except that it incorporates the Pillar definition of CUBE BBO.[53] Like the pre-Pillar Rule, the proposed Rule would specify when the Exchange would adjust the permissible range of executions based on interest that arrives during the Auction. Specifically, as proposed, the range of permissible executions for a Complex CUBE Order to buy (sell) would be adjusted based on updates to the CUBE BB (BO) during an Auction, providing that, if the CUBE BB (BO) updates to be higher (lower) than the initiating price, the Auction will end early pursuant to paragraph (c)(3) of this Rule.[54]

Initiating of Auction

Proposed Rule 971.2NYP would set forth the requirements for initiating a Complex CUBE Auction, which are substantively identical to pre-Pillar functionality as noted herein. Specifically, to initiate an Auction, the net price of a Complex CUBE Order to buy (sell) must be equal to or higher (lower) than the CUBE BB (BO) and a Complex CUBE Order that fails to meet these requirements would be rejected along with the Complex Contra Order.[55] As further proposed, the time at which the Auction is initiated would also be considered the time of execution for the Complex CUBE Order, which is identical to pre-Pillar functionality.[56]

Complex CUBE Auction Eligibility Requirements

On Pillar, as is the case today, all options traded on the Exchange would be eligible to be part of a Complex CUBE Auction.[57] Proposed Rule 971.2NYP(b), like the pre-Pillar Rule, would set forth the requisite conditions for initiating a Complex CUBE Auction.

• Proposed Rule 971.2NYP(b)(1) is substantively identical to Rule 971.2NY(b)(1) and would provide that the Initiating Participant marks the Complex CUBE Order for Auction processing and submits a Complex Contra Order with a ''stop price'' or an ''auto-match limit price'' (described below) as the means of guaranteeing the execution of the Complex CUBE Order.

○ Proposed Rule 971.2NYP(b)(1)(A), like Rule 971.2NY(b)(1)(A), would describe the ''stop price'' as the price at which the Initiating Participant guarantees the Complex CUBE Order.[58] The pre-Pillar Rule provides that that the stop price, ''must be executable against the initiating price'', that a stop price must not cross the same-side

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''the BBO for each component,'' of a complex strategy from the Simple Book [*i.e.,* leg markets] (Cboe Rule 5.33(a)). Because the SBBO for each component leg is based on the best bid and offer *disseminated* by Cboe, the Exchange believes it is reasonable to infer that only displayed Priority Customer is considered for purposes of C–AIM pricing. As such, the Exchange believes that the proposed Rule is consistent with (a reasonable interpretation of) Cboe's requirements and is therefore not new or novel.

[48] As noted, *supra,* the proposed CUBE BBO, if based on the DBBO, ignores the leg ratio of the complex strategy and would require price improvement of only one penny, which is consistent (and competitive) with Cboe as discussed herein.

[49] *See* proposed Rule 971.2NYP(a)(1)(A)(iv) (defining the initiating price).

[50] *See* pre-Pillar Rule 971.2NY(a)(3). As noted above, per pre-Pillar Rule 971.2NY(a)(2), the CUBE BBO must improve the Complex BBO or Derived BBO, as applicable, by at least one cent ($0.01) regardless of Customer interest.

[51] As noted herein, Complex CUBE Orders may not trade with interest in the leg markets; however, such orders may not trade at prices that disadvantage interest in the leg markets, including displayed Customer interest. *See, e.g.,* Pillar Rule 980NYP(c)(2) (providing that when an ECO is trading with another ECO, ''each component leg of the ECO must trade at a price at or within the Exchange BBO for that series'') and 980NYP(e)(1)(A) (providing that, at a price, interest in the leg markets have first priority to trade with an ECO provided it can trade in full or in a permissible ratio).

[52] *See* Cboe Rule 5.38(e)(5)(B) (regarding permissible range of executions at the conclusion of a C–AIM auction).

[53] *Compare* proposed Rule 971.2NYP(a)(1)(A)(v) (defining the range of permissible executions) *with* pre-Pillar Rule 971.2NY(a)(4) (providing that ''[t]the 'range of permissible executions' of a Complex CUBE Order is all prices equal to or between the initiating price and the same-side CUBE BBO''). As noted *infra,* unlike pre-Pillar Rule 971.2NY, the proposed Rule does not refer to the ''same-side CUBE BBO,'' but instead specifies the CUBE BB or CUBE BO, as applicable.

[54] *Compare* proposed Rule 971.2NYP(a)(1)(A)(v) *with* pre-Pillar Rule 971.2NY(a)(4)(A) (providing relevant part, that the CUBE BBO would not update during the Auction if such ''updated CUBE BBO would cause the Auction to conclude earlier pursuant to paragraph (a)(3) of this Rule').

[55] *See* proposed Rule 971.2NYP(a)(2) (Initiating of Auction). *See also* pre-Pillar Rule 971.2NY(b)(2) (providing that ''[a] Complex CUBE Order that does not have a net debit/credit price that is equal to or better than the same-side CUBE BBO is not eligible to initiate an Auction and will be rejected, along with the Complex Contra Order''). The Exchange notes that pre-Pillar Rule 971.2NY(a)(2) refers to a ''net debit/credit price,'' the Exchange proposes to refer simply to the ''net price.'' *See, e.g.,* Pillar Rule 980NYP(c) (referring to the total ''net price'' of an ECO for ranking and priority purposes).

[56] *See* proposed Rule 971.2NYP(a)(2) (Initiating of Auction). *See also* pre-Pillar Rule 971.2NY(c) (providing that [t]he time at which the Auction is initiated will also be considered the time of execution for the Complex CUBE Order'').

[57] Unlike the pre-Pillar Rule, which states that all options traded on the Exchange are eligible to be ''part of a Complex CUBE Order,'' the proposed rule would state that all such options would be eligible to be ''part of a Complex CUBE Auction.'' *Compare* proposed Rule 971.2NYP(b) *with* pre-Pillar Rule 971.2NY(b). This proposed difference would align with Pillar Rule 971.1NYP(b), which provides that ''[a]ll options traded on the Exchange are eligible to be part of the CUBE Auction.''

[58] *Compare* proposed Rule 971.2NY(b)(1)(A) (providing that the single ''stop price'' is ''the price at which the Initiating Participant guarantees the Complex CUBE Order'') *with* pre-Pillar Rule 971.2NY(b)(1)(A) (same).

CUBE BBO; and that ''[t]he Complex Contra Order may trade with the Complex CUBE Order at the stop price''.[59] The Exchange proposes to streamline the implementation of the stop price requirements. Specifically, the proposed Rule would state definitively that ''[t]he stop price must be equal to the initiating price,'' otherwise both the Complex CUBE Order and the Complex Contra Order would be rejected and no Auction would be initiated.[60] The Exchange believes the proposed Rule, which relies solely on the initiating price as the benchmark for the stop price, would add clarity and transparency to, and would improve the accuracy of, the stop price requirements.[61]

○ Proposed Rule 971.2NYP(b)(1)(B) is substantively identical to Rule 971.2NY(b)(1)(B), with differences specified below. Like the pre-Pillar Rule, the proposed Rule would describe the ''auto-match limit price'' as the best (*i.e.,* most aggressive) price at which the Initiating Participant is willing to trade with the Complex CUBE Order, which price must be executable against the initiating price of the Auction.[62] Also consistent with the pre-Pillar Rule, the proposed Rule would specify that when the Initiating Participant guarantees a Complex CUBE Order with an auto-match limit price, the Complex Contra Order for a Complex CUBE Order to buy (sell) would automatically match the price and size of all RFR Responses that are priced lower (higher) than the initiating price down (up) to the auto-match limit price.[63]

In addition, consistent with the pre-Pillar Complex CUBE rule (although worded differently), the proposed Rule would provide that an auto-match limit price specified for a Complex CUBE Order to buy (sell) that is below (above) the CUBE BB (BO) will be repriced to the CUBE BB (BO).[64] Finally, consistent with the pre-Pillar Rule (although not explicitly stated), the Exchange proposes to state that an auto-match limit price specified for a Complex CUBE Order to buy (sell) that is above (below) the initiating price is not eligible to initiate an Auction and both the Complex CUBE Order and the Complex Contra Order will be rejected.[65] The Exchange believes this proposed change would add clarity, transparency, and internal consistency to Exchange rules.[66]

On Pillar, the Exchange would continue to reject Complex CUBE Orders (together with Complex Contra Orders) under the following two circumstances, each of which is identical to the reasons for rejection of such orders per pre-Pillar Rule 971.2NY (b)(3) and (b)(5), respectively, as described below.

• Proposed Rule 971.2NYP(b)(2) is identical to Rule 971.2NY(b)(3) and would provide that Complex CUBE Orders submitted before the opening of trading would not be eligible to initiate an Auction and would be rejected, along with the Complex Contra Order.

• Proposed Rule 971.2NYP(b)(4) is identical to Rule 971.2NY(b)(5) and would provide that Complex CUBE Orders submitted during a trading halt are not eligible to initiate an Auction and would be rejected, along with the Complex Contra Order.

In addition, the proposed Rule would continue to reject Complex CUBE Orders (together with Complex Contra Orders) under the following circumstance, which differs slightly the from the pre-Pillar rule, but would align the proposed Rule with Pillar Rule 971.1NYP for single-leg CUBE Auctions on Pillar.[67]

• Proposed Rule 971.2NYP(b)(3) would provide that the Exchange would reject Complex CUBE Orders submitted when there is insufficient time in the trading session to conduct an Auction. However, whereas the pre-Pillar rule provides that Complex CUBE Orders are rejected if submitted during ''the final second of the trading session,'' the proposed Rule would provide that Complex CUBE Orders would be rejected if submitted ''when there is insufficient time for an Auction to run the full duration of the Response Time Interval.'' [68] The Exchange believes that the proposed change would better account for the fact that a CUBE Auction may last for as little as 100 milliseconds—well below the permitted maximum of one second as stated in the pre-Pillar Rule.[69]

The Exchange believes that this proposed change, which mirrors the operation of the Response Time Interval for single-leg CUBE Auctions, would add clarity, transparency, and internal consistency to Exchange rules regarding when CUBE Orders may be rejected—particularly to market participants

[59] *See* pre-Pillar Rule 971.2NY(b)(1)(A) (providing that, ''[i]f an Initiating Participant specifies a single stop price, the stop price must be executable against the initiating price of the Auction. The Complex Contra Order may trade with the Complex CUBE Order at the stop price, pursuant to paragraph (c)(4) of this Rule. If the stop price crosses the same-side CUBE BBO, the Complex CUBE Order is not eligible to initiate an Auction and will be rejected along with the Complex Contra Order'').

[60] *See* proposed Rule 971.2NYP(b)(1)(A) (providing that ''[t]he stop price must be equal to the initiating price,'' and that ''[a] stop price specified for a Complex CUBE Order that is not equal to the initiating price is not eligible to initiate an Auction and both the Complex CUBE Order and the Complex Contra Order will be rejected'').

[61] Compare proposed Rule 971.2NYP(b)(1)(A) (relying solely on the initiating price as the benchmark against which the stop price is evaluated) *with* '' Rule 971.2NY(b)(1)(A) (relying solely on the initiating price as the benchmark against which the stop price is evaluated) providing, in relevant part, that ''[t]he Complex Contra Order may trade with the Complex CUBE Order at the stop price'').

[62] *See* pre-Pillar Rule 971.2NY(b)(1)(B) (providing that the ''auto-match limit price'' is the most aggressive price at which the Initiating Participant is willing to trade with the Complex CUBE Order, which must be executable against the initiating price of the Auction). The proposed Rule differs in that it refers to ''best price,'' rather than ''most aggressive price,'' which is a stylistic preference that would add clarity and transparency to Exchange rules.

[63] *See* pre-Pillar Rule 971.2NY(b)(1)(B) (providing that ''[t]he Complex Contra Order may trade with the Complex CUBE Order at prices that are better than or equal to the initiating price until trading at the auto-match limit price, if applicable,'' pursuant to paragraph (c)(4) of the pre-Pillar Rule regarding Order Allocation).

[64] *Compare* proposed Rule 971.2NYP(b)(1)(B) *with* pre-Pillar Rule 971.2NY(b)(1)(B) (providing, in relevant part, that ''[i]f the auto-match limit price crosses the same-side CUBE BBO, the Complex Contra Order will be priced back to lock the same-side CUBE BBO.).The Exchange notes that the proposed Rule provision is substantively the same as the pre-Pillar Rule, however, rather than use the terms ''cross'' and ''lock,'' the proposed Rule specifies whether the Complex CUBE Order is to buy or sell and includes the relevant side of the CUBE BBO, which would add clarity and transparency to Exchange rules.

[65] *See* proposed Rule 971.2NYP(b)(1)(B).

[66] The Exchange notes that this functionality has been implemented for single-leg CUBE Auctions on Pillar. *See, e.g.,* Pillar Rule 971.1NYP(b)(1)(C) (providing that for a single-leg CUBE Auction, ''[a]n auto-match limit price specified for a CUBE Order to buy (sell) that is above (below) the initiating price is not eligible to initiate an Auction and both the CUBE Order and the Contra Order will be rejected'').

[67] The proposed Rule would also align with single-leg CUBE Auction functionality. *See, e.g.,* Pillar Rule 971.1NYP(b)(4) (''CUBE Orders submitted when there is insufficient time for an Auction to run the full duration of the Response Time Interval are not eligible to initiate an Auction and shall be rejected, along with the Contra Order'').

[68] *Compare* proposed Rule 971.2NYP(b)(3) (''Complex CUBE Orders submitted when there is insufficient time for an Auction to run the full duration of the Response Time Interval are not eligible to initiate an Auction and shall be rejected, along with the Complex Contra Order'') *with* pre-Pillar Rule 971.2NY(b)(4) (''Complex CUBE Orders submitted during the final second of the trading session in the component series are not eligible to initiate an Auction and shall be rejected, along with the Complex Contra Order''). The Exchange proposes to remove the superfluous reference to ''in the component series,'' which would streamline the proposed Rule text. *See* proposed Rule 971.2NYP(b)(3).

[69] *See, e.g.,* pre-Pillar Rule 971.2NY(c)(1)(B) (providing in relevant part, that ''[t]he minimum/maximum parameters for the Response Time Interval will be no less than 100 milliseconds and no more than one (1) second''). *See also* proposed Rule 971.2NYP(c)(1)(B) (which provides the same minimum/maximum parameters), as discussed *infra.*

submitting CUBE Orders late in the trading day.

Auction Process: Request for Responses and Response Time Interval

On Pillar, the Exchange proposes to utilize the (same) process set forth in pre-Pillar Rule 971.2NY(c) for announcing a Complex CUBE Auction and soliciting trading interest to potentially interact with the Complex CUBE Order, with modifications and enhancements specified below.

- Proposed Rule 971.2NYP(c) would provide that once an Auction has commenced, the Complex CUBE Order (as well as the Complex Contra Order) may not be cancelled or modified, which text is identical to the latter portion of the last sentence of pr pre-Pillar Rule 971.2NY(c).
- Proposed Rule 971.2NYP(c)(1)(A) is substantively identical to pre-Pillar Rule 971.2NY(c)(1)(A) and would provide that upon receipt of a Complex CUBE Order, the Exchange would send a ''Request for Responses'' or ''RFR'' to all ATP Holders who subscribe to receive RFR messages, which RFR would identify the series, the side and size of the Complex CUBE Order, as well as the initiating price. On Pillar, however, the RFR would also include an AuctionID that would identify each Complex CUBE Auction, which would be a new feature.[70] The Exchange notes that other options exchanges likewise include an AuctionID on the request for responses to the price improvement auction and this proposed change is therefore not new or novel.[71]
- Proposed Rule 971.2NYP(c)(1)(B) is substantively identical to pre-Pillar Rule 971.2NY(c)(1)(B) insofar as it provides that the ''Response Time Interval'' would refer to the time period during which responses to the RFR may be entered, which period would be no less than 100 milliseconds and no more than one (1) second. The proposed rule differs from the pre-Pillar rule, which provides for a Response Time Interval that lasts for ''a random period of time within parameters determined by the Exchange and announced by Trader Update.'' [72] Rather than a random period of time, the Exchange proposes that the Response Time Interval would instead be a set duration of time, which is more deterministic.[73] This proposal to rely on a fixed (rather than random) duration of time for a price improvement auction is identical to single-leg CUBE Auction functionality and consistent with functionality available on another options exchange.[74]

Proposed Rule 971.2NYP(c)(1)(C) is identical to pre-Pillar Rule 971.2NY(c)(1)(C) insofar as it would provide that any ATP Holder may respond to the RFR, provided such response is properly marked specifying the price, size and side of the market (''RFR Response'').[75] The proposed Rule would also provide that, consistent with the pre-Pillar Rule (although stated differently), any RFR Response to a Complex CUBE Order to buy (sell) priced below (above) the CUBE BB (BO) would be repriced to the CUBE BB (BO) and would be eligible to trade in the Auction at such price.[76]

RFR Responses: Complex GTX Orders

On Pillar and consistent with the pre-Pillar rule, the Exchange would accept Complex GTX Orders as RFR Responses and impose the following requirements for such orders to be eligible to trade in the CUBE Auction.

- Proposed Rule 971.2NYP(c)(1)(C)(i) is substantively identical to pre-Pillar Rule 971.2NY(c)(1)(C)(i) and would provide that ATP Holders may respond to RFRs with Complex GTX Orders, which are ECOs, as defined in Pillar Rule 980NYP, and have a time-in-force contingency for the Response Time Interval, and must specify price, size and side of the market.[77] The proposed Rule would also specify that Complex GTX Orders must be on the opposite side of the market as a Complex CUBE Order being auctioned when submitted, which would add clarity and transparency to Exchange rules.[78]
- Proposed Rule 971.2NYP(c)(1)(C)(i)(a) is identical to the first sentence of pre-Pillar Rule 971.2NY(c)(1)(C)(i)(a) and would provide that Complex GTX Orders would not be displayed on the Consolidated Book and would not be disseminated to any participants.
- Proposed Rule 971.2NYP(c)(1)(C)(i)(c) is identical to pre-Pillar Rule 971.2NY(c)(1)(C)(i)(c) and would provide that Complex GTX Orders may be cancelled or modified.

In addition to continuing the foregoing requirements, the Exchange proposes to modify or clarify the operation of Complex GTX Orders on Pillar (as compared to pre-Pillar) as follows.[79]

- The Exchange proposes new functionality on Pillar that would permit senders of Complex GTX Orders the option to include an AuctionID to signify the Complex CUBE Order with which such Complex GTX Order would like to trade.[80] The Exchange believes that this proposed functionality, which is also available for single-leg CUBE Auctions and on other options exchanges, would allow market participants to have more control over their trading interest.[81] For the sake of

[70] *See* proposed Rule 971.2NYP(c)(1)(A).

[71] *See* Cboe Rule 5.38(c)(2) (providing that each ''AIM Auction Notification Message'' will include an ''AuctionID''). *See also* Pillar Rule 971.1NYP(c)(1)(A) (providing for the inclusion of AuctionIDs on RFRs announcing single-leg CUBE Auctions).

[72] *See* pre-Pillar Rule 971.2NY(c)(1)(B). *See* Trader Update, January 27, 2022 (announcing that, beginning February 28, 2022, the randomized timer would have a minimum of 100 milliseconds and a maximum of 105 milliseconds), available at, *https://www.nyse.com/trader-update/history#110000409951*.

[73] *See* proposed Rule 971.2NYP(c)(1)(B).

[74] *See* Pillar Rule 971.1NYP(c)(1)(B) (providing the same requirement that ''[t]he Response Time Interval will last for a set duration within parameters determined by the Exchange and announced by Trader Update.''). *See* Cboe Rule 5.38(c)(3) (providing that the ''C–AIM Auction period'' is a period of time determined by the Exchange, which may be no less than 100 milliseconds and no more than 3 seconds).

[75] The Exchange notes that the proposed Rule includes the non-substantive change to add ''the'' before the word ''price,'' which would add clarity and transparency to Exchange rules.

[76] *Compare* proposed Rule 971.2NYP(c)(1)(C) *with* pre-Pillar Rule 971.2NY(c)(1)(C) (providing, in relevant part, that any RFR Response that crosses the same-side CUBE BBO will be eligible to trade in the Complex CUBE Auction at a price that locks the same-side CUBE BBO). The Exchange notes that the proposed Rule provision is substantively the same as the pre-Pillar Rule, however, rather than use the terms ''cross'' and ''same-side CUBE BBO,'' the proposed Rule specifies whether the Complex CUBE Order is to buy or sell and includes the relevant side of the CUBE BBO, which would add clarity and transparency to Exchange rules.

[77] The Exchange notes that the proposed Rule updates the cross-reference to reflect Pillar Rule 980NYP (from the reference in pre-Pillar Rule 971.2NY(c)(1)(C)(i) to pre-Pillar Rule 980NY).

[78] *See* proposed Rule 971.2NYP(c)(1)(C)(i). As discussed, *infra,* the Exchange would reject a Complex GTX Order that is submitted when there is no contra-side Complex CUBE Order being auctioned. *See* proposed Rule 971.2NYP(c)(1)(C)(i)(d).

[79] Unlike pre-Pillar Rule 971.2NY(c)(1)(C)(i)(b), the proposed Rule will not state that ''Complex GTX Orders with a size greater than the size of the Complex CUBE Order will be capped at the size of the CUBE Order,'' because, consistent with Pillar Rule 964NYP and as discussed below, only non-Customer Complex GTX Orders would be capped for purposes of pro rata allocation, whereas Customer Complex GTX Orders would trade with the CUBE Order based on time. *See* proposed Rule 971.2NYP(c)(4)(B), as discussed *infra*.

[80] *See* proposed Rule 971.2NYP(c)(1)(C)(i) (providing in relevant part that ''Complex GTX Orders may include an AuctionID to respond to a specific Complex CUBE Auction''). Should the Complex GTX Order include an apparently erroneous AuctionID (*e.g.,* a Complex GTX Order to buy includes an AuctionID for a Complex CUBE Order to buy), the Exchange would reject such Complex GTX Order even if there are other Auctions (*e.g.,* on the contra-side with a different AuctionID) with which that Complex GTX Order could have traded.

[81] *See* Pillar Rule 971.1NYP(c)(1)(C)(i) (providing that GTX Orders responding to a single-leg CUBE

clarity and transparency, the proposed Rule would also state that a Complex GTX Order that does not include an AuctionID would respond to the Auction that began closest in time to the submission of the Complex GTX Order.[82]

• The Exchange proposes to describe how Complex GTX Orders will be treated on Pillar consistent with Pillar Rule 964NYP (described in detail below).[83] In short, on Pillar, options trading interest is prioritized and allocated in one of three categories: Priority 1—Market Orders; Priority 2—Display Orders; and Priority 3—Non-Display Orders.[84] The proposed Rule would provide that, although such orders are not disseminated or displayed (as described above), for purposes of trading and allocation with the Complex CUBE Order, Complex GTX Orders would be ranked and prioritized as Priority 2—Display Orders per Pillar Rule 964NYP(e).[85] The Exchange believes that this proposed change, which mirrors the handling of GTX Orders in single-leg CUBE Auctions, would add clarity, transparency, and internal consistency to Exchange rules and would make clear to market participants responding to Complex CUBE Auctions with Complex GTX Orders how such interest will be prioritized on Pillar.[86]

• The Exchange also proposes to modify the operation of Complex GTX Orders on Pillar by restricting the interest with which such orders may trade. Pursuant to the second sentence of pre-Pillar Rule 971.2NY(c)(2), any size of a Complex GTX Order that remains after it executes, if at all, with the Complex CUBE Order may then execute with other ECOs on the same side of the market as the CUBE Order before cancelling.[87] On Pillar, the Exchange proposes that Complex GTX Orders, which are submitted for the purpose of participating in an Auction, would execute solely with the Complex CUBE Order, if at all, and then cancel, which differs from the pre-Pillar Rule and is identical to how the Exchange handles GTX Orders submitted to the single-leg CUBE Auction.[88] Like GTX Orders submitted to the single-CUBE Auction, the Exchange believes that allowing the Complex GTX Order to execute solely with the Complex CUBE Order, if at all, would enable ATP Holders to send targeted, more deterministic, Auction responses (including to interact with specific Auctions by utilizing the optional AuctionID functionality, discussed above).[89] The Exchange notes that ATP Holders would continue to have the option to submit RFR Responses not designated as Complex GTX Orders, which Responses would be eligible to trade with any contra-side interest received during the Auction, with any remaining portion of such Responses being cancelled or processed pursuant to Pillar Rule 964NYP, as applicable.[90]

• The Exchange also proposes to modify the circumstances under which a Complex GTX Order would be rejected. First, the Exchange proposes to reject Complex GTX Orders that are priced higher (lower) than the initiating price of a CUBE Order to buy (sell) or that are submitted when there is no contra-side Complex CUBE Auction being conducted, which is consistent with the handling of GTX Orders submitted to single-leg CUBE Auctions.[91]

In addition, as discussed *infra,* on Pillar, the Exchange would allow more than one Auction in a given complex strategy to occur at once—which simultaneous Auctions could be on both sides of the market.[92] Thus, rather than reject Complex GTX Orders submitted on the same side of a Complex CUBE Order (*e.g.,* per pre-Pillar Rule 971.2NY(c)(1)(c)(i)(d)), the Exchange would instead reject Complex GTX Orders submitted when there is no contra-side Complex CUBE Auction occurring when the Complex GTX Order is submitted.[93] The Exchange believes this proposed change would provide increased opportunities to solicit price-improving auction interest.

Consistent with pre-Pillar Rule 971.2NY, the Exchange proposes to treat as RFR Responses certain unrelated Electronic Complex Orders (or ECOs), as defined in Pillar Rule 980NYP, including ECOs designated to be submitted to the Complex Order Auction (''COA'').[94] Further, like the pre-Pillar rule, the proposed Rule would provide that the Exchange will treat as an RFR Response any ECO that is on the opposite side of the market as a Complex CUBE Order; is not marked GTX; is received during the Response Time Interval or resting in the Consolidated Book when the Auction commences; and is eligible to

Auction may include an AuctionID). *See also* Cboe Rule 5.38(c)(5) (providing that AIM Auction responses may include ''the AuctionID for the AIM Auction to which the User is submitting the response'').

[82] *See* proposed Rule 971.2NYP(c)(1)(C)(i).

[83] *See* discussion of Complex CUBE Order allocation, per Pillar Rule 964NYP, *infra. See also* Pillar Priority Filing (describing the Pillar Priority Rules, which govern priority and allocation for options trading on Pillar).

[84] *See* Pillar Rule 964NYP(e) (providing that ''[a]t each price, all orders and quotes are assigned a priority category and, within each priority category, Customer orders are ranked ahead of non-Customer'' and that ''[i]f, at a price, there are no remaining orders or quotes in a priority category, then same-priced interest in the next priority category has priority.'').

[85] *See* proposed Rule 971.2NYP(c)(1)(C)(i)(a) (''Complex GTX Orders will not be displayed or disseminated to any participants. For purposes of trading and allocation with the CUBE Order, GTX Orders will be ranked and prioritized with same-priced Limit Orders as Priority 2—Display Orders, per Pillar Rule 964NYP(e)'').

[86] *See* Pillar Rule 971.1NYP(c)(1)(C)(i)(a) (describing same functionality for GTX Orders submitted in response to single-leg CUBE Auctions).

[87] *See* pre-Pillar Rule 971.2NY(c)(2) (providing, in relevant part, that ''any RFR Responses (*including Complex GTX Orders*) may trade with Complex Orders on the same side of the market as the Complex CUBE Order in accordance with Rule 980NY, Complex Order Trading'' and that ''any remaining balance of Complex GTX Orders will cancel.'' (emphasis added). *See also* pre-Pillar Rule 971.2NY (c)(3), and (c)(4) (providing that Complex GTX Orders may be eligible to trade with Auction interest (other than the Complex CUBE Order) before cancelling).

[88] *Compare* proposed Rule 971.2NYP(c)(1)(C)(i)(b) (''A Complex GTX Order will execute solely with the Complex CUBE Order, if at all, and then cancel'') *with* Pillar Rule 971.1NYP(c)(1)(C)(i)(c) (providing that, in a single-leg CUBE Auction, ''[a] GTX Order will cancel after trading with the CUBE Order to the extent possible''). *See also* Pillar Rule 980NYP(b)(C) (providing, in relevant part, that any remaining portion of a COA GTX Order that does not trade with the COA Order will be cancelled at the end of the COA).

[89] *See* proposed Rule 971.2NYP(c)(1)(C)(i)(b). *See also* proposed Rule 971.2NYP(c)(1)(C)(i) (which provides for optional AuctionID functionality).

[90] As discussed *infra,* proposed Pillar Rule 971.2NYP(c)(2) would provide, in relevant part, that ''[a]t the conclusion of the Auction, the Complex CUBE Order will execute pursuant to paragraph (c)(4) of this Rule'' and that ''[a]ny remaining quantity of RFR Responses (excluding Complex GTX Orders) after the Auction will be processed in accordance with Rule 964NYP (Order Ranking, Display, and Allocation).''

[91] *See* proposed Rule 971.2NYP(c)(1)(C)(i)(d). *See also* Pillar Rule 971.1NYP(c)(1)(C)(i)(e) (providing for the same handling of GTX Orders in a single-leg CUBE Auction).

[92] *See* proposed Rule 971.2NYP(c) (providing that ''[o]ne or more Complex CUBE Auctions in the same complex strategy may occur at the same time'').

[93] *See* proposed Rule 971.2NYP(c)(1)(C)(i)(d). The Exchange notes that it will reject a Complex GTX Order that includes an AuctionID for a Complex CUBE Order that is on the same side of the market as such Complex GTX Order even if there are contra-side Complex CUBE Auctions (with a different AuctionID) with which that Complex GTX Order could have traded.

[94] *Compare* proposed Rule 971.2NYP(c)(1)(C)(i) *with* pre-Pillar Rule 971.2NY(c)(1)(C)(ii). The Exchange notes that the proposed Rule updates the cross-reference for ECOs to Pillar Rule 980NYP and updates the reference to ''COA Orders'' (from the substantively identical ''COA-eligible orders''), which orders are designated to initiate a COA. *See* Pillar Rule 980NYP(a)(3) (defining COA process) and (a)(3)(A) (defining COA Orders). As discussed *infra,* the Exchange notes that COA Orders are eligible to execute in Complex CUBE Auctions. *See* proposed (Pillar) Rule 980NYP(f) (providing that a COA Order may only initiate a COA on arrival, otherwise it is processed as a (non-COA) ECO per Pillar Rule 980NYP(e).

participate within the range of permissible executions specified for the Auction pursuant to proposed paragraph (a)(1)(A)(v) of this Rule.[95] The proposed Rule would specify that the Electronic Complex Order would also have to be in the same complex strategy as the Complex CUBE Order, which difference does not impact functionality and would add clarity, transparency, and internal consistency to Exchange rules.[96]

Concurrent Complex CUBE Auctions [97]

The Exchange proposes to enhance functionality on Pillar by allowing more than one Complex CUBE Auction in the same complex strategy to run concurrently, which would align with single-leg CUBE Auction functionality per Pillar Rule 971.1NYP.[98] The Exchange proposes that if there are multiple Complex CUBE Auctions in a complex strategy that are running concurrently, such Auctions would conclude sequentially, based on the time each Complex CUBE Auction was initiated, unless an Auction concludes early, per proposed paragraph (c)(3) of this Rule (discussed below).[99] As further proposed, at the time each Complex CUBE Auction concludes, the Complex CUBE Order would be allocated against all eligible RFR Responses available at the time of conclusion.[100] In the event there are multiple Auctions underway that are each terminated early, such Auctions would be processed sequentially based on the time each Complex CUBE Auction was initiated, which processing mirrors handling of concurrent single-leg CUBE Auctions.[101] The Exchange believes that this proposed functionality would allow more Complex CUBE Auctions in the same complex strategy to be conducted, thereby increasing opportunities for price improvement on the Exchange to the benefit of all market participants.

In addition, as discussed below, the proposal to add concurrent auctions would also prevent the early end of an Auction in progress when the Exchange receives a new Complex CUBE Order in the same complex strategy.[102] By eliminating this early end scenario, the Exchange would increase the likelihood that an Auction may run for the full Response Time Interval thus affording more time and opportunity for the arrival of price-improving interest to the benefit of investors. The Exchange notes that allowing more than one price improvement auction at a time in the same complex strategy is not new or novel and is functionality already available on another options exchange.[103]

Conclusion of Auction

As is the case today, on Pillar, a Complex CUBE Auction would conclude at the end of the Response Time Interval, unless there is a trading halt in any of the component series or if the Complex CUBE Auction ends early pursuant to proposed paragraph (c)(3) of this Rule (discussed below).[104] At the conclusion of the Auction, the Complex CUBE Order would execute pursuant to proposed paragraph (c)(4) of this Rule (discussed below).[105] After the conclusion of the Auction, the Exchange proposes that any RFR Responses (excluding Complex GTX Orders) that remain would be processed in accordance with Pillar Rule 964NYP (Order Ranking, Display, and Allocation).[106] The Exchange notes that, as discussed below, it would no longer end an Auction early if, during the Auction, interest arrives that crosses any RFR Response(s), which new functionality allows incoming interest to trade outside of the Auction or to trade with unexecuted RFR Responses (or portions thereof) after the Auction.[107] This proposed Rule would align Complex CUBE Auction functionality with single-leg CUBE Auctions on Pillar, including by relying on Pillar Rule 964NYP for any post-Auction executions.[108]

Early Conclusion of Complex CUBE Auction

On Pillar, the Exchange proposes to streamline and reduce the number of scenarios that would cause a Complex CUBE to end early (*i.e.,* before the end of the Response Time Interval) based on trading interest that arrives during the Auction. Pre-Pillar Rule 971.2NY sets forth six scenarios that would cause an Auction to end early.[109] As proposed, on Pillar, the following scenarios would no longer result in the early end of a CUBE Auction:

- First, because the Exchange proposes to allow concurrent auctions, the Exchange would no longer end a Complex CUBE Auction early based on the arrival of a new Complex CUBE Order.[110]
- Second, as noted above, the Exchange does not propose to end the Auction early upon the receipt of any interest that adjusts the same-side CUBE BBO to cross any RFR Response(s) because the Exchange would allow the

[95] *Compare* proposed Rule 971.2NYP(c)(1)(C)(ii) *with* pre-Pillar Rule 971.2NY(c)(2)(C)(ii). The Exchange notes that the proposed Rule differs from the pre-Pillar Rule in that it includes an updated cross-reference to the permissible range of executions as well as minor wording changes to account for concurrent auction functionality, which difference is immaterial because it does not impact functionality.

[96] *See* proposed Rule 971.2NYP(c)(1)(C)(ii) (Unrelated Electronic Complex Orders) (providing that ''Electronic Complex Orders, as defined in Rule 980NYP (including if designated as COA Orders), on the opposite side of the market in the same complex strategy as the Complex CUBE Order that are not marked GTX, that are received during the Response Time Interval or resting in the Consolidated Book when an Auction commences and that are eligible to participate within the range of permissible executions specified for the Auction pursuant to paragraph (a)(4) of this Rule will be also considered RFR Responses.'').

[97] The Exchange notes that the proposal to allow multiple Complex CUBE Auctions to run concurrently on Pillar is distinct from the functionality that permits a single-leg Auction in an option series to run concurrent with a Complex CUBE Auction for a complex strategy that includes the same series. *See* Commentary .03 to pre-Pillar Rule 971.2NY and proposed Commentary .01 to Rule 971.2NYP (which are substantively identical, as discussed below).

[98] *Compare* proposed Rule 971.2NYP(c) (providing that ''[o]ne or more Complex CUBE Auctions in the same series may occur at the same time.'') *with* pre-Pillar Rule 971.2NY(c) (providing that ''[o]nly one Auction may be conducted at a time in any given series''). *See also* Pillar Rule 971.1NYP(c) (allowing single-leg CUBE Auctions to run concurrently),

[99] *See* proposed Rule 971.2NYP(c). As discussed *infra,* a CUBE Auction may conclude early (*i.e.,* before the end of the Response Time Interval) because of certain trading interest that arrives during the Auction or in the event of a trading halt in the underlying security while the Auction is in progress. *See* proposed Rule 971.2NYP(c)(2), (c)(3).

[100] *See* proposed Rule 971.2NYP(c).

[101] *See id. See* also Pillar Rule 971.1NYP(c) (describing substantively identical sequential processing of concurrent single-leg CUBE Auctions in the same series).

[102] *See* pre-Pillar Rule 971.2NY(c)(3)(A).

[103] *See* Cboe Rule 5.38(c)(1)(A)–(B) (providing that multiple price-improvement auctions in the same complex strategy can run concurrently and will be processed sequentially, including if all such auctions are ended early and providing that if only one such auction ends early it will be allocated when it ends).

[104] *See* proposed Rule 971.2NYP(c)(2).

[105] *See id.*

[106] *Compare* proposed Rule 971.2NYP(c)(2) *with* pre-Pillar Rule 971.2(c)(2) (providing, in relevant part, that ''[a]fter the Complex CUBE Order has been filled, any RFR Responses *(including Complex GTX Orders)* may trade with Complex Orders on the same side of the market as the Complex CUBE Order in accordance with Rule 980NYP, Complex Order Trading. Subsequently, any remaining balance of Complex GTX Orders will cancel.'') (emphasis added).

[107] *See* pre-Pillar Rule 971.2NY(c)(3)(C) (providing for the early end of a pre-Pillar Complex CUBE Auction if, during the Auction, the Exchange receives ''[a]ny interest that adjusts the same-side CUBE BBO to cross any RFR Response(s)'').

[108] *See, e.g.,* Pillar Rule 971.1NYP(c)(2) (providing, in relevant part (and substantively identical to the proposed Rule), that, at the conclusion of a Single-Leg CUBE Auction, ''[t]he residual of RFR Responses (excluding GTX Orders) after the CUBE Auction will be processed in accordance with Rule 964NYP (Order Ranking, Display, and Allocation)'').

[109] *See* pre-Pillar Rule 971.2NY(c)(3)(A)–(F).

[110] *Compare* Rule 971.2NY(c)(3)(A) *with* proposed Rule 971.2NYP(c)(3) (which does not include this scenario as causing the early end of an Auction).

Auction to continue uninterrupted.[111] With this proposal, the incoming interest would immediately trade with any non-GTX RFR Responses or route to an Away Market. This proposed handling would align the proposed Rule with the handling of incoming marketable interest that arrives during a single-leg CUBE Auction per Pillar Rule 971.1NYP.[112] The Exchange believes that, on Pillar, allowing an Auction to continue uninterrupted in the above-referenced circumstances would result in fewer Complex CUBE Auctions ending early and, as such, would provide more opportunities for price improvement on the Exchange to the benefit of all market participants.

In contrast, the following scenarios would continue to result in the early end of a Complex CUBE Auction on Pillar. As proposed, an Auction for a Complex CUBE Order to buy (sell) would (continue to) end early if, during the Response Time Interval, the Exchange receives updates to the CUBE BBO as follows:

- Any same-side interest that adjusts the CUBE BB (BO) to be higher (lower) than the initiating price,[113] which proposed provision is substantively identical to the scenario set forth in pre-Pillar Rule 971.2NY(c)(3)(B); [114] or
- Any opposite-side interest that adjusts the CUBE BO (BB) to be lower (higher) than the initiating price when the CUBE BO (BB) is based on the DBO (DBB) (*i.e.,* leg market interest on the Exchange).[115] This proposed provision is based on pre-Pillar Rule 971.2NY(c)(3)(F), which provides for the early end of an Auction based on updates to the leg markets, but differs in that it relies on the Pillar concept of the DBBO.[116] This early end scenario only applies when the CUBE BBO is based on the DBBO (*i.e.,* the leg markets) and the contra-side leg market updates to cross) [sic] the initiating price, which price sets the boundary for the Auction.[117]
- Because leg market interest has priority at a price, the Complex CUBE Auction must end to allow the (improved) leg market interest to trade. The Exchange notes that the pre-Pillar rule provides for the early end of an Auction if the leg markets update to be better than the stop price or auto-match limit price. On Pillar, the parameters for both the stop price and the auto-match limit price are made in relation to the initiating price (as discussed herein) and therefore the Exchange believes the initiating price is the more appropriate benchmark. In addition, proposed Rule 971.2NYP(c)(3)(A) (discussed above), also relies on the initiating price as the basis for determining if an Auction should end early based on same-side market updates. As such, this proposed update would add clarity, transparency, and internal consistency to Exchange rules.

In addition to being substantively the same as the analogous early end scenarios set forth in pre-Pillar Rule 971.2NY(c)(3)(B) and (F) (with the exception of reliance on the DBBO), the Exchange reiterates its belief that the elimination of the balance of the pre-Pillar early end scenario would result in fewer Complex CUBE Auctions ending early and, as such, would provide more opportunities for price improvement on the Exchange to the benefit of all market participants.

Complex CUBE Order Allocation

The Exchange proposes to modify how a Complex CUBE Order is allocated at the end of the Auction to conform with and incorporate Pillar Rule 964NYP (described below), which proposed handling mirrors the allocation of single-leg CUBE Orders as described in Pillar Rule 971.1NYP(c)(4).[118]

Pre-Pillar Rule 971.2NY(c)(4) describes Complex CUBE Order allocation. Specifically, at the conclusion of the Auction, any RFR Responses (including Complex GTX Orders) [119] that are larger than the Complex CUBE Order will be ''capped at the Complex CUBE Order size for purposes of size pro rata allocation of the Complex CUBE Order per [pre-Pillar] Rule 964NY(b)(3)'' [120] and that, at each price level, displayed Customer orders have first priority to trade with the Complex CUBE Order per pre-Pillar Rule 964NY(c)(2)(A).[121] Further, pre-Pillar Rule 971.2NY(c)(4)(B) provides that, after executing against displayed Customer orders at a price, the Complex CUBE Order will be allocated among the RFR Responses and the Complex Contra Order, which allocation may vary depending on whether the Complex Contra Order guaranteed the Complex CUBE Order using a specified stop price or auto-match limit price.[122]

As noted above, prior to the Exchange's migration to Pillar, Complex CUBE Orders traded in accordance with Rule 964NY—the Exchange's pre-Pillar priority and allocation rule.[123] On Pillar, orders and quotes will be ranked, prioritized, and executed based on Pillar Rule 964NYP, which aligns with the Exchange's pre-Pillar ranking and priority scheme. Pillar Rule 964NYP(e) provides that ''[a]t each price, all orders and quotes are assigned a priority category and, within each priority category, Customer orders are ranked

[111] *Compare* Rule 971.2NY(c)(3)(C) *with* proposed Rule 971.2NYP(c)(3) (which does not include this scenario as causing the early end of an Auction).

[112] *See* Pillar Single-Leg CUBE Filing, 88 FR, at 467545.

[113] *See* proposed Rule 971.2NYP(c)(3)(A).

[114] *See* Rule 971.2NY(c)(3)(B) and (c)(3)(D) (providing for the early end of an Auction upon the receipt of any interest that adjusts the same-side CUBE BBO ''to be better than the initiating price'' or ''to cross the single stop price specified by the Initiating Participant,'' respectively). The Exchange notes that the proposed Rule provision is substantively the same as the pre-Pillar Rule, however, rather than use the terms ''same-side CUBE BBO'' and ''better than,'' the proposed Rule specifies whether the Complex CUBE Order is to buy or sell, whether the incoming interest is ''same-side interest,'' and includes the relevant side of the CUBE BBO updated, which would add clarity and transparency to Exchange rules.

[115] *See* proposed Rule 971.2NYP(c)(3)(B). The Exchange notes that as stated in paragraph (a)(1)(A)(ii) of the proposed Rule, when the CUBE BBO is based on the DBBO, such CUBE BBO may be adjusted to account for the presence of displayed Customer interest. *See* proposed Rule 971.2NYP(a)(1)(A)(ii). The Exchange notes that rather than use the terms ''same-side CUBE BBO'' and ''cross,'' the proposed Rule specifies whether the Complex CUBE Order is to buy or sell, whether the incoming interest is ''opposite-side interest'' and includes the relevant side of the CUBE BBO that was updated, which would add clarity and transparency to Exchange rules.

[116] *See* pre-Pillar Rule 971.2NY(c)(3)(F) (providing for the early end of an Auction upon the receipt of ''[i]nterest in the leg market that causes the contra-side CUBE BBO to be better than the stop price or auto-match limit price.'').

[117] For example, if there is an Auction in progress for a CUBE order to buy (sell), the Auction will end early if, during the Auction, the Exchange received contra-side interest to sell (buy) that updates the DBO (DBB) to be lower (higher) than the initiating price (*i.e.,* the incoming interest crosses the initiating price).

[118] As noted herein, Rule 964NY does not apply to trading on Pillar. *Compare* proposed Rule 971.2NYP(c)(4) *with* Pillar Rule 971.1NYP(c)(4) (setting forth priority and allocation rules, as dictated by Pillar Rule 964NYP).

[119] *See* pre-Pillar Rule 971.2NY(c)(1)(C)(i)(b) (''Complex GTX Orders with a size greater than the size of the CUBE Order will be capped at the size of the CUBE Order''). On, Pillar, however, only non-Customer Complex GTX Orders would be capped at the Complex CUBE Order size for purposes of size pro rata allocation whereas Customer Complex GTX Orders would trade with the CUBE Order based on time. *See, e.g.,* proposed Rule 971.2NYP(c)(4)(B), as discussed, *infra.*

[120] Pre-Pillar Rule 964NY(b)(3) describes the Exchange's pro rata allocation formula, which same formula is described in Pillar Rule 964NYP(i).

[121] Pre-Pillar Rule 964NY(c)(2)(A) provides an ''inbound order will first be matched against all available displayed Customer interest in the Consolidated Book.''

[122] *See* pre-Pillar Rule 971.2NY(c)(4)(B)(i)–(ii).

[123] *See* (pre-Pillar) Rule 964NY(b), (c) (providing that, at a price, displayed interest is ranked ahead of non-displayed interest with priority afforded to Customer interest over displayed non-Customer interest; followed by same-priced non-displayed interest, which non-displayed interest is ranked solely in time priority with no preference given to non-displayed Customer interest). *See also* Pillar Priority Filing (describing priority and allocation per Rule 964NYP).

ahead of non-Customer'' and that ''[i]f, at a price, there are no remaining orders or quotes in a priority category, then same-priced interest in the next priority category has priority.'' [124] The three categories are: Priority 1—Market Orders, Priority 2—Display Orders and Priority 3—Non-Display Orders (the ''Pillar Priority categories'').[125] Thus, on Pillar, Customer orders in each priority category will have first priority to trade ahead of same-priced non-Customer interest in that priority category until all interest in that Pillar Priority category is exhausted—and, if there is more than one Customer in that category at the same price, the Customer first in time has priority.[126] Furthermore, as is the case today, the Exchange would allocate same-priced, non-Customer interest that is displayed in the Consolidated Book on a size pro rata basis.[127] Finally, on Pillar (and unlike (pre-Pillar) Rule 964NY), at a price, non-displayed Customer orders will trade in time priority before same-priced non-displayed, non-Customer interest, which also trades in time.[128]

The Exchange proposes that Complex CUBE Auctions on Pillar would follow the priority, ranking, and allocation model set forth in the above-described Pillar Rule 964NYP. As proposed, Rule 971.2NYP(c)(4)(A) would provide that, at each price, Complex CUBE Orders would be allocated consistent with Pillar Rule 964NYP as follows.

- First priority to execute with the Complex CUBE Order is given to Customer RFR Responses, followed by same-priced non-Customer RFR Responses ranked Priority 1—Market Orders (each, ''Priority 1 Interest'');
- Next priority to execute with the Complex CUBE Order is given to Customer RFR Responses ranked Priority 2—Display Orders (''Priority 2 Customer Interest''), followed by same-priced non-Customer RFR Responses ranked Priority 2—Display Orders; and
- Third priority to execute with the Complex CUBE Order is afforded to Customer RFR Responses followed by same-priced non-Customer RFR Responses ranked Priority 3—Non-Display Orders.[129]

The proposal to align Complex CUBE Order allocation with Pillar Rule 964NYP(j) would mirror the allocation methodology for single-leg CUBE Orders on Pillar and would add clarity, transparency, and internal consistency to Exchange rules.[130] In addition, as discussed further below, before the Complex Contra Order receives its guaranteed allocation, the Complex CUBE Order would first trade, at a price, with all Priority 1 Interest and with Priority 2 Customer Interest to ensure the priority of Customer interest is consistent with the Exchange's Customer priority model.

Proposed Rule 971.2NYP(c)(4)(B) (Allocation) would provide that RFR Responses would be allocated based on time or per size pro rata allocation. Specifically, RFR Responses of Customers ranked Priority 1 and 2, as well as all RFR Responses ranked Priority 3, would trade with the Complex CUBE Order based on time per Pillar Rule 964NYP(j).[131] And, RFR Responses of non-Customers ranked Priority 1 and Priority 2 would be capped at the Complex CUBE Order size for purposes of size pro rata allocation per Pillar Rule 964NYP(i).[132] The Exchange notes that this proposed allocation methodology is consistent with the pre-Pillar Auction allocation methodology, except that on Pillar, Customer RFR Responses would be allocated based on time (and no longer on a size pro rata basis), which handling would align the allocation of Complex CUBE Orders with the Exchange's Customer priority model.[133]

Proposed Rule 971.2NYP(c)(4)(C) (Surrender Quantity) would be new functionality and would provide that an Initiating Participant that guarantees a Complex CUBE Order with a stop price (as described in proposed Rule 971.2NYP(b)(1)(A)) has the option of designating a ''Surrender Quantity'' and receiving some percentage of the Complex CUBE Order less than the 40% participant guarantee (as described in proposed Rule 971.2NYP(c)(4)(D)(i)(b)). As proposed, if the Initiating Participant elects a Surrender Quantity, and there is sufficient contra-side interest equal to or better than the stop price to satisfy the Complex CUBE Order, the Complex CUBE Order executes against the Complex Contra Order up to the amount of its Surrender Quantity.[134] Absent sufficient size of contra-side interest equal to or better than the stop price, the Complex Contra Order would trade with the balance of the Complex CUBE Order at the stop price regardless of the Complex Contra Order's Surrender Quantity, which functionality is consistent with pre-Pillar Complex Contra Order behavior.[135] Finally, as proposed, Surrender Quantity information is not disseminated to other market participants and may not be modified after the Complex Contra Order is submitted. The Exchange notes that the concept of ''Surrender Quantity'' is available in single-leg CUBE Auctions and on other options exchanges and is therefore not new or novel.[136] The Exchange believes that providing Initiating Participants the option to designate a Surrender Quantity in Complex CUBE Auctions on Pillar would enhance functionality by affording flexibility and discretion to the Complex Contra Order while providing additional opportunities for RFR Responses to interact with the Complex CUBE Order. In addition, the proposed enhancement to add the option of electing a Surrender Quantity would be a competitive change and would make the Exchange a more attractive venue to send (auction-related) order flow.

Proposed Rule 971.2NYP(c)(4)(D) (RFR Responses and Complex Contra Order Allocation) would provide that, at a price, RFR Responses are allocated in accordance with proposed paragraphs (c)(4)(A) (Customer Priority) and (c)(4)(B) (Time or Size Pro Rata Allocation) and that any allocation to

[124] *See* Pillar Rule 964NYP(e) (Priority Categories).

[125] *See* Pillar Rule 964NYP(e)(1)–(3) (setting forth the Pillar Priority categories).

[126] *See* Pillar Rule 964NYP(e), (j).

[127] *See* Pillar Rule 964NYP(i) (Size Pro Rata Allocation) (setting forth Pillar pro rata allocation formula). The Exchange notes that the Pillar pro rata allocation formula is substantively identical to that set forth in pre-Pillar Rule 964NY(b)(3) (Size Pro Rata Allocation).

[128] *See* Pillar Rule 964NYP(j)(6)–(7).

[129] *See* proposed Rule 971.2NYP(c)(4)(A) (Customer Priority).

[130] *See* Pillar Rule 971.1NYP(c)(4) (describing the Allocation of CUBE Orders, which is the same as the allocation proposed for Complex CUBE Orders).

[131] *See* proposed Rule 971.2NYP(c)(4)(B)(i) (Time).

[132] *See* proposed Rule 971.2NYP(c)(4)(B)(ii) (Size Pro Rata). The size pro rata formula set forth in Pillar Rule 964NYP(i) is substantively identical to the size pro rata formula set forth in Rule 964NY(b)(3). *See* Pillar Priority Filing.

[133] *See, e.g.,* Pillar Rule 964NYP(j). Because the proposed Rule details at the outset of the order allocation section how both Customer and non-Customer RFR Responses would be processed (*i.e.,* in time or on a pro rata allocation basis), the Exchange believes it is not necessary to repeat this (now superfluous) information throughout proposed Rule 971.2NYP(c)(4) (Allocation of Complex CUBE Orders). *See, e.g.,* pre-Pillar Rule 971.2NY(c)(4)(B)(i)–(ii) (repeating in each rule provision how RFR Responses would be allocated).

[134] *See* proposed Rule 971.2NYP(c)(4)(C).

[135] *Compare* proposed Rule 971.2NYP(c)(4)(D)(i) *with* pre-Pillar Rule 971.2NY(c)(4)(B)(i) (allocation to Contra Order that guaranteed a CUBE Order by a single stop price).

[136] *See* Pillar Rule 971.1NYP(c)(4)(C) (Surrender Quantity option in single-leg CUBE Auctions). *See also* Cboe Rule 5.38(e)(5) (allowing initiating participants that guarantee a paired order with a single-price submission, to elect to have ''last priority'' to trade against the agency order and will only trade with the agency order after such order has traded with all other contra-side interest at prices equal to or better than the guaranteed stop price; and further providing that ''last priority'' information is not available to other market participants and, once submitted, may not be modified).

the Complex Contra Order would depend upon the method by which the Complex CUBE Order was guaranteed.[137]

• *Stop Price.*[138] Consistent with the pre-Pillar Complex CUBE rule, a Complex CUBE Order to buy (sell), that is guaranteed by a stop price would execute first with RFR Responses at each price level priced below (above) the stop price within the range of permissible executions, beginning with the lowest (highest) price.[139]

○ Next, any remaining contracts of the Complex CUBE Order would execute at the stop price, first with all Priority 1 Interest, followed by Priority 2 Customer Interest, which as noted above is consistent with new Pillar Rule 964NYP(j).[140]

○ Then, at the stop price, the Complex Contra Order would receive an allocation of the greater of 40% of the original Complex CUBE Order size or one contract (or the greater of 50% of the original Complex CUBE Order size or one contract if there is only one RFR Response), or the Surrender Quantity, if one has been specified. Then, any remaining Complex CUBE Order contracts would be allocated first among remaining RFR Responses at the stop price. If all RFR Responses are filled, any remaining Complex CUBE Order contracts would be allocated to the Contra Order. This proposed handling is consistent with the pre-Pillar Complex CUBE rule except that it includes reference to the new option of designating a ''Surrender Quantity.'' [141]

○ Finally, identical to pre-Pillar functionality, if there are no RFR Responses, the Complex CUBE Order would execute against the Complex Contra Order at the stop price.[142]

• *Auto-Match Limit.*[143] Consistent with the pre-Pillar Complex CUBE rule, a Complex CUBE Order to buy (sell), that is guaranteed by auto-match limit would execute first with RFR Responses at each price level priced below (above) the auto-match limit price within the range of permissible executions, beginning with the lowest (highest) price.[144]

○ Next, consistent with pre-Pillar Complex CUBE functionality, the Complex CUBE Order would be allocated to RFR Responses at a price equal to the price of the Complex Contra Order's auto-match limit price, and if volume remains, to prices higher (lower) than the auto-match limit price; at each price level equal to or higher (lower) than the auto-match limit price, the Complex Contra Order would be allocated contracts equal to the aggregate size of all other RFR Responses within the range of permissible executions, until a price point is reached where the balance of the CUBE Order can be fully executed (the ''clean-up price''). Further, like pre-Pillar functionality, if the Complex Contra Order meets its allocation guarantee at a price below (above) the clean-up price, it would cease matching RFR Responses.[145]

○ As proposed, at the clean-up price, any remaining contracts of the Complex CUBE Order will execute against all Priority 1 Interest, followed by Priority 2 Customer Interest, which as noted above is consistent with proposed new Rule 964NYP(j).[146]

○ Next, and consistent with the pre-Pillar Complex CUBE rule, the Complex Contra Order would receive additional contracts required to achieve an allocation of the greater of 40% of the original Complex CUBE Order size or one contract (or the greater of 50% of the original Complex CUBE Order size or one contract if there is only one RFR Response); if there are other RFR Responses at the clean-up price, the remaining Complex CUBE Order contracts, would be allocated first to RFR Responses; and any remaining CUBE Order contracts would be allocated to the Complex Contra Order at the initiating price.[147]

○ Finally, consistent with the pre-Pillar Complex CUBE rule, if there are no RFR Responses, the Complex CUBE Order would execute against the Complex Contra Order at the initiating price.[148]

Commentary to Proposed Rule 971.2NYP for CUBE Auctions on Pillar

The Exchange proposes to adopt Commentaries to the proposed Rule, which are substantively identical to pre-Pillar Commentaries .01 through .03 and .04 to Rule 971.2NY, with differences discussed below (each a ''proposed Commentary'' or a ''pre-Pillar Commentary'').[149]

Proposed Commentary .01 is substantively identical to pre-Pillar Commentary .03 and would describe ''Concurrent Single-Leg and Complex CUBE Auctions involving the same option series.'' [150] As proposed, like the pre-Pillar Complex CUBE rule, the proposed Rule would allow the Exchange to conduct simultaneous single-leg CUBE Auctions for a given series at the same time as a Complex CUBE Auction for an ECO that includes the same option series.[151] Also, like the pre-Pillar Complex CUBE rule, to the extent there are concurrent CUBE Auctions for a specific option series, each CUBE Auction will be processed sequentially based on the time each

[137] *See* Pillar Rule 971.1NYP(c)(4)(D) (describing substantively identical allocation of RFR Responses and Contra Order in single-leg CUBE Auctions). Consistent with proposed Rule 971.2NYP(c)(1)(C)(i)(c), and in contrast to pre-Pillar Rule 971.2NY(c)(2), the proposed Complex CUBE Order allocation section would not reference Complex GTX Orders, as noted herein, Complex GTX Orders would execute solely with the Complex CUBE Order or cancel.

[138] *See* proposed Rule 971.2NYP(b)(1)(A) (describing stop price requirements).

[139] *Compare* proposed Rule 971.2NYP(c)(4)(D)(i)(a) *with* pre-Pillar Rule 971.2NY(c)(4)(B)(i)(a).

[140] *Compare* proposed Rule 971.2NYP(c)(4)(D)(i)(b) *with* pre-Pillar Rule 971.2NY(c)(4)(B)(i)(b).

[141] *See id.*

[142] *Compare* proposed Rule 971.2NYP(c)(4)(D)(i)(c) *with* pre-Pillar Rule 971.2NY(c)(4)(B)(i)(c).

[143] *See* proposed Rule 971.2NYP(b)(1)(B) (describing auto-match limit price requirements).

[144] *See* proposed Rule 971.2NYP(c)(4)(D)(ii)(a). *See also* pre-Pillar Rule 971.2NY(c)(4)(B)(ii)(a).

[145] *See* proposed Rule 971.2NYP(c)(4)(D)(ii)(b). *See also* pre-Pillar Rule 971.2NY(c)(4)(B)(ii)(b).

[146] *See* proposed Rule 971.2NYP(c)(4)(D)(ii)(c). *See also* pre-Pillar Rule 971.2NY(c)(4)(B)(ii)(b).

[147] *Compare* proposed Rule 971.2NYP(c)(4)(D)(ii)(c) *with* pre-Pillar Rule 971.2NY(c)(4)(B)(ii)(b).

[148] *Compare* proposed Rule 971.2NYP(c)(4)(D)(ii)(d) *with* pre-Pillar Rule 971.2NY(c)(4)(B)(ii)(c). The proposed Rule differs in that it would not specify that ''[a] single RFR Response will not be allocated a number of contracts that is greater than its size,'' as is set forth in (pre-Pillar) Rule 971.2NY(c)(4)(C), because this statement merely re-iterates standard processing on the Exchange. As such, the Exchange believes the inclusion of this statement in the proposed Rule is unnecessary and may lead to potential confusion.

[149] Because the beginning of the proposed Rule includes a ''Definitions'' section (*i.e.,* proposed Rule (a)(1)(D))) [sic] for terms applicable to Complex CUBE Auctions on Pillar, the terms described in pre-Pillar Commentary .02 to Rule 971.2NY are no longer applicable and, as discussed infra, the Exchange proposes to omit pre-Pillar Commentary .02 from the proposed Rule. The omission of this Commentary does not alter the functionality of the proposed Rule and the Exchange therefore believes its omission is immaterial.

[150] The Exchange proposes to relocate the text from pre-Pillar Commentary .03 to proposed Commentary .01, which re-numbering would align the proposed Rule with Commentary .01 to Pillar Rule 971.1NYP—single-leg CUBE Auctions on Pillar). As a result of this reorganization, the Exchange proposes to hold Commentary .03 to proposed Rule 971.2NYP as ''Reserved''.

[151] *See* proposed Rule 971.2NYP, Commentary .01. *See also* Pillar Rule 971.1NYP, Commentary .01 (same). As discussed, *supra,* proposed Commentary .01 (and pre-Pillar Commentary .03) describes functionality that is distinct from the proposal to allow multiple Complex CUBE Auctions to run concurrently on Pillar. *See, e.g.,* proposed Rule 971.2NYP(c). To emphasize this distinction, the proposed Rule states that ''[t]o the extent there are concurrent *single-leg and Complex* CUBE Auctions for a specific option series, each CUBE Auction will be processed sequentially based on the time each CUBE Auction commenced'' (emphasis added). *See* proposed Rule 971.2NYP, Commentary .01.

CUBE Auction commenced.[152] Finally, substantively identical to pre-Pillar Complex CUBE functionality, at the time each CUBE Auction concludes, including when it concludes early, it will be processed pursuant to Pillar Rule 971.1NYP(c)(4) (for Single-Leg CUBE) or proposed Rule 971.2NYP(c)(4) (for Complex CUBE) as applicable.[153]

Proposed Commentary .02(a)–(d) is substantively identical to pre-Pillar Commentary .01(a)–(d) [154] and would provide that the following conduct will be considered conduct inconsistent with just and equitable principles of trade:

- An ATP Holder entering RFR Responses to an Auction for which the ATP Holder is the Initiating Participant;
- Engaging in a pattern and practice of trading or quoting activity for the purpose of causing an Auction to conclude before the end of the Response Time Interval;
- An Initiating Participant that breaks up an agency order into separate Complex CUBE Orders for the purpose of gaining a higher allocation percentage than the Initiating Participant would have otherwise received in accordance with the allocation procedures contained in paragraph (c)(4) of this Rule; [155] and
- Engaging in a pattern and practice of sending multiple RFR Responses at the same price that in the aggregate exceed the size of the Complex CUBE Order.

Proposed Commentary .04 describes functionality for AON Complex CUBE Orders that is substantively identical to pre-Pillar Commentary .04 and would provide that, except as provided in proposed Commentary .04, an AON Complex CUBE auction will be subject to the provisions of proposed Rule 971.2NYP.[156]

- Proposed Commentary .04 (like pre-Pillar Commentary .04) would provide that an Initiating Participant may be designated a Complex CUBE Order of at least 500 contracts as AON (an ''AON Complex CUBE Order'') and unlike non-AON Complex CUBE Orders, such AON CUBE Orders may only be guaranteed by a specified stop price.[157]
  - Proposed Commentary .04 would differ from pre-Pillar Commentary .04 to make clear that the (new) option for certain Initiating Participants to designate a Surrender Quantity would not be available for Complex Contra Orders to an AON Complex CUBE Order. This proposed text is not included in pre-Pillar Commentary .04 because the option to designate a Surrender Quantity is not available today and is an enhanced feature that would only be available for certain non-AON Complex CUBE Auctions on Pillar.[158] The Exchange believes that allowing Initiating Participants to designate a Surrender Quantity to an AON Complex CUBE Order would undermine the purpose of the ''all or none'' aspect of this order type.

Proposed Commentary .04(a)–(d), is substantively identical to pre-Pillar Commentary .04(a)–(d), with differences noted herein, and would provide the following.[159]

- An AON Complex CUBE Order to buy (sell) will execute in full with the Complex Contra Order at the single stop price even if there is non-Customer interest priced lower (higher) than the stop price that, either on its own or when aggregated with non-Customer RFR Responses at the stop price or better, are insufficient to satisfy the full quantity of the AON Complex CUBE Order;
- The Complex Contra Order will not receive any allocation and will be cancelled if (i) RFR Responses to sell (buy) at prices lower (higher) than the stop price can satisfy the full quantity of the AON Complex CUBE Order or (ii) there is Customer interest to sell (buy) at the stop price or better that on its own, or when aggregated with RFR Responses to sell (buy) at the stop price or prices lower (higher) than the stop price, can satisfy the full quantity of the AON Complex CUBE Order. In either case, the RFR Responses will be allocated as provided for in paragraphs (c)(4)(A) and (c)(4)(B) of this proposed Rule, as applicable;
- The AON Complex CUBE Order to buy (sell) and Complex Contra Order will both be cancelled if there is Customer interest to sell (buy) at the stop price or better and such interest, either on its own or when aggregated with RFR Responses to sell (buy) at the stop price or at prices lower (higher) than the stop price, is insufficient to satisfy the full quantity of the AON Complex CUBE Order; and
- Prior to entering an agency order on behalf of a Customer into the Complex CUBE Auction as an AON Complex CUBE Order, Initiating Participants must deliver to the Customer a written notification informing the Customer that such order may be executed using the Complex CUBE Auction. Such written notification must disclose the terms and conditions contained in this Commentary .04 and must be in a form approved by the Exchange.[160]

Rule 900.2NY: Definitions of Customer and Professional Customer

Rule 900.2NY defines a ''Customer'' as ''an individual or organization that is not a Broker/Dealer'' [161] and defines a ''Professional Customer'' as ''an individual or organization that (i) is not a Broker/Dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).'' [162] Included in the definition of Professional Customer is a list of Exchange rules for purposes of

[152] *See id.* The Exchange proposes to make a clarifying change that specifies that ''[t]o the extent there are concurrent *single-leg and Complex* CUBE Auctions for a specific option series, each CUBE Auction will be processed sequentially based on the time each CUBE Auction commenced,'' which change would improve transparency and internal consistency of Exchange rules. *See* proposed Rule 971.2NYP, Commentary .01 (emphasis added).

[153] *See id.* The Exchange notes that the internal cross-reference in the proposed Commentary has been updated to reflect the allocation section in the proposed Rule (*i.e.,* change reference to paragraph (c)(5) of Rule 971.1NY to paragraph (c)(4) of Pillar Rule 971.1NYP and update cite to proposed Rule to include ''P'' modifier), which changes are not material because they do not impact functionality.

[154] The Exchange proposes to relocate pre-Pillar Commentary .01 to proposed Commentary .02 to align with Commentary .02 to Pillar Rule 971.1NYP—single-leg CUBE Auctions on Pillar. In this regard, the Exchange proposes to hold Commentary .03 of the proposed Rule as ''Reserved.''

[155] The Exchange notes that the internal cross-reference in the Commentary .02 has been updated to reflect the allocation section in the proposed Rule (*i.e.,* change reference to paragraph (c)(5) of pre-Pillar Rule 971.2NY to paragraph (c)(4) of the proposed Rule), which change is not material because it does not impact functionality.

[156] The Exchange proposes the non-substantive change to re-locate to the beginning of the proposed Rule text that appears at the bottom of the pre-Pillar Rule.

[157] The Exchange proposes the non-substantive change to use the active voice in proposed Commentary .04. *See* proposed Commentary .04 (providing, in relevant part, that ''[a]n Initiating Participant may designate a Complex CUBE Order that has at least 500 contracts on the smallest leg as AON . . . .'').

[158] *See* proposed Rule 971.2NYP, Commentary .04 (providing, in relevant part that ''a Complex Contra Order that guarantees an AON CUBE Order is not eligible to designate a Surrender Quantity of its guaranteed participation''). *See, e.g.,* proposed Rule 971.2NYP(c)(4)(C) (describing the proposed option of designating a Surrender Quantity for non-AON Complex CUBE Orders that are guaranteed by a stop price).

[159] The Exchange notes that it has made the non-substantive change to specify that the AON Complex CUBE Order is ''to buy (sell)'' and to replace certain references to ''better'' with ''lower (higher)'' and reference to ''contra-side'' with ''sell (buy)'' to more clearly reflect the handling of AON Complex CUBE Orders based on the side of the market to which such order is submitted, which would add clarity, transparency, and internal consistency to the Exchange rules.

[160] *See* proposed Rule 971.2NYP, Commentary .04.

[161] *See* Rule 900.2NY (defining a Customer, including that ''when not capitalized, 'customer' refers to any individual or organization whose order is being represented, including a Broker/Dealer.''),

[162] *See* Rule 900.2NY (defining a Professional Customer).

which Professional Customers are treated in the same manner as Broker/Dealers (or non-Customers) (referred to herein as the ''Professional Customer carve out''), including pre-Pillar Rule 971.2NY for pre-Pillar Complex CUBE Auctions.[163] Accordingly, Professional Customers are treated as Broker/Dealers (or non-Customers) for purposes of the pre-Pillar Complex CUBE Auction. The Exchange notes that at least one other options exchange likewise treats Professional Customer interest as Broker/Dealer (non-Customer) interest for purposes of their price improvement auction.[164]

As described herein the proposed Rule includes certain modifications and enhancements to the Complex CUBE Auction, but the core functionality is substantively identical to the pre-Pillar Complex CUBE functionality. Accordingly, the Exchange believes it would be consistent with the Act to amend Rule 900.2NY to include Rule 971.2NYP in the list of Exchange rules for purposes of which Professional Customers are treated as Broker/Dealers (or non-Customers).[165] This proposed handling would result in consistent treatment of Complex CUBE Orders on Pillar with the handling that existed pre-Pillar, which adds clarity, transparency, and internal consistency to Exchange rules.[166]

Rule 935NY: Order Exposure Requirements

Rule 935NY requires, among other things, that a User's agency orders be exposed for at least one (1) second before such orders may be executed against the User's principal orders, unless such agency order is afforded an exemption. Current Rule 935NY (iv) exempts from its one-second order exposure requirements orders submitted to the CUBE Auction, pursuant to pre-Pillar Rule 971.2NY (Complex Electronic Cross Transactions). The Exchange proposes to amend Rule 935NY to add a cross-reference to proposed Rule 971.2NYP, which would extend the exemption from the order exposure requirements to all Pillar Complex CUBE Orders.[167] As noted herein Complex CUBE Auctions on Pillar include certain enhancements to the pre-Pillar Auctions, but the core functionality remains the same.

Accordingly, the Exchange believes that it would be consistent with the Act to exempt orders submitted to Complex CUBE Auctions on Pillar from the one-second order exposure requirement. This proposed handling would result in consistent treatment of Complex CUBE Orders that were submitted pursuant to pre-Pillar Rule 971.2NY with Complex CUBE Orders submitted on Pillar pursuant to the proposed Rule.[168]

Like the pre-Pillar Complex CUBE Auction, the proposed Rule would provide ATP Holders a minimum of 100 milliseconds to respond to Complex CUBE Auctions, which should promote timely executions, while ensuring adequate exposure of the Complex CUBE Order seeking price improvement.[169] Further, consistent with Rule 935NY, Commentary .01, the ATP Holders that submit Complex CUBE Orders would do so only when there is a genuine intention to execute a bona fide transaction.[170] Moreover, as with the pre-Pillar Complex CUBE Auction, any User on the Exchange can respond to a Complex CUBE on Pillar.[171]

Pillar Rule 980NYP: Electronic Complex Order Trading

Pillar Rule 980NYP describes how Electronic Complex Orders (''ECOs'') will trade on the Exchange.[172] The Exchange proposes to modify Pillar Rule 980NYP to reflect the proposed Complex CUBE Orders and the impact of such orders on the Complex Order Auction (or COA).

First, the Exchange proposes to modify Pillar Rule 980NYP(b) (Types of ECOs) to include Complex CUBE Orders in the list of potential ECOs available for trading on the Exchange, which addition would add clarity, transparency, and internal consistency to Exchange rules.[173]

Next, the Exchange proposes to modify Pillar Rule 980NYP(f) regarding the execution of ECOs during a COA.[174] Procedurally, the COA process is similar to the Complex CUBE Auction insofar as the Exchange sends out a Request for Responses (RFR) once a COA Order satisfies the requirements to initiate a COA, the COA lasts for a specified duration (*i.e.,* the Response Time Interval), unless it ends early, and when the COA concludes, the COA Order executes with the best-priced ECOs received during the COA, next with the leg markets, and any remaining balance is ranked in the Consolidated Book.[175] Unlike a Complex CUBE Order, the COA Order is not a paired order and is not guaranteed an execution and unlike the Complex CUBE Auction which can run concurrent auctions in the same complex strategy, only one COA may be conducted at a time.[176]

The Exchange proposes to modify Pillar Rule 980NYP(f) to specify that a

[163] Specifically, Rule 900.2NY provides that ''[a] Professional Customer will be treated in the same manner as a Broker/Dealer (or non-Customer) in securities for the purposes of'' certain Exchange rules, including but not limited to, pre-Pillar Rule 971.2NY (Complex Electronic Cross Transactions). *See id.* (defining Professional Customer).

[164] *See* Cboe Rule 5.38(e) (providing that ''Priority Customer'' interest executes first with the Agency Order submitted to the price improvement auction, followed by non-Priority Customer interest).

[165] *See* proposed Rule 900.2NY (providing in relevant part, that for purposes of Rule 971.2NYP (Complex Electronic Cross Transactions), ''[a] Professional Customer will be treated in the same manner as a Broker/Dealer (or non-Customer) in securities'').

[166] To update and improve the accuracy of Rule 900.2NY, the Exchange proposes to remove reference to pre-Pillar Rules 971.1NY and 971.2NY because these rules are not operative on Pillar, which change would add clarity, transparency, and internal consistency to Exchange rules. *See* proposed Rule 900.2NY (removing from Professional Customer definition reference to Rules 971.1NY and 971.2NY).

[167] *See* proposed Rule 935NY(iii) (excluding from the order exposure requirement agency orders submitted to ''the Customer Best Execution Auction ('CUBE Auction') pursuant to Rules 971.1NYP or *971.2NYP.*'') (emphasis added).

[168] To update and improve the accuracy of Rule 935NY, the Exchange proposes to remove reference to pre-Pillar Rules 971.1NY and 971.2NY because these rules are not operative on Pillar, which change would add clarity, transparency, and internal consistency to Exchange rules. *See* proposed Rule 935NY (removing reference to Rules 971.1NY and 971.2NY from order exposure carve out).

[169] *See* proposed Rule 971.2NYP(c)(1)(B) (regarding a Response Time Interval of no less than 100 milliseconds).

[170] *See* Rule 935NY, Commentary .01 (''Rule 935NY prevents a User from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the User was already bidding or offering on the book'').

[171] *Compare* Rule 971.2NY(c)(1)(C) (providing that ''[a]ny ATP Holder may respond to the RFR, provided such response is properly marked specifying price, size and side of the market ('RFR Response'))'' *with* proposed Rule 971.2NYP(c)(1)(C) (same).

[172] *See generally* Rule 980NYP (Electronic Complex Order Trading). Unless otherwise specified, all capitalized terms used herein have the same meaning as is set forth in Rule 980NYP.

[173] *See* proposed Rule 980NYP(b)(1) (providing that ''ECOs may be entered as Limit Orders, Limit Orders designated as Complex Only Orders, *Complex CUBE Orders,* Complex QCCs, or as Complex Customer Cross Orders'') (emphasis added).

[174] *See* Pillar Rule 980NYP(f)(providing that ''[a] COA Order received when a complex strategy is open for trading and that satisfies the requirements of paragraph (1) [*Initiation of a COA*] below will initiate a COA only on arrival after trading with eligible interest per paragraph (2)(A) [*Pricing of a COA*] below''). A COA Order will be rejected if entered during a pre-open state or if entered during Core Trading Hours with a time in-force of FOK or GTX. Only one COA may be conducted at a time in a complex strategy).

[175] *See* Pillar Rule 980NYP(a)(3)(A)–(D) (defining terms related to the COA process); (f)(3)(A)–(D) (setting forth the circumstances under which a COA will conclude before the end of the Response Time Interval); and (f)(4)(A)–(C) (providing the allocation of COA Orders. *See* Rule 900.2NY (defining Consolidated Book as ''the Exchange's electronic book of orders and quotes'').

[176] *See* Pillar Rule 980NYP(f).

COA Order received during a Complex CUBE Auction in the same complex strategy will not initiate a COA.[177] As is the case with COA Orders that do not initiate a COA on arrival, such COA Order would be processed in the same manner as a (non-COA) ECO per Pillar Rule 980NYP(e).[178] The Exchange will only allow one auction process for ECOs at a given time. As such, a COA received during a Complex CUBE Auction would not initiate a COA on arrival and, as with any COA Order that does not initiate a COA on arrival, the Exchange would process the COA Order as a (non-COA) ECO. The Exchange notes that allowing only one auction of complex orders is consistent with functionality on at least one other options exchange and is therefore not new or novel.[179] Consistent with the foregoing, the Exchange also proposes to modify Pillar Rule 980NYP(f)(3)(E), to specify that a COA in progress will end early upon receipt of a Complex CUBE Order in the same complex strategy as the COA.[180] This proposed change would be consistent the with the Exchange's early termination of a COA in progress upon the receipt of a Complex QCC Order in the same complex strategy as the COA Order. The Exchange's rationale for this proposed change is the same as its rationale for ending a COA upon the arrival of a Complex QCC Order in the same complex strategy: to ''allow the Exchange to incorporate executions from the COA, or any remaining balance of the COA Order, to conduct the requisite price validations'' for the Complex CUBE Order.[181] As noted above, until a COA concludes, the Consolidated Book is not updated to reflect any COA Order executions or any balance of the COA Order ranking in the Book. Thus, to allow the later-arriving Complex CUBE Order to be evaluated based on the most up-to-date Book, the Exchange proposes to end a COA upon the arrival of a Complex CUBE Order in the same complex strategy.[182] As such, the Exchange believes that its proposal would help preserve—and maintain investor's confidence in—the integrity of the Exchange's local market.[183]

* * * * *

Implementation

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, is anticipated to be in the second quarter of 2024.

2. Statutory Basis

For the reasons set forth above, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade,remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because the enhancement to Complex CUBE Auctions on Pillar would continue to encourage ATP Holders to compete vigorously to provide the opportunity for price improvement for Complex CUBE Orders in a competitive auction process, which may lead to enhanced liquidity and tighter markets.

To the extent that the proposed Rule contains provisions that are identical (or substantively identical) to pre-Pillar Rule 971.2NY, the Exchange believes the proposed Rule would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because the proposed Rule includes streamlined, and in some cases reorganized, descriptions of approved pre-Pillar Auction functionality in a manner that adds clarity, transparency, and internal consistency to Exchange rules.[184]

Further, to the extent that the proposed Rule includes modifications and enhancements to the Auction, the Exchange believes that the proposed Rule would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because the proposed modifications and enhancements to Auctions on Pillar would continue to encourage ATP Holders to compete vigorously to provide the opportunity for price improvement for Complex CUBE Orders in a competitive auction process, which may lead to enhanced liquidity and tighter markets. In addition, and as described herein, the proposed modifications and enhancements would align Complex CUBE Auction functionality with single-leg CUBE Auction functionality on Pillar, which would add internal consistency to Exchange rules and may encourage market participants to utilize the enhanced Complex CUBE Auction functionality.[185] Moreover, and as discussed herein, the proposed modifications and enhancements are already available on at least one other options exchange (including the proposed pricing parameters as discussed herein and below) and are therefore competitive.[186]

[177] *See* proposed Pillar Rule 980NYP(f) (providing in relevant part that ''[o]nly one COA may be conducted at a time in a complex strategy *and a COA Order received during a Complex CUBE Auction in the same complex strategy will not initiate a COA*'') (emphasis added).

[178] *See* Pillar Rule 980NYP(f)(1) (''A COA Order that does not satisfy these pricing parameters will not initiate a COA and, unless cancelled, will be ranked in the Consolidated Book and processed as an ECO pursuant to paragraph (e) above'' regarding the ''Execution of ECOs During Core Trading Hours'').

[179] *See* MIAX Options User Manual, MIAX Complex Order Price Improvement Mechanism (MIAX cPRIME, Auction Eligibility), at p. 34, *available here: https://www.miaxglobal.com/sites/default/files/2022-09/MIAX_Options_User_Manual_04042022_0.pdf* (providing, in relevant part, that ''[o]nly one complex auction whether a cPRIME or a Standard Complex auction may be in process for any given Strategy at a time'' and that MIAX will reject ''a cPRIME order in a Strategy that is already in a cPRIME or Standard Complex auction''). Like the Complex CUBE Auction, MIAX's cPRIME is an electronic price improvement mechanism for paired orders; and, like the COA, MIAX's Standard Complex auction is a price improvement auction for orders that are not guaranteed an execution. As noted herein, and unlike MIAX, the Exchange permits concurrent Complex CUBE Auctions in the same complex strategies.

[180] *See* proposed Rule 980NYP(f)(3)(E). *See* Securities Exchange Act Release No. 99354 (January 17, 2024), 89 FR 4358, 4359 (January 23, 2024) (SR–NYSEAMER–2024–03) (adopting, on an immediately effective basis, Pillar Rule 980NYP(f)(3)(E) which specifies that a COA in progress ends early upon receipt of a Complex QCC Order in the same complex strategy).

[181] *See id.,* 89 FR, at 4359.

[182] *See id.* (providing the same rationale for ending a COA early upon the receipt of a Complex QCC in the same complex strategy as the COA Order).

[183] *See id.*

[184] *See, e.g.,* proposed Rule 971.2NYP(b)(1)(A)–(B) (describing stop price and auto-match limit price); (b)(2)–(4) (regarding eligibility of Complex CUBE Orders submitted to the Auction); (c)(1) (regarding RFRs and RFR Responses) and (c)(2) (regarding conclusion of Complex CUBE Auction).

[185] *See, e.g.,* Pillar Rule 971.1NYP (c)(permitting concurrent Auctions); (c)(1)(A) (providing that each RFR include an AuctionID); (c)(1)(B) (providing for a minimum of 100 milliseconds fixed duration of the Response Time Interval); (c)(1)(C)(i) (regarding handling of GTX Orders and optional AuctionID feature); (c)(4)(A) and (B) (incorporating Pillar Rule 964NYP for the priority and allocation of CUBE Orders); and (c)(4)(C) (regarding the optional Surrender Quantity feature).

[186] *See, e.g.,* Cboe Rule 5.38(c)(1) (permitting concurrent auctions in the same strategy); (c)(2) (providing that each C–AIM Auction notification message include an AuctionID) (c)(3) (providing for a minimum of 100 milliseconds fixed duration of C–AIM Auction period); (c)(5) (regarding optional ''AuctionID'' for auction responses); (e)(5) (regarding optional ''last priority'' (*i.e.,* Surrender Quantity) feature); and (e)(5)(B) (describing range of permissible executions in C–AIM and requiring that auction responses price improve Priority Customer interest).

In particular, the proposed rule change to modify the pricing requirements for initiating and participating in Complex CUBE Auctions, including updating the CUBE BBO definition to incorporate the Pillar concept of DBBO, would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because it would add internal consistency to Exchange rules and streamline Pillar Auction functionality making it easier for market participants to navigate and comprehend.[187]

The Exchange believes that the modified requirements for Complex CUBE Auctions, including the requisite (one penny) price improvement to the proposed CUBE BBO in the presence of displayed Customer interest, would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because the proposed change would incorporate and align with Pillar Rules 964NYP and 980NYP and would allow the Exchange to better compete for complex auction order flow with a competing options exchange.[188]

Further, the proposed CUBE BBO, which requires price improvement over the best-priced interest if such interest represents displayed Customer interest on the Exchange would continue to protect the priority of such interest. The Exchange believes that making price improvement contingent on Customer interest, which is consistent with pricing requirements on Cboe for its price improvement auction for complex trading interest, may increase Complex CUBE Orders directed to the Exchange, while maintaining the Exchange's Customer-centric priority scheme.[189] The proposed CUBE BBO would protect investors and the public interest by assuring that Complex CUBE Orders comply with the existing priority and allocation rules applicable to the processing and execution of Complex Orders per Pillar Rule 980NYP. In particular, the proposed CUBE BBO would continue to protect same-priced, displayed Customer interest and would ensure that Complex CUBE Orders do not trade ahead of such displayed Customer interest, whether in the leg markets or as Customer Complex Orders. In addition, using the proposed CUBE BBO would ensure that the proposed Rule aligns with the Exchange's priority and allocation rules, per Pillar Rules 964NYP and 980NYP, and that interest in the leg markets, including displayed Customer interest, continues to be protected.

Similarly, the proposed modification to the ''initiating price,'' which incorporates the DBBO, would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because, consistent with pre-Pillar functionality, it would ensure that the price of the Complex CUBE Order respects the priority of the leg markets, including when they contain displayed Customer interest.

The Exchange believes that the proposal to reject Complex CUBE Orders that are submitted when there is not enough time for a Complex CUBE Auction to run the full duration of the Response Time Interval would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because it would make clear that Complex CUBE Orders that cannot be exposed to solicit price-improving interest for the full Response Time Interval would not be accepted by the Exchange. Moreover, the proposal to modify the Response Time Interval to be a set duration as opposed to a random duration would align with the operation of the single-leg CUBE auction as well as with other options exchanges that include this feature.[190]

The proposed rule change to enhance the Auction process on Pillar by allowing concurrent auctions, adding the associated ''AuctionID'' feature, and permitting Initiating Participants to designate a Surrender Quantity would, as discussed below, remove impediments to and perfect the mechanisms of a free and open market and a national market system for several reasons. First, the proposed changes would not only allow more Complex CUBE Auctions to occur on the Exchange (because of concurrent Auctions) but would also allow more targeted participation in Complex CUBE Auctions with the new AuctionID feature available for Complex GTX Orders. Market participants that respond to Auctions with Complex GTX Orders would be able to direct their trading interest to a specific Auction thus increasing determinism. That said, and as noted herein, the AuctionID functionality would be optional and a Complex GTX Order sent without an AuctionID would respond to the Auction that began closest in time to the submission of the Complex GTX Order. The Exchange notes that these proposed modifications and enhancements are substantively identical to existing Pillar functionality for single-leg CUBE Auctions and are also available on another options exchange.[191]

The proposal to permit concurrent auctions in the same complex strategies for Complex CUBE Orders would benefit investors because it would allow more Complex CUBE Auctions to run the full duration of the Response Time Interval, thus affording more time and opportunity for the arrival of price-improving interest. The Exchange believes the proposal to allow concurrent Auctions should promote and foster competition and provide more options contracts with the opportunity for price improvement—including because receipt of a new Complex CUBE Order would no longer cause the Auction in progress to end early, which should benefit all market participants. Further, and as noted herein the Exchange permits the conduct of concurrent single-leg CUBE Auctions, per Pillar Rule 971.1NYP(c), and therefore this proposal would add internal consistency to Exchange rules. In addition, the proposed change is consistent with functionality offered on at least one competing options exchange.[192] In addition, this proposed change may lead to an increase in Exchange volume and should allow the Exchange to better compete against other markets that already permit overlapping price improvement auctions for complex orders. Moreover, because at least one other options exchange permits concurrent auctions in price improvement auctions for complex orders, this proposal is not

[187] *See, e.g.,* proposed Rule 971.2NYP(a)(1)(A) (defining the key terms for the proposed Rule, including incorporating the concept of the DBBO per Pillar Rule 980NYP).

[188] *See* Cboe Rule 5.38(b)(1) (requiring that the ''Initiating Order'' (akin to Complex CUBE Order) must be guaranteed by the ''Agency Order'' (akin to Complex Contra Order) at a price that improves by at least one MPV the best-priced interest on the complex order book or in the leg markets when such interest represents a ''Priority Customer''); (e)(5)(B) (describing range of permissible executions in C–AIM and requiring that auction responses price improve Priority Customer interest). *See, e.g.,* proposed Rule 971.2NYP(a)(1)(A) (proposed definitions, including incorporating the concept of the DBBO per Pillar Rule 980NYP).

[189] *See* Cboe Rule 5.38(b)(1) and (e)(5)(B) (regarding required price improvement in the presence of Customer interest). *See supra* note 47 (regarding the Exchange's supposition that Cboe's C–AIM Rule requires price improvement of Priority Customer interest that is displayed).

[190] *See* Pillar Rule 971.1NYP(c)(1)(B). *See also* Cboe Rule 5.38(c)(3) (citing to the minimum auction interval of 100 milliseconds in place on Cboe).

[191] *See* Pillar Rule 971.1NYP(c)(1)(A). *See also* Cboe Rule 5.38(c)(2) (regarding ''AuctionID'' feature).

[192] *See* Cboe Rule 5.38(c)(1) (providing for ''Concurrent C–AIM Auctions in Same Complex Strategies'').

new or novel functionality and would be a competitive change that may make the Exchange a more attractive venue for auction-related order flow.

The proposed changes to streamline early end scenarios for Complex CUBE Auctions would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because it would increase the opportunity for each Complex CUBE Auction to run the full length of the (fixed duration) Response Time Interval, which should increase opportunities for price improvement. In addition, this proposed change should promote and foster competition and provide more options contracts with the opportunity for price improvement, which should benefit all market participants.

The proposal to provide the option of designating a Surrender Quantity would remove impediments to and perfect the mechanisms of a free and open market because it would afford more discretion and flexibility to the Complex Contra Order and may result in increased Complex CUBE Auction volume on the Exchange. Moreover, this proposed enhancement would align with the single-leg CUBE Auction which likewise allows the Initiating Participant to designate a Surrender Quantity and would allow the Exchange to compete on more equal footing with another options exchange that offers this feature in their price improvement auctions.[193]

The proposed rule changes to modify the handling and operation of Complex GTX Orders on Pillar (*e.g.,* that such orders will execute solely with the Complex CUBE Order, if at all, and then cancel) and to clarify that Complex GTX Orders, although not displayed or disseminated, are ranked and prioritized with same-priced Limit Orders as Priority 2—Display Orders on Pillar (consistent with Pillar Rule 964NYP) would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because such changes would make clear to market participants responding to an Auction with a Complex GTX Order how such interest would be prioritized and handled on Pillar, thus adding clarity, transparency, and internal consistency to Exchange rules. This proposed change would also align with the handling of GTX Orders in single-leg CUBE Auctions.[194]

The proposed rule change would remove impediments to and perfect the mechanisms of a free and open market and a national market system and would protect investors and the public interest because the proposed Complex CUBE Order allocation is consistent with the pre-Pillar Complex CUBE rule except that it is modified to align with Pillar Rule 964NYP (as discussed in detail herein), which sets forth a priority model on Pillar that is consistent with the Exchange's Customer-centric allocation model and affords Customers priority within each Pillar Priority category. In addition, this alignment of Complex CUBE Order functionality with Pillar Rule 964NYP would add clarity, transparency, and internal consistency to Exchange rules to the benefit of investors. This proposed change would also align the allocation of Complex CUBE Orders with the handling of CUBE Orders in single-leg CUBE Auctions, per Pillar Rule 971.1NYP(c)(4)(A).

The Exchange believes the proposed rule change is not unfairly discriminatory because the proposed handling of Complex CUBE Auctions on Pillar would be the same for similarly-situated ATP Holders. As was the case for pre-Pillar Auctions, all ATP Holders would continue to have an equal opportunity to receive the broadcast and respond with their best prices during the auction. The proposal to continue to afford Customer interest first priority within each Pillar Priority category is consistent with the Exchange's Customer-centric trading model and would benefit investors by attracting more (Customer) order flow to the Exchange which would result in increased liquidity.

Overall, the Exchange believes this proposal may lead to an increase in Exchange volume and should allow the Exchange to better compete against another options market that already offers the enhanced functionality proposed herein.[195] As is the case for single-leg CUBE Auctions on Pillar, the Exchange believes that its proposal would allow the Exchange to better compete for auction order flow, while providing an opportunity for price improvement on Complex CUBE Orders of any size.[196] In addition, the proposed functionality should promote and foster competition and provide more options contracts with the opportunity for price improvement, which should benefit market participants.

Conforming Changes to Rule 900.2NY

The proposed change to the definition of Professional Customer to make clear that Professional Customers are treated as Broker/Dealers (or non-Customers) for purposes of the Complex CUBE Auction on Pillar, per proposed Rule 971.2NYP would remove impediments to and perfect the mechanism of a free and open market and a national market system and would protect investors and the public interest because such changes would ensure consistent handling of Professional Customer interest in the Complex CUBE Auction prior to and after the Exchange's migration to Pillar. The proposed change would align Exchange rules with the rules of at least one other options exchange that likewise differentiates the treatment of Professional Customer interest from Customer interest for purposes of price improvement auctions for paired orders, where Customers (but not Professional Customers) are afforded first priority to trade in the auction.[197] Further, the proposal to remove reference to the pre-Pillar Rules 971.1NY and 971.2NY because these rules are not operative on Pillar would benefit investors because it would improve the accuracy of, and add clarity, transparency, and internal consistency to, Exchange rules making them easier to navigate and understand.

Conforming Changes to Rule 935NY

The Exchange believes that adding a cross-reference to proposed Rule 971.2NYP and thus extending the exemption from the one-second order exposure requirement set forth in Rule 935NY to include the Complex CUBE Auctions on Pillar would remove impediments to and perfect the mechanism of a free and open market and a national market system. As noted herein, the proposed Complex CUBE Auctions on Pillar would offer features that are substantively identical to the pre-Pillar Complex CUBE Auction. Accordingly, the Exchange believes that it would promote just and equitable principles of trade to exempt from the

[193] *See* Pillar Rule 971.1NYP(c)(4)(C). *See also* Cboe Rule 5.38(e)(5) (regarding ''last priority'' feature).

[194] *See* Pillar Rule 971.1NYP(c)(1)(C)(i). The proposed handling of Complex GTX Orders is also consistent with the handling of COA GTX Orders submitted to a COA, per Pillar Rule 980NYP.

[195] *See generally* Cboe Rule 5.38 (offering, in its C–AIM, similar enhanced features and requiring the same pricing parameters and price improvement over ''Priority Customers'' as are proposed herein).

[196] *See generally* Pillar Rule 971.1NYP (regarding single-leg CUBE Auctions on Pillar). *See* discussions, *supra* (detailing features of single-leg CUBE Auctions on Pillar that mirror the enhancements proposed herein).

[197] *See* Cboe Rule 5.38(e) (providing that ''Priority Customer'' interest executes first with the Agency Order submitted to the price improvement auction, followed by non-Priority Customer interest).

one-second order exposure requirement Complex CUBE Orders submitted on Pillar, per proposed Rule 971.2NYP. Like the pre-Pillar CUBE Auction, the proposed Complex CUBE provides ATP Holders a minimum of 100 milliseconds to respond to Complex CUBE Orders, which should promote timely executions, while ensuring adequate exposure of such orders.[198] Further, consistent with Rule 935NY, Commentary .01, the ATP Holders submitting CUBE Orders—to the existing CUBE or to Pillar CUBE—would do so only when there is a genuine intention to execute a bona fide transaction.[199] Finally, the proposal to remove reference to pre-Pillar Rules 971.1NY and 971.2NY because these rules are not operative on Pillar, add clarity, transparency, and internal consistency to Exchange rules.

Conforming Changes to Rule 980NYP

The proposed change to Pillar Rule 980NYP(b)(1) to include Complex CUBE Orders in the list of potential ECOs would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would add clarity, transparency, and internal consistency to Exchange rules. The proposed change to Pillar Rule 980NYP(f) to specify that a COA Order received during a Complex CUBE Auction in the same complex strategy would not initiate a COA and that a COA in progress would end early upon the receipt of a Complex CUBE Order in the same complex strategy would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would allow the Exchange to conduct only one auction process of ECOs at a time, which handling is consistent with functionality on at least one other options exchange.[200] Similarly, the proposal to end a COA in progress early upon the receipt of a Complex CUBE Order would promote internal consistency a COA in progress will end early upon receipt of a Complex QCC Order in the same complex strategy per Pillar Rule 980NYP(f)(3)(E).[201]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes would support that intermarket competition by allowing the Exchange to offer additional functionality to its ATP Holders, thereby potentially attracting additional order flow to the Exchange. The Exchange does not believe that the proposed rule changes would impact intra-market competition as the proposed rule changes would be applicable to all similarly-situated ATP Holders and reflects the Exchange's pre-Pillar priority model. As noted herein, the proposed enhancements would align the proposed Rule with the operation of the single-leg CUBE Auction (per Pillar Rule 971.1NYP), which may encourage ATP Holders to utilize both auction mechanisms thus attracting additional liquidity to the Exchange.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes this proposed rule change would promote fair competition among the options exchanges and establish more uniform functionality across the various price improvement auctions offered by other options exchanges. As noted herein, several of the proposed enhancements to the Auction—*i.e.,* concurrent auctions, inclusion of an AuctionID on Request for Responses and the option to include an AuctionID on Complex GTX Orders, a fixed duration during which auction responses are submitted, and the ability to designate an optional Surrender Quantity—are offered on at least one other options exchange (*e.g.,* Cboe) and the addition of these features would make the Exchange a more competitive venue for price improvement auctions. As discussed herein, the proposed changes to the CUBE BBO definition, which incorporate Pillar concepts (including regarding priority and the DBBO), are designed to enhance the Exchange's ability to compete with Cboe for complex order auction flow. To the extent that the proposed functionality leads to an increase in Exchange volume, this increase should allow the Exchange to better compete against other options markets that already offer similar price improvement mechanisms and for this reason the proposal does not create an undue burden on intermarket competition. By contrast, not having the proposed functionality places the Exchange at a competitive disadvantage vis-à-vis other options exchanges that offer similar price improvement mechanisms.

Similarly, the proposal to treat Professional Customer interest as Broker/Dealer (non-Customer) interest for purposes of the proposed Rule would not impose any undue burden on intramarket or intermarket competition as use of the Complex CUBE Auction is optional. For those market participants that choose to utilize CUBE Auctions on Pillar, the proposed definition applies equally to all similarly-situated investors. In addition, all investors that opt to use the Complex CUBE Auction would be subject to the same (amended) definition—which is consistent with the definition that applied to pre-Pillar Rule 971.2NY—and would also align the Exchange with at least one other options exchange that likewise affords priority in price improvement auctions to ''Priority Customers'' but not to Professional Customers.[202]

The Exchange does not believe that its proposed rule change will impose any burden on intra-market competition because any User on the Exchange may utilize the Complex CUBE Auction, as described in the proposed Rule, and all orders submitted to the Auction would be treated in the same manner for purposes of Rule 935NY (*i.e.,* such orders would be exempt from the one-second order exposure requirement).

In addition, the proposed change to include Complex CUBE Orders among the list of available Complex Orders set forth in Pillar Rule 980NYP(b)(1) would not impose an undue burden on competition but would instead add clarity, transparency, and internal consistency to Exchange rules. Furthermore, the proposal to modify Pillar Rule 980NYP(f) to disallow a COA at the same time there is a Complex CUBE Auction in progress (or end a COA early upon receipt of a Complex CUBE Auction) likewise would not impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the

[198] *See* proposed Rule 971.2NYP(c)(1)(B) (regarding a Response Time Interval of no less than 100 milliseconds).

[199] *See* Rule 935NY, Commentary .01 (''Rule 935NY prevents a User from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the User was already bidding or offering on the book'').

[200] *See* MIAX Options User Manual, *supra* note 179 (stating that, on MIAX, ''[o]nly one complex auction whether a cPRIME or a Standard Complex auction may be in process for any given Strategy at a time'' and that MIAX will reject ''a cPRIME order in a Strategy that is already in a cPRIME or Standard Complex auction'').

[201] *See* Pillar Rule 980NYP; *see also* note 179 [sic], *supra* (regarding the Exchange's adoption, on an immediately effective basis, new Pillar Rule 980NYP(f)(3)(E), which specifies that a COA in progress ends early upon receipt of a Complex QCC Order in the same complex strategy).

[202] *See* Cboe Rules 5.38(e)–(f) (regarding the handling of Priority Customer interest for purposes of priority and allocation in Cboe's C–AIM Auction and for inclusion on customer crossing orders).

purposes of the Act. First, this proposed change would enable the Exchange to compete on more equal footing with at least one other options exchange that likewise prevents complex trading interest from being subject to simultaneous auctions.[203] Furthermore, options exchanges are free to adopt (if they have not already done so) electronic crossing mechanisms with price improvement auctions that similarly prevent multiple complex auction mechanisms to occur in the same strategy at the same time.

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act [204] and Rule 19b–4(f)(6) [205] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[206]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[203] *See supra* note 179 (citing to MIAX Options User Manual, which prohibits more than one complex auction at a time—whether in the same mechanism (*i.e.,* cPRIME) or in different auction mechanisms (*i.e.,* cPRIME versus MIAX's ''Standard Complex auction'').

[204] 15 U.S.C. 78s(b)(3)(A).

[205] 17 CFR 240.19b–4(f)(6).

[206] In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2024–24 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–NYSEAMER–2024–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2024–24 and should be submitted on or before May 22, 2024.

[207] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[207]

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100027; File No. SR–NYSE–2024–13]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change for Amendments to Rule 7.35 and Rule 7.35B

April 25, 2024.

On March 1, 2024, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 7.35 and Rule 7.35B. The proposed rule change was published for comment in the **Federal Register** on March 18, 2024.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission will either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is May 2, 2024. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change, so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates June 16, 2024, as the date by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 99719 (Mar. 12, 2024), 89 FR 19370 (Mar. 18, 2024) (SR–NYSE–2024–13).

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSE–2024–13).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–09333 Filed 4–30–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100029; File No. SR–NYSEARCA–2024–05]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the COtwo Advisors Physical European Carbon Allowance Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)

April 25, 2024.

I. Introduction

On January 10, 2024, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the COtwo Advisors Physical European Carbon Allowance Trust under NYSE Arca Rule 8.201–E. The proposed rule change was published for comment in the **Federal Register** on January 26, 2024.[3]

On March 4, 2024, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has not received any comments on the proposed rule change. The Commission is publishing this order to institute proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to disapprove the proposed rule change.

II. Description of the Proposed Rule Change[7]

The Exchange proposes to list and trade Shares of the COtwo Advisors Physical European Carbon Allowance Trust (''Trust'')[8] under NYSE Arca Rule 8.201–E, which governs the listing and trading of Commodity-Based Trust Shares[9] on the Exchange. The sponsor of the Trust is COtwo Advisors LLC, a Delaware limited liability company (''Sponsor'').

Description of the Operation of the Trust

According to the Exchange, the investment objective of the Trust will be for the Shares to reflect the performance of the price of EU Carbon Emission Allowances for stationary installations (''EUAs''), less the Trust's expenses.[10] The Trust intends to achieve its objective by investing all of its assets in EUAs on a non-discretionary basis (*i.e.,* without regard to whether the value of EUAs is rising or falling over any particular period).[11] The Trust will not hold any assets other than EUAs and, possibly, a very limited amount of cash to pay Trust expenses.[12]

The Trust will not invest in futures, options, options on futures, or swap contracts.[13] The Trust will not hold or trade in commodity futures contracts, ''commodity interests,'' or any other instruments regulated by the Commodity Exchange Act.[14] The Trust's cash custodian may hold cash proceeds from EUA sales to pay Trust expenses. All EUAs will be held in the Union Registry (defined below).[15]

The Trust will value its Shares daily based on the value of EUAs as reflected by the EUA End of Day Index value, as published by the European Energy Exchange AG (''EEX'').[16] The administrator of the Trust will determine the net asset value (''NAV'') of the Trust once each Exchange trading day, which will be released after the end of the Core Trading Session, which is typically 4 p.m. New York time[17] When the Trust sells or redeems its Shares, it will do so in ''in-kind'' transactions with authorized participants in blocks of 50,000 Shares.[18]

EUAs and the EUA Markets

According to the Exchange, the European Union Emissions Trading System (''EU ETS'') is a ''cap and trade'' system that caps the total volume of greenhouse gas emissions from installations and aircraft operators.[19] The EU ETS is administered by the EU Commission, which issues a predefined amount of EUAs through auctions or free allocation.[20] An EUA represents the right to emit one metric ton of carbon

[6] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 99409 (January 22, 2024), 89 FR 5273 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 99668, 89 FR 16808 (March 8, 2024). The Commission designated April 25, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] Additional information regarding the Trust and the Shares can be found in the Notice, *supra* note 3.

[8] On May 12, 2023, the Trust filed with the Commission a registration statement on Form S–1 (File No. 333–271910) (''Registration Statement'') under the Securities Act of 1933. The Exchange represents that the Registration Statement is not yet effective, and the Shares will not trade on the Exchange until such time that the Registration Statement is effective. The Exchange further represents that the Trust will not be registered as an investment company under the Investment Company Act of 1940, as amended, and that the Trust is not a commodity pool for purposes of the Commodity Exchange Act, as amended. *See* Notice, *supra* note 3, 89 FR at 5274.

[9] The Exchange represents that the Shares will satisfy the requirements of NYSE Arca Rule 8.201–E and thereby qualify for listing on the Exchange, and that the Trust relies on the exemption contained in Rule 10A–3(c)(7) regarding the application of Rule 10A–3 (17 CFR 240.10A–3) under the Act. *See* Notice, *supra* note 3, 89 FR at 5274.

[10] *See* Notice, *supra* note 3, 89 FR at 5274.

[11] *See id.*

[12] *See id.* The Trust may also cause the Sponsor to receive EUAs from the Trust in such a quantity as may be necessary to pay the Sponsor's annual fee. *See id.*

[13] *See id.*

[14] *See id.*

[15] *See id.*

[16] *See id.* at 5279. The EUA End of Day Index methodology is available at *https://www.eex.com/fileadmin/EEX/Downloads/Trading/Specifications/Indeces/DE/20211005_Index_Description_v010.pdf.* According to the Exchange, the value of the EUA End of Day Index is calculated based on an algorithm using data regarding the prices of qualifying trades and the average bids and asks of orders that meet certain order quantity requirements. *See* Notice, *supra* note 3, 89 FR at 5276. In order for data regarding trades and orders to be used for calculating the value of the EUA End of Day Index, the trades or orders must satisfy certain requirements regarding (i) quantity of traded contracts, (ii) quantity of contracts per order, (iii) minimum duration of the cumulated valid best bid and best ask, and (iv) maximum spread per contract. The EUA End of Day Index calculation methodology depends on the number of valid trades and orders which fulfil the product-specific parameters. *See id.* The data used for calculating the EUA End of Day Index can also come from fair values collected in a price committee or from other price sources. *See id.* The EUA End of Day Index price calculated is then validated against actual market prices. *See id.*

[17] *See id.* at 5279. The administrator also converts the value of Euro denominated assets into US Dollar equivalent using published foreign currency exchange prices by an independent pricing vendor. *See id.*

[18] *See id.* at 5278.

[19] There are two types of EU emissions allowances: (i) general allowances for stationary installations, or EUA; and (ii) allowances for the aviation sector. *See id.* at 5274. The Trust will not hold any assets other than EUAs and, possibly, a very limited amount of cash to pay Trust expenses. *See id.*

[20] *See id.* at 5274–75.

dioxide equivalent into the atmosphere by operators of stationary installations (''Covered Entities'').[21] By the end of April each year, all Covered Entities are required to surrender EUAs equal to the total volume of actual emissions from their installation for the last calendar year.[22] EU ETS operators can buy or sell EUAs to achieve EU ETS compliance.[23]

In 2012, EU ETS operations were centralized into a single EU registry operated by the EU Commission (the ''Union Registry''), which covers all countries participating in the EU ETS.[24] According to the Exchange, the Union Registry is an online database that holds accounts for all entities covered by the EU ETS as well as for participants (such as the Trust) not covered under the EU ETS.[25] An account must be opened in the Union Registry by a legal or natural person before being able to participate in the EU ETS and transact in EUAs.[26] The European Union Transaction Log (''EUTL'') [27] checks, records and authorizes all transactions that take place between accounts in the Union Registry to ensure that transfers are in accordance with the EU ETS rules.[28] The Union Registry is at all times responsible for holding all EUAs.[29]

The spot and futures markets for EUAs have existed since 2005 after the formal launch of the EU ETS on January 1, 2005.[30] Spot EUA contracts are traded exclusively on EEX,[31] and futures contracts are traded on EEX, ICE Endex Markets B.V. (''ICE Endex''),[32] and Nasdaq Oslo.[33] Additionally, options on EUA futures contracts are traded on EEX and ICE Endex, but not on Nasdaq Oslo.[34]

According to the Exchange, there are currently two primary avenues for trading EUAs: a primary market and a secondary market.[35] The primary market involves participation in a regularly scheduled auction.[36] EUA auctions are held on a near-daily basis throughout the year, other than between mid-December to mid-January, when auctions are paused.[37] EUA auctions take place exclusively on EEX.[38] Prices achieved in these auctions are published on various publicly-accessible websites, including the European Commission's primary website.[39] The secondary market involves transactions between buyers and sellers on regulated markets. The contracts offered for trading are the following: (1) instruments with a daily expiry, including spot EUAs [40] and a single day futures contract on EUAs (''Daily EUA Future''),[41] (2) futures contracts with various maturities; [42] and (3) options on futures contracts.[43] There are also over-the-counter transactions, but, according to the Exchange, they comprise a negligible percentage of transactions.[44]

The Exchange states that the daily EUA End of Day Index value can be expected to be substantially identical to the daily settlement price of the Daily EUA Future.[45] In support of this statement, the Exchange provided a comparison of the daily EUA End of Day Index value and the Daily EUA Future settlement price over a 45 calendar day period from October 26, 2023 through December 8, 2023.[46] Additionally, the Exchange provided a chart showing the spot prices in continuous trading on the EEX and the intra-day prices of Daily EUA Futures on ICE Endex, in EUR/tCO2 from January 2018 to January 2022 to illustrate how the Daily EUA Future reflects the EUA spot price during the trading day.[47]

Surveillance

In support of its proposal, the Exchange states that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority Inc. (''FINRA''), on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[48] The Exchange states that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[49]

The Exchange has entered into a comprehensive surveillance sharing agreement (''CSSA'') with ICE Endex.[50] The Exchange states that, pursuant to the CSSA, it will communicate as needed regarding trading in the Shares and Daily EUA Futures with ICE Endex, and may obtain trading information regarding trading in the Shares and Daily EUA Futures from ICE Endex.[51]

III. Proceedings to Determine Whether To Approve or Disapprove SR–NYSEARCA–2024–05 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [52] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[53] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to

[21] *See id.* at 5275.

[22] *See id.*

[23] *See id.*

[24] *See id.*

[25] *See id.*

[26] *See id.*

[27] The EUTL is a central transaction log that checks and records all transactions taking place within the EU ETS. It is run by the European Commission and provides an easy access to emission trading data contained in the EUTL. *See https://www.eea.europa.eu/data-and-maps/dashboards/emissions-trading-viewer-1.*

[28] *See* Notice, *supra* note 3, 89 FR at 5275.

[29] *See id.*

[30] *See id.*

[31] *See id. See also https://www.esma.europa.eu/sites/default/files/EEX_1.pdf;* and Rules and Regulations at *https://www.eex.com/en/markets/trading-ressources/rules-and-regulations.*

[32] *See* Notice, *supra* note 3, 89 FR at 5275. *See also https://www.ice.com/endex/regulation#:~:text=The%20Dutch%20Authority%20for%20Consumers,energy%20industry%20and%20wholesale%20trading.*

[33] *See* Notice, *supra* note 3, 89 FR at 5275.

[34] *See id.*

[35] *See id.*

[36] *See id.*

[37] *See id.* at 5276.

[38] *See id.*

[39] *See id.*

[40] *See id.*

[41] *See id.* The Daily EUA Future is exclusively traded on ICE Endex and is a deliverable contract where each person with a position open at cessation of trading is obliged to make or take delivery of EUAs upon the expiration of the contract at the end of each trading day. *See id.* Each Daily EUA Future represents one lot of 1,000 EUAs. *See id.*

[42] *See id.* at 5278.

[43] *See id.*

[44] *See id.*

[45] *See id.*

[46] *See id.* at 5276–77.

[47] *See id.* at 5277.

[48] *See* Notice, *supra* note 3, 89 FR at 5280. FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. *See id.*

[49] *See id.*

[50] *See id.*

[51] *See id.*

[52] 15 U.S.C. 78s(b)(2)(B).

[53] *Id.*

protect investors and the public interest.'' [54]

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. Given the nature of the underlying assets held by the Trust, what are commenters' views on whether the proposed Trust and Shares would be susceptible to manipulation? What are commenters' views generally on whether the Exchange's proposal is designed to prevent fraudulent and manipulative acts and practices? What are commenters' views generally with respect to the liquidity and transparency of the EUA spot and futures markets and such markets' susceptibility to manipulation? Are there particular features related to the EUA markets and the EUA ecosystem that raise unique concerns about whether the proposed Trust, which would hold EUAs and, possibly, a very limited amount of cash, would be susceptible to fraud or manipulation?

2. According to the Exchange, EEX calculates and publishes its EUA End of Day Index on the price of spot EUAs. The value of the EUA End of Day Index is calculated based on an algorithm using data regarding the prices of qualifying trades and the average bids and asks of orders that meet certain order quantity requirements.[55] What are commenters' views on whether the EUA End of Day Index is an accurate basis to price spot EUAs for purposes of NAV calculation and valuing the Shares of the Trust?

3. The Exchange states that ''[g]iven the significant size of ICE Endex, there is a reasonable likelihood that a market participant attempting to manipulate the Trust Shares would also have to trade on ICE Endex to successfully manipulate the Trust Shares.'' [56] In addition, the Exchange states that ''[i]t is unlikely that trading in the Trust Shares would be the predominant influence on Daily EUA Futures prices traded on ICE Endex for a number of reasons, including the significant volume in and size of the EUA daily expiry market.'' [57] Based on data and analysis provided by the Exchange,[58] do commenters agree with the Exchange that ICE Endex, on which the Daily EUA Futures trade, represents a regulated market of significant size related to spot EUAs? [59] What are commenters' views on whether there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on ICE Endex to manipulate the Shares? [60] Do commenters agree with the Exchange that trading in the Shares would not be the predominant influence on prices in the Daily EUA Futures market? [61]

4. The Exchange states that the ''the correlation between the EUA End of Day Index value that reflects the value of the spot EUAs traded on EEX and the Daily EUA Future settlement price is nearly perfect,'' and ''[t]hus, on any given day, the value of an EUA purchased on EEX or an EUA received after settling a Daily EUA Future traded on ICE Endex is the same.'' [62] The Exchange concludes that ''[w]hile it is possible that a potential manipulator could chose to trade only in the spot EUA market (EEX), the near-perfect correlation between the EUA End of Day Index value and the Daily EUA Future settlement price means that a price distortion in the spot EUA market would be reflected in the Daily EUA Futures market and vice versa.'' [63] What are commenters' views on the correlation between the EUA End of Day Index value and the Daily EUA Future settlement price? What are commenters' views on the correlation between the spot EUA market and the ICE Endex futures market? What are commenters' views on the extent to which a CSSA with ICE Endex would assist in detecting and deterring fraud and manipulation that impacts an exchange-traded product that holds spot EUAs, and on whether the Exchange's correlation analysis [64] provides any evidence to this effect?

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[65]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by May 22, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 5, 2024.

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–NYSEARCA–2024–05 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–NYSEARCA–2024–05. 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

[54] 15 U.S.C. 78f(b)(5).

[55] *See* Notice, *supra* note 3, 89 FR at 5276.

[56] *See id.* at 5280–81.

[57] *See id.*

[58] *See* Notice, *supra* note 3.

[59] *See* Notice, *supra* note 3, 89 FR at 5280.

[60] *See id.*

[61] *See id.*

[62] *See id.*

[63] *See id.*

[64] *See* Notice, *supra* note 3.

[65] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2024–05 and should be submitted on or before May 22, 2024. Rebuttal comments should be submitted by June 5, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[66]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–09325 Filed 4–30–24; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 20155 and # 20156; ALASKA Disaster Number AK–20001]

Presidential Declaration Amendment of a Major Disaster for the State of Alaska

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of ALASKA (FEMA–4763–DR), dated 03/15/2024.

Incident: Wrangell Cooperative Association—Severe Storm, Landslides, and Mudslides.

Incident Period: 11/20/2023.

DATES: Issued on 04/24/2024.

Physical Loan Application Deadline Date: 05/20/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 12/16/2024.

ADDRESSES: Visit the MySBA Loan Portal at *https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of ALASKA, dated 03/15/2024, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 05/20/2024.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–09359 Filed 4–30–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12382]

Office of the Chief of Protocol; Gifts to Federal Employees From Foreign Government Sources Reported To Employing Agencies in Calendar Year 2022; Correction

ACTION: Notice; Correction.

SUMMARY: The Department of State published a document of overvalue gifts reported to employing agencies in calendar year 2022 in the **Federal Register** of February 15, 2024. The document contained incorrect values and disposition of respective gifts for 50 previously reported items. This notice corrects the previously reported information for those items.

FOR FURTHER INFORMATION CONTACT: Ms. Jennine Jones, Protocol Gift Officer, Office of the Chief of Protocol, U.S. Department of State, 202–647–1333, *SCPR-Gifts-DL@state.gov.*

SUPPLEMENTARY INFORMATION: All information reported to the Office of the Chief of Protocol, including gift appraisal and donor information, is the responsibility of the employing agency, in accordance with applicable law and GSA regulations.

The Office of the Chief of Protocol, Department of State, submits the following comprehensive listing of the statements which, as required by law, federal employees filed with their employing agencies during calendar year 2022 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined in 5 U.S.C. 7432 and GSA regulations. For calendar year 2022 (January 1, 2022 through December 31, 2022), minimal value is $415.00.

Pursuant to Title 22 of the Code of Federal Regulations Section 3.4, the report includes all gifts given on a single occasion when the aggregate value of those gifts exceeds minimal value. Agencies not listed in the previously published report either did not receive relevant gifts during the calendar year, did not transmit a listing to the Secretary of State of all statements filed during the preceding year by the employees of that agency pursuant to 5 U.S.C. 7432(f)(1), or did not respond to the State Department's Office of the Chief of Protocol's request for data. The U.S. Senate maintains an internal minimal value of $100; therefore, all gifts over the $100 limit are furnished in the U.S. Senate report.

Publication of this listing in the **Federal Register** is required by section 7342(f) of Title 5, United States Code, as added by section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Pub. L. 95–105, August 17, 1977, 91 Stat. 865).

Correction

In the **Federal Register** of February 15, 2024, in FR Doc. 2024–03129, on page 11898–11902, in the Report of Tangible Gifts Furnished by the White House—Executive Office of the President, correct the following:

[66] 17 CFR 200.30–3(a)(57).

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT

[Report of tangible gifts furnished by the White House—Executive Office of the President]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Joseph R. Biden Jr., President of the United States.	Painting titled "At Parika Stelling (Guyana)." Rec'd—3/2/2022 Est. Value—$650.00 Disposition—Transferred to NARA.	His Excellency Mohamed Irfaan Ali, President of the Co-operative Republic of Guyana.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Basket made of Werregue Fiber, Handwoven Hammock Rec'd—3/24/2022 Est. Value—$600.00 Disposition—Transferred to NARA.	His Excellency Iván Duque, President of the Republic of Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	"Nekhbet Collar" Reproduction Rec'd—4/29/2022 Est. Value—$1,530.00 Disposition—Transferred to NARA.	His Excellency Abdel Fattah Al-Sisi, President of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Gold-plated Basket Rec'd—5/13/2022 Est. Value—$490.00 Disposition—Transferred to NARA.	His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah Ibni Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien, Sultan and Yang Di-Pertuan of Brunei Darussalam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Sterling Silver Plate with Wood Stand Rec'd—5/13/2022 Est. Value—$420.00 Disposition—Transferred to NARA.	His Excellency Hun Sen, Prime Minister of the Kingdom of Cambodia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Navy Blue Silk Rec'd—5/13/2022 Est. Value—$420.00 Disposition—Transferred to NARA.	His Excellency Pham Minh Chinh, Prime Minister of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Footed Bowl Stamped "PAMPALONI 825" with Stand Rec'd—5/16/2022 Est. Value—$9,585.00 Disposition—Transferred to NARA.	Ms. Mareva Grabowski-Mitsotakis, Spouse of the Prime Minister of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Iittala Vase Rec'd—5/19/2022 Est. Value—$425.00 Disposition—Transferred to NARA.	His Excellency Sauli Niinisto, President of the Republic of Finland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	"QATAR 2022/22 Joe Biden" Sports Jersey with "FIFA World Cup Qatar 2022" Identification Card Rec'd—5/26/2022 Est. Value—$430.00 Disposition—Transferred to NARA.	His Royal Highness Sheikh Tamim bin Hamad Al Thani, Emir of the State of Qatar.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Paper Scissor-cut Artwork Rec'd—5/26/2022 Est. Value—$450.00 Disposition—Transferred to NARA.	His Excellency Narendra Modi, Prime Minister of the Republic of India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Painting Titled "Evening in Aranguez" Rec'd—6/8/2022 Est. Value—$1,300.00 Disposition—Transferred to NARA.	The Honorable Keith Rowley, Prime Minister of the Republic of Trinidad and Tobago.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts furnished by the White House—Executive Office of the President]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Joseph R. Biden Jr., President of the United States.	Green Stone Sculpture Rec'd—6/9/2022 Est. Value—$450.00 Disposition—Transferred to NARA.	The Right Honorable Justin Trudeau, PC, MP, Prime Minister of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Pottery Marked ''Oscar Soteno E. Metepec. Mex.22'' Rec'd—6/10/2022 Est. Value—$700.00 Disposition—Transferred to NARA.	His Excellency Marcelo Ebrard Casaubon, Foreign Secretary of Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Framed Artwork Rec'd—6/21/2022 Est. Value—$2,180.00 Disposition—Transferred to NARA.	His Excellency Pham Minh Chính, Prime Minister of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	''Seoan'' Reading Table Rec'd—6/23/2022 Est. Value—$3,200.00 Disposition—Transferred to NARA.	His Excellency Yoon Suk Yeol, President of the Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Building Model by Royal Selangor Rec'd—6/23/2022 Est. Value—$8,700.00 Disposition—Transferred to NARA.	His Excellency Dato' Sri Ismail Sabribin Yaakob, Prime Minister of Malaysia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Painting of Virgin Mary with Child Rec'd—6/23/2022 Est. Value—$560.00 Disposition—Transferred to NARA.	His Excellency Pedro Castillo, President of the Republic of Peru and Mrs. Lilia Paredes.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Watercolor Painting and Cufflinks Rec'd—6/23/2022 Est. Value—$450.00 Disposition—Transferred to NARA.	His Excellency Lee Hsien Loong, Prime Minister of the Republic of Singapore.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	''Mere'' Māori Battle Axe, Thomas Hansen of Tauranga Moana Area Footed Bowl Rec'd—6/24/2022 Est. Value—$2,870.00 Disposition—Transferred to NARA.	The Right Honorable Jacinda Ardern, Prime Minister and Minister of National Security and Intelligence of New Zealand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Set of 6 Crystal Tumblers, Commemorative Coins Rec'd—7/8/2022 Est. Value—$440.00 Disposition—Transferred to NARA.	His Majesty Felipe VI, King of Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	2 Scene Shadowbox, ''State of Palestine'' Photobook Rec'd—7/15/2022 Est. Value—$2,740.00 Disposition—Transferred to NARA.	His Excellency Mahmoud Abbas, President of the Palestinian Authority.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Olive Wood Nativity Scene Rec'd—7/15/2022 Est. Value—$9,760.00 Disposition—Transferred to NARA.	Mr. Hanna Hanania, Mayor of Bethlehem, Palestinian Authority.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts furnished by the White House—Executive Office of the President]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Joseph R. Biden Jr., President of the United States.	2 Volume Book Set, 3 ''AlUla'' Books by Assouline, Wooden Box with Olive Oil and Coffee Rec'd—7/15/2022 Est. Value—$31,655.00 Disposition—Book Set, Books and Wooden Box Transferred to NARA. Perishable items disposed of pursuant to USSS policies.	His Royal Highness, Salman bin Abdulaziz Al Saud, Custodian of the Two Holy Mosques King of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Cotton Washcloths, Two Glass Serving Trays, 12 Rogaska of Slovenia Crystal Containers, Clear Glass Jar, Rogaska of Slovenia Tray and Serving Tray, Incense Burner, 7 Rogaska Bowls Rec'd—7/16/2022 Est. Value—$1,950.00 Disposition—Transferred to NARA.	His Royal Highness Muhammad bin Salman bin Abdulaziz Al Saud, Crown Prince, Deputy Prime Minister, and Minister of Defense of the Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Wool Ground Mat, Kuwaiti Drinking and Clothing Set, and Medallion Rec'd—7/16/2022 Est. Value—19,850.00 Disposition—Transferred to NARA.	His Highness Sheikh Mishaal Al-Ahmed Al-Jaber Al-Sabah, Crown Prince of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Wood Bowl Rec'd—7/28/2022 Est. Value—$790.00 Disposition—Transferred to NARA.	His Majesty King Abdullah II ibn Al Hussein, King of the Hashemite Kingdom of Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Yellow Gold Brooch, Guyana Flag Lapel Pin Rec'd—8/8/2022 Est. Value—$736.00 Disposition—Transferred to NARA.	His Excellency Mohamed Irfaan Ali, President of the Co-operative Republic of Guyana.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	2 Coffee Table Books, Drink Set, 2 Books by Nelson Mandela, Wood Box Rec'd—9/16/2022 Est. Value—$997.00 Disposition—Transferred to NARA.	His Excellency Matamela Cyril Ramaphosa, President of the Republic of South Africa.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Pair of South Sea Cufflinks Rec'd—9/21/2022 Est. Value—$3,700.00 Disposition—Transferred to NARA.	His Excellency Ferdinand R. Marcos, Jr., President of the Republic of Philippines.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	18k Gold Pin Rec'd—10/31/2022 Est. Value—$670.00 Disposition—Transferred to NARA.	The Honorable James Marape, MP, Prime Minister of the Republic of Papua New Guinea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Metal Ankh Rec'd—11/10/2022 Est. Value—$2,430.00 Disposition—Transferred to NARA.	His Excellency Abdel Fattah Al-Sisi, President of the Arab Republic of Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	ASEAN 2022 Watch, Briefcase Set with Notebook and Pen Rec'd—11/11/2022 Est. Value—$1,790.00 Disposition—Transferred to NARA.	His Excellency Hun Sen, Prime Minister of the Kingdom of Cambodia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts furnished by the White House—Executive Office of the President]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
The Honorable Joseph R. Biden Jr., President of the United States.	Blue Batik, G20 Notebook Cover, Leather Briefcase with iPad, Silver Horn, Pin Rec'd—11/12/2022 Est. Value—$14,244.00 Disposition—Transferred to NARA.	G20 Host Committee, Government of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Blue Shirt, Orange Multi-Colored Shirt by Kwong Tung, Blue Multi-Colored Shirt by Kwong Tung Rec'd—11/12/2022 Est. Value—$710.00 Disposition—Transferred to NARA.	ASEAN East Asia Summit 2022 Host Committee, Government of the Kingdom of Cambodia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Traditional Dagger with Carvings Rec'd—11/14/2022 Est. Value—$3,200.00 Disposition—Transferred to NARA.	His Excellency Joko Widodo, President of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Painting Titled ''Orange Patterns'' Rec'd—11/21/2022 Est. Value—$2,400.00 Disposition—Transferred to NARA.	His Excellency Volodymyr Zelenskyy, President of Ukraine.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Christofle Silver Bowl, Grande Nautic Ski GMT Watch, Book ''Revolution'', Bottle of Armagnac 1942 Reserve Joseph Rec'd—11/30/2022 Est. Value—$3,169.00 Disposition—Watch Purchased, Bowl and Book transferred to NARA, Perishable items retained for Official Use and/or disposed of pursuant to USSS policies	His Excellency Emmanuel Macron, President of the French Republic and Mrs. Brigitte Macron.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States.	Panama Style Hat by Signes of Ecuador, Alpaca Fur Scarf Rec'd—Unknown (2022) Est. Value—$792.00 Disposition—Transferred to NARA.	His Excellency Guillermo Lasso, President of the Republic of Ecuador.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States and Dr. Jill Biden, First Lady of the United States.	Painting Depicting Cityscape. Rec'd—1/12/2022 Est. Value—$900.00 Disposition—Transferred to NARA.	His Excellency Khazar Ibrahim, Ambassador of Azerbaijan to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Joseph R. Biden Jr., President of the United States, Dr. Jill Biden, First Lady of the United States of America.	2 Rose Quartz Hummingbirds Artwork Rec'd—6/23/2022 Est. Value—$890.00 Disposition—Transferred to NARA.	His Excellency Jair Bolsonaro, President of the Federative Republic of Brazil.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Table Linens with 4 Napkins, Gold Brooch Rec'd—5/9/2022 Est. Value—$530.00 Disposition—Transferred to NARA.	Mrs. Olena Zelenska, First Lady of Ukraine.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Taytta of Ecuador Hat, Painting of Dr. Biden, Tote Bag, Print of Dr. Biden Rec'd—6/23/2022 Est. Value—$1,847.00 Disposition—Transferred to NARA.	Her Excellency Ivonne A-Baki, Ambassador of the Republic of Ecuador to the United States.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: THE WHITE HOUSE—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of tangible gifts furnished by the White House—Executive Office of the President]

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Dr. Jill Biden	Black Shawl by Torath Shop, Long Sleeve Jacket by Torath Shop Rec'd—8/22/2022 Est. Value—$594.00 Disposition—Transferred to NARA.	His Excellency Mahmoud Abbas, President of the Palestinian Authority.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Pair of South Sea Pearl Earrings Rec'd—9/21/2022 Est. Value—$3,180.00 Disposition—Transferred to NARA.	Mrs. Louise Araneta-Marcos, First Lady of the Republic of the Philippines.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Heden Clutch with Metal Chain Rec'd—9/21/2022 Est. Value—$780.00 Disposition—Transferred to NARA.	Her Majesty Letizia, Queen of Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	White Marble Dish, Diamond and Gold Bracelet Rec'd—10/20/2022 Est. Value—$555.00 Disposition–Transferred to NARA.	Mrs. Mareva Mitsotakis, Spouse of the Prime Minister of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Jill Biden	Gold Pin with Pearl, Scarf Set Rec'd—11/12/2022 Est. Value—$605.00 Disposition—Transferred to NARA (scarf set), Retained for personal use (pin).	G20 Host Committee, Government of the Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Ronald Klain, Assistant to the President & Chief of Staff.	Herend Porcelain Tea Set Rec'd—8/17/2022 Est. Value—$700.00 Disposition—Pending transfer to GSA.	His Excellency Peter Szijjarto, Minister of Foreign Affairs and Trade to the Republic of Hungary.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Jacob Sullivan, Assistant to the President for National Security Affairs.	Traditional Rug, Wood Plaque, Silver Filigree Box, Pashmina Wool Shawl, Leather Briefcase Rec'd—8/12/2022 Est. Value—$1,625.00 Disposition—Pending transfer to GSA.	General Qamar Javed Bajwa, Chief of Army Staff of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
The Honorable Jacob Sullivan, Assistant to the President for National Security Affairs.	Painting Titled ''The Light Will Win'', and Traditional Ukrainian Shirt Rec'd—11/4/2022 Est. Value—$926.00 Disposition–Pending transfer to GSA.	His Excellency Volodymyr Zelenskyy, President of Ukraine.	Non-acceptance would cause embarrassment to donor and U.S. Government.

Ethan Michael Rosenzweig,

Acting Chief of Protocol of the United States, Office of the Chief of Protocol, Department of State.

[FR Doc. 2024–09344 Filed 4–30–24; 8:45 am]

BILLING CODE 4710–20–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36486 (Sub-No. 7)]

Grainbelt Corporation—Trackage Rights Exemption—BNSF Railway Company

By petition filed on March 1, 2024, Grainbelt Corporation (GNBC) requests that the Board partially revoke the trackage rights exemption granted to it under 49 CFR 1180.2(d)(7) in Docket No. FD 36486 (Sub-No. 6), as necessary to permit that trackage rights arrangement to expire on March 31, 2025. GNBC filed its verified notice of exemption on March 1, 2024, and simultaneously filed its petition for partial revocation. Notice of the exemption was served and published in the **Federal Register** (89 FR 19001) on March 15, 2024, and the exemption became effective on March 31, 2024.

As explained by GNBC in its verified notice of exemption in Docket No. FD 36486 (Sub-No. 6), GNBC and BNSF Railway Company (BNSF) have entered into an amendment to extend the term of the previously amended, local trackage rights on trackage owned by BNSF between approximately milepost 668.73 in Long, Okla., and approximately milepost 723.30 in Quanah, Tex. (the Line), allowing GNBC to (1) use the Line to access the Plains Cotton Cooperative Association (PCCA) facility near BNSF Chickasha Subdivision milepost 688.6 at Altus, Okla., and (2) operate additional trains on the Line to accommodate the movement of trains transporting BNSF customers' railcars (loaded or empty) located along the Line to unit train

facilities on the Line (collectively, the PCCA Trackage Rights). (GNBC Verified Notice of Exemption 2–4, *Grainbelt Corp.—Trackage Rts. Exemption—BNSF Ry.,* FD 36486 (Sub-No. 6).)

GNBC explains that the trackage rights covered by the verified notice in Docket No. FD 36486 (Sub-No. 6) are local rather than overhead rights and therefore do not qualify for the Board's class exemption for temporary trackage rights under 49 CFR 1180.2(d)(8). (GNBC Pet. 4.) GNBC therefore filed its verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7) and a petition for partial revocation of the exemption as necessary to permit the PCCA Trackage Rights to expire on March 31, 2025, pursuant to the parties' agreement. (GNBC Pet 3.) GNBC argues that the requested relief will promote the rail transportation policy and is limited in scope. (*Id.* at 4.) GNBC also asserts that the Board has routinely granted similar petitions to allow trackage rights to expire on a negotiated date. (*Id.* at 4–5.)

Discussion and Conclusions

Although GNBC and BNSF have expressly agreed on the duration of the proposed trackage rights, trackage rights approved under the class exemption at 49 CFR 1180.2(d)(7) typically remain effective indefinitely, regardless of any contractual provisions. At times, however, the Board has partially revoked a trackage rights exemption to allow those rights to expire after a limited time rather than lasting in perpetuity. *See, e.g., Grainbelt Corp.—Trackage Rts. Exemption—BNSF Ry.,* FD 36486 (Sub-No. 5) (STB served May 15, 2023) (granting a petition to partially revoke a trackage rights exemption involving the Line at issue in this case); *BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R.,* FD 36377 (Sub-No. 7) (STB served Mar. 2, 2023); *New Orleans Pub. Belt R.R.—Trackage Rts. Exemption—Ill. Cent. R.R.,* FD 36198 (Sub-No. 1) (STB served June 20, 2018).

Granting partial revocation in these circumstances to permit the trackage rights to expire would eliminate the need for GNBC to file a second pleading seeking discontinuance when the agreement expires, thereby promoting the rail transportation policy at 49 U.S.C. 10101(2), (7), and (15). Moreover, partially revoking the exemption to limit the term of the trackage rights is consistent with the limited scope of the transaction previously exempted.[1] Therefore, the Board will grant the petition and permit the trackage rights exempted in Docket No. FD 36486 (Sub-No. 6) to expire on March 31, 2025.

To provide the statutorily mandated protection to any employee adversely affected by the discontinuance of trackage rights, the Board will impose the employee protective conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

It is ordered:

1. The petition for partial revocation of the trackage rights class exemption is granted.

2. As discussed above, the trackage rights in Docket No. FD 36486 (Sub-No. 6) are permitted to expire on March 31, 2025, subject to the employee protective conditions set forth in *Oregon Short Line Railroad,* 360 I.C.C. 91.

3. Notice of this decision will be published in the **Federal Register**.

4. This decision is effective on May 31, 2024. Petitions to stay must be filed by May 13, 2024. Petitions for reconsideration must be filed by May 21, 2024.

Decided: April 25, 2024.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

Raina White,

Clearance Clerk.

[FR Doc. 2024–09387 Filed 4–30–24; 8:45 am]

BILLING CODE 4915–01–P

[1] Because the proposed transaction is of limited scope, the Board need not make a market power finding. *See* 49 U.S.C. 10502(a).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2024–1191]

Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: International Traveler Information Card

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The collection involves obtaining information from FAA employees and contractors who will travel overseas on official business. The information to be collected will be used in the event an FAA employee and/or contractor is isolated overseas and requires lifesaving assistance.

DATES: Written comments should be submitted by July 1, 2024.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into the search field).

By mail: Michael S. Raby, FAA National Headquarters, 800 Independence Ave. SW, Washington, DC 20591.

By fax: 202–267–8496.

FOR FURTHER INFORMATION CONTACT: Michael S. Raby, Division Manager, FAA Office of Investigations and Professional Responsibility (AXI–500), by email at: *michael.raby@faa.gov;* phone: (202) 604–2419.

SUPPLEMENTARY INFORMATION: The collection information is necessary to comply with 22 U.S.C. 3927 and 4802, which require Federal agencies to have personnel information on file in the event of an isolating event overseas.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–XXXX.

Title: International Traveler Information Card.

Form Numbers: There are no FAA forms associated with this information collection.

Type of Review: New information collection.

Background

The International Traveler Information Card (ITIC) is an electronic form that FAA employees and contractors will complete prior to international travel on official business. The purpose of the form is to collect pertinent data to be used in the event a FAA employee and/or contractor are isolated overseas and require lifesaving assistance. This data will assist in the government's ability to properly identify individuals and provide, if necessary, medical support and personal items to FAA employees and contractors should they be isolated overseas.

The authority for this collection resides in Presidential Policy Directive (PPD)/PPD–30, 22 U.S.C. 4802 and 22 U.S.C. 3927. The duty of an agency with employees in foreign countries is to ensure they fully comply with all applicable directives of the Chief of Mission. In order to protect FAA personnel on official duty abroad, the ITIC documents the Personally Identifiable Information (PII) of FAA employees and contractors to help aid in their authentication and recovery. The ITIC requests the following PII: Name, Date of Birth, Gender, Height, Weight, Hair and Eye Color, Clothing and Shoe Size, Race/Ethnic Group, Blood Type, Scars/Marks/Tattoos, Known Medical Conditions, Current Medical Prescriptions, Allergies, Contact Information, Specialized Training, Language(s) Spoken, as well as information about their Emergency Contact. The traveler will also create a Duress Word and Personal Authenticator Statements to aid in the identification.

This information will not be available to the public, and will be managed in accordance with applicable Records Management and Privacy Act policies. Only two International Travel Security Program Managers and the Senior Watch Officer of the Washington Operations Center can retrieve ITICs to aid employees and/or contractors during an isolating event, as determined by the Chief of Mission. The Chief of Mission, relying on situational factors, will make the ultimate decision with whom this information is shared, such as, but not limited to, the Department of Defense, in the event of a personnel recovery event.

Respondents: The FAA estimates 52 respondents because of the number of contractors who traveled internationally on official business in Fiscal Year 2023.

Frequency: As needed.

Estimated Average Burden per Response: 30 minutes per traveler.

Estimated Total Annual Burden: 26 hours per year.

Issued in Washington, DC, on April 19, 2024.

Michelle L. Salter,

Executive Director FAA, Office of Investigations and Professional Responsibility.

[FR Doc. 2024–09445 Filed 4–30–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2024–1416]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Helicopter Air Ambulance Operator Reports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves the requirement for Helicopter Air Ambulance Operators to report certain information to the FAA. The FAA collects 14 pieces of data from helicopter air ambulance operators, 8 of which are mandated in the report to Congress. We collect data on the following: number of helicopters, helicopter base locations, number of hours the helicopters are flown, number of patients transported, number of transportation requests accepted or denied, number of accidents, number of instrument flight hours flown, number of night flight hours flown, number of incidents, and the rate of accidents or incidents per 100,000 flight hours. The information to be collected will be used in helping the FAA develop risk mitigation strategies and provide information to Congress.

DATES: Written comments should be submitted by July 1, 2024.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Sandra Ray, Federal Aviation Administration, AFS–260, 1187 Thorn Run Rd., Suite 200, Coraopolis, PA 15108.

By fax: 412–546–7344.

FOR FURTHER INFORMATION CONTACT: Sandra L. Ray by email at: *Sandra.ray@faa.gov;* phone: 412–546–7344.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0761.

Title: Helicopter Air Ambulance Operator Reports.

Form Numbers: 2120–0756.

Type of Review: Renewal of an information collection.

Background: The FAA Modernization and Reform Act of 2012 (The Act) mandates that all helicopter air ambulance operators must begin reporting the number of flights and hours flown, along with other specified information, during which helicopters operated by the certificate holder were providing helicopter air ambulance services. See Public Law 112–95, sec. 306, 49 U.S.C. 44731. The Act further mandates that not later than 2 years after the date of enactment, and annually thereafter, the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, a report containing a summary of the data collected.

The helicopter air ambulance operational data provided to the FAA will be used by the agency as background information useful in the development of risk mitigation strategies to reduce the helicopter air ambulance accident rate, and to meet the mandates set by Congress. The information requested is limited to the minimum necessary to fulfill these new reporting requirements mandated by the Act and as developed by FAA. The amount of data required to be submitted is proportional to the size of the operation.

Respondents: 65 Helicopter Air Ambulance Operators.

Frequency: Annually.

Estimated Average Burden per Response: Varies per size of operation.

Estimated Total Annual Burden: 765 Hours for all operators.

Issued in Washington, DC, on April 26, 2024.

Sandra L. Ray,

Aviation Safety Inspector, AFS–260.

[FR Doc. 2024–09370 Filed 4–30–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2024–0033]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to approve a new information collection. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by May 31, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0033 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Melissa Corder, 202–366–5853, Office of Real Estate Services, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, between 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We published a **Federal Register** Notice with a 60-day public comment period on this information collection on November 20, 2023 at 88 FR 80809. There were no comments received.

Title: Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs.

Background: This program implements 42 U.S.C. 4602, concerning acquisition of real property and relocation assistance for persons displaced by Federal and federally assisted programs. It prohibits the provision of relocation assistance and payments to persons not legally present in the United States (with certain exceptions). The information collected consists of a certification of residency status from affected persons to establish eligibility for relocation assistance and payments. Displacing agencies will require each person who is to be displaced by a Federal or federally assisted project, as a condition of eligibility for relocation payments or advisory assistance, to certify they are lawfully present in the United States.

Respondents: Federal agencies, 50 State Transportation Departments, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands, local government agencies, persons administering projects or programs and airport sponsors receiving financial assistance for expenditures of Federal funds on acquisition and relocation payments and required services to displaced persons that are subject to the Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, for file maintenance and for annual statistical reports.

Frequency: Annually.

Estimated Average Burden per Response: The estimated average burden per response varies. For the respondents, it takes 15 minutes to complete the relocation certification. It takes 1 hour for the file record keeping.

Estimated Total Annual Burden Hours: The estimated total annual burden hours are 10,000 hours, including the 2,000 hours for respondents and 8,000 for the file record keeping.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: April 26, 2024.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2024–09421 Filed 4–30–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2024–0034]

Agency Information Collection Activities: Notice of Request for Revision of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for revision of currently approved information collection.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for a revision a currently approved information collection. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by May 31, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0034 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kenneth Petty, Office of Planning (HEPP–1), 202–366–6654, and Spencer Stevens, Office of Planning (HEPP–20), 202–366–6221, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We published a **Federal Register** Notice

with a 60-day public comment period on this information collection on October 27, 2023, at [88 FR 73932]. There were no comments received.

Title: Survey of Metropolitan Planning Organizations and State Departments of Transportation Regarding Practices for Incorporating Equity and Meaningful Public Involvement in Transportation Planning and Project Decision-Making.

OMB Control: 2125–0665.

Background: The U.S. Department of Transportation (DOT, or ''the Department'') is committed to pursuing a comprehensive approach to advancing equity for all. In support of the Department's Equity Action Plan (*https://www.transportation.gov/priorities/equity/equity-action-plan*), DOT is working to support transportation agencies in better addressing the needs of underserved communities.

One focus area for DOT relates to the Department's programmatic enforcement of Title VI of the Civil Rights Act (DOT Order 1000.12C), including emphasizing agency review of potentially-discriminatory plans, investment programs, and projects to prevent unlawful discrimination, and empower communities, including limited English proficient communities, in transportation decision-making (49 CFR 21.5, 21.7, 21.9 and 28 CFR 406). DOT is also emphasizing the requirements of Section 504 of the Rehabilitation Act (28 CFR 35.104) and of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) for ensuring that transportation plans and investment programs do not discriminate on the basis of disability and provide equal opportunity and access for persons with disabilities.

In August of 2022, FHWA conducted a survey of all State departments of transportation (State DOTs) and metropolitan planning organizations (MPOs) to better understand how these agencies consider equity and comply with Title VI in transportation planning and programming activities (OMB Control Number 2125–0665). This survey included questions about how each State DOT or MPO uses quantitative data or tools to analyze equity factors for transportation plans and investment programs, as well as how each agency provides a meaningful and representative role to members of all communities, including underserved and limited English proficient communities, in shaping these plans and programs (28 CFR 407). Information from the survey was used to help the Department form an understanding of the state of the practice related to equity and civil rights compliance and meaningful public involvement in transportation planning and programming, and to inform research products and capacity-building activities for State DOTs and MPOs, to help them improve practices.

FHWA plans to conduct follow-up annual surveys, beginning in 2024, to monitor the progress of State DOTs and MPOs in advancing their transportation planning equity and meaningful public involvement practices, and to identify ongoing research, training, and technical assistance needs. These surveys will cover similar topics as the 2022 survey, with reworded questions to reduce respondent burden and to align with updates to the Department's Equity Action Plan and other policies or guidance.

Survey responses may also inform future revisions to existing guidance, or the development of new guidance, to DOT funding recipients on meeting the requirements of title VI of the Civil Rights Act, the National Environmental Policy Act, section 504 of the Rehabilitation Act, the Americans with Disabilities Act, transportation planning and programming, or other legal or regulatory requirements that relate to transportation equity and public involvement.

FHWA plans to conduct the survey on a voluntary-response basis, utilizing an electronic survey platform. This is planned as an annual information collection, and FHWA estimates that the survey will take approximately one hour to complete. The survey will consist of both multiple-choice and short-answer question formats.

Respondents: 52 State DOTs and approximately 420 MPOs.

Frequency: Annually, beginning in 2024.

Estimated Average Burden per Response: Approximately 60 minutes per respondent.

Estimated Total Annual Burden Hours: Approximately 472 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: April 26, 2024.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2024–09436 Filed 4–30–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0267]

RIN 2126–AB56

FMCSA Registration System Modernization

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

ACTION: Notice of virtual public meeting.

SUMMARY: FMCSA announces a virtual public meeting to engage stakeholders—including motor carriers, brokers, freight forwarders, insurance companies, financial institutions, process agents, blanket companies, and third-party service providers—to hear more on their perspectives on improving the registration experience with FMCSA. This is the second instance of FMCSA's Registration Modernization Stakeholder Day; the first meeting was held in person at FMCSA headquarters on January 17, 2024.

DATES: This virtual public meeting will be held on May 29, 2024, from 1 to 3 p.m. EST. A copy of the agenda will be available in advance of the meeting at *https://www.fmcsa.dot.gov/registration/fmcsa-registration-modernization-stakeholder-day-ii.*

ADDRESSES: The meeting will be held virtually. The link will be sent to participants after they register. Those interested in attending this virtual public meeting must register at *https://www.fmcsa.dot.gov/registration/fmcsa-registration-modernization-stakeholder-day-ii* by 11:59 p.m. EST, on May 24, 2024.

FOR FURTHER INFORMATION CONTACT: Gio Vizcardo, Knowledge Manager, Office of Registration, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–0356; *mcrs-social@dot.gov.*

Services for individuals with disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Gio Vizcardo using one of the above means by 11:59 p.m. EST, on April 29, 2024.

SUPPLEMENTARY INFORMATION:

Background

FMCSA is developing a new online registration system to improve the transparency and efficiency of FMCSA's registration procedures and implement statutory requirements related to the registration program. FMCSA seeks user perspectives on improving the registration experience when engaging with FMCSA's registration system. During this meeting, FMCSA will invite attendees to participate after providing initial presentations on preliminary system designs and functionality. FMCSA moderators will facilitate discussions on what potential users would like to see, as well as what would not be helpful from a user experience perspective.

Meeting Information

This meeting is intended for current and potential users of a new online registration system, including but not limited to:

- Motor carriers;
- Brokers and freight forwarders;
- Insurance companies/financial institutions and process agents/blanket companies; and
- Third party service providers.

The full meeting agenda will be available on the registration site (see **ADDRESSES** above for instructions on meeting registration) in advance of the meeting.

Sue Lawless,

Acting Deputy Administrator.

[FR Doc. 2024–09356 Filed 4–30–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2014–0106]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on March 14, 2024, Metro-North Railroad (MNCW) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240 (Qualification and Certification of Locomotive Engineers) and part 242 (Qualification and Certification of Conductors). The relevant Docket Number is FRA–2014–0106.

Specifically, MNCW requests relief required to continue participation in FRA's Confidential Close Call Reporting System (C^{3}RS) Program. MNCW seeks to continue shielding reporting employees from mandatory punitive sanctions that would otherwise arise as provided in §§ 240.117(e)(1)–(4); 240.305(a)(1)–(4) and (a)(6); 240.307; 242.403(b), (c), (e)(1)–(4), (e)(6)–(11), (f)(1)–(2); and 242.407. The C^{3}RS Program encourages certified operating crew members to report close calls and protects the employees and the railroad from discipline or sanctions arising from the incidents reported per the C^{3}RS Implementing Memorandum of Understanding (IMOU). MNCW notes that it and the Association of Commuter Rail Employees have been governed by an IMOU since September 2014. MNCW states that recent safety improvements associated with C^{3}RS include: ''Development of diagrams to enhance notices to crews for partial passenger platform closures;'' ''Deployment of standardized train spotting or enhanced spotting markers for specific stations;'' and ''Enhancement of root cause analysis for C^{3}RS eligible 'known events' by inviting employees involved to be interviewed by members of the PRT.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by July 1, 2024 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2024–09451 Filed 4–30–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2010–0171]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on March 1, 2024, Sacramento Southern Railroad/California State Railroad Museum (CSRM) petitioned the Federal Railroad Administration (FRA) to extend a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 215 (Railroad Freight Car Safety Standards) and 224 (Reflectorization of Rail Freight Rolling Stock). FRA assigned the petition Docket Number FRA–2010–0171.

Specifically, CSRM requests to extend its previous [1] special approval pursuant to 49 CFR 215.203, *Restricted cars,* for 2 railcars (SSRR 6102 and SSRR 6108) and 1 locomotive (SN 402) that are more than 50 years from the dates of original construction. CSRM also seeks relief from § 215.303, *Stenciling of restricted cars,* and part 224, to operate the cars in excursion service. In support of its request, CSRM states that the cars will not be used in interchange or for revenue freight service, and the locomotive is primarily used to haul passenger trains during daylight hours or for yard switching operations. CSRM also states that the equipment is inspected regularly and in excellent mechanical condition.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by

[1] The special approval/waiver in Docket Number FRA–2010–0171 expired on May 16, 2022.

submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by July 1, 2024 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2024–09450 Filed 4–30–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2024–0042]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that on March 15, 2024, Coos Bay Rail Line (CBRL) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2024–0042.

Specifically, CBRL requests to discontinue the use of the signal system located on the North Bend swing span bridge, which will be replaced with gates equipped with stop signs, distance signs, and ''craft specific locks'' to govern about 10 train crossings per week over the bridge. CBRL states that the signal system, at milepost 763.6 on the Coos Bay Subdivision, ''has been subjected to years of regular vandalism and theft,'' which makes ''maintaining such a system particularly challenging.'' Additionally, CBRL explains that ''the system also requires significant updating and repairs stemming from a structural failure that damaged multiple components crucial to its reliable and safe operation.'' In support of its request, CBRL states that the subject trackage operates under yard limits authority (GCOR rules 6.27 and 6.28) and that the ''more analog style system'' it proposes to use will be a ''more tamper resistant alternative for governing movement over the bridge.'' CBRL also notes that another of its swing bridges has used a similar system for several years and has had no recordable incidents.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by July 1, 2024 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2024–09452 Filed 4–30–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of a person whose property and interests in property have been unblocked and who have been removed from the Specially Designated Nationals and Blocked Persons List (SDN List). OFAC is also publishing the name of a vessel previously been identified on the SDN List that is being removed from the SDN List.

DATES: OFAC's actions described in this notice were effective on April 26, 2024.

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

A. On April 26, 2024, OFAC removed from the SDN List the person listed below, whose property and interests in property were blocked pursuant to section 1(a) of Executive Order 14024 of April 15, 2021, ''Blocking Property With Respect To Specified Harmful

Foreign Activities of the Government of the Russian Federation,'' 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (Apr. 15, 2021) (E.O. 14024).

1. ICE PEARL NAVIGATION CORP, Ucpinarlar Caddesi 36, Kucuk Camlica, Uskudar 34696, Turkey; Marshall Islands; Identification Number IMO 4118745 [RUSSIA–EO14024]

B. On April 26, 2024, OFAC removed from the SDN List the vessel listed below, which was previously subject to prohibitions imposed pursuant to E.O. 14024.

1. YASA GOLDEN BOSPHORUS (V7KQ8) Crude Oil Tanker Marshall Islands flag; Vessel Registration Identification IMO 9334038; MMSI 538002662 (vessel) [RUSSIA–EO14024] (Linked To: ICE PEARL NAVIGATION CORP).

Dated: April 26, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–09389 Filed 4–30–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference through the Microsoft Teams Platform.

DATES: The meeting will be held Thursday, May 23, 2024.

FOR FURTHER INFORMATION CONTACT: Conchata Holloway at 1–888–912–1227 or 214–413–6550.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, May 23, 2024, at 3:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information, please contact Conchata Holloway at 1–888–912–1227 or 214–413–6550, or write TAP Office, 1114 Commerce St. MC 1005, Dallas, TX 75242 or contact us at the website: *http://www.improveirs.org.*

The agenda will include the potential project referrals from the committees, and discussions on priorities the TAP will focus on for the 2024 year. Public input is welcomed.

Dated: April 26, 2024.

Shawn Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2024–09464 Filed 4–30–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Request for Individual Access to Records Protected Under the Privacy Act and Consent for Disclosure of Records Protected Under the Privacy Act

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before May 31, 2024 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202) 622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Individual Access to Records Protected under the Privacy Act and Consent for Disclosure of Records Protected under the Privacy Act.

OMB Control Number: 1505–NEW.

Type of Review: Extension without change of a currently approved collection.

Description: The *Request for Individual Access to Records Protected under the Privacy Act and Consent for Disclosure of Records Protected under the Privacy Act,* was developed in accordance with the Office of Management and Budget (OMB) Memorandum *M–21–04, Modernizing Access to and Consent for Disclosure of Records Subject to the Privacy Act,* which implements the requirements of the Creating Advanced Streamlined Electronic Services for Constituents Act of 2019 (''*CASES Act*''). This form is based on the mandatory OMB M–21–04 templates for individuals to submit requests for accessing and consenting to the disclosure of records protected under the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

The *Request for Individual Access to Records Protected under the Privacy Act* form is used by individuals seeking access to their records under the Privacy Act and any information pertaining to them that are maintained in Treasury's systems of records. The Privacy Act provides that ''the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.'' Therefore, this form may also be used by a parent or legal guardian.

Form Number: None.

Affected Public: Public Individuals.

Estimated Number of Respondents: 316.

Frequency of Response: Annual.

Estimated Total Number of Annual Responses: 316.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 948.

Authority: 44 U.S.C. 3501 et seq.

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2024–09432 Filed 4–30–24; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0545]

Agency Information Collection Activity Under OMB Review: Report of Medical, Legal, and Other Expenses Incident to Recovery for Injury or Death

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 (VBA), 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. 2900–0545''.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0545'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 1503, 28 CFR 3.262, § 3.271, and § 3.272.

Title: Report of Medical, Legal, and Other Expenses Incident to Recovery for Injury or Death.

OMB Control Number: 2900–0545.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21P–8416b is used to gather information about certain expenses related to securing compensation based on personal injury or death. The form is used by claimants for VA income-based benefits to determine the amount of countable income. Without this information, the VA would be unable to properly determine entitlement to income-based benefits and the rate payable.

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 89 FR 14154 on Friday, February 26, 2024, page 14154.

Affected Public: Individuals or Households.

Estimated Annual Burden: 75 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 100.

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. 2024–09379 Filed 4–30–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0114]

Agency Information Collection Activity: Statement of Marital Relationship

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 1, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0114'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0114'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 101(3), 38 U.S.C. 101(31), 38 U.S.C. 103(c).

Title: Statement of Marital Relationship (VA Form 21–4170).

OMB Control Number: 2900–0114.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–4170 is primarily used to gather information that is necessary to determine whether a valid common law marriage was established. The form is used by persons claiming to be common law widows/widowers of deceased veterans and by veterans and their claimed common law spouses. Benefits cannot be authorized unless a valid marriage is established. No changes have been made to this form. The respondent burden has decreased due to the estimated number of receivables averaged over the past year.

Affected Public: Individuals or Households.

Estimated Annual Burden: 827 hours.

Estimated Average Burden per Respondent: 25 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,984 per year.

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. 2024–09321 Filed 4–30–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0094]

Agency Information Collection Activity: Supplement to VA Forms 21–526EZ, 21P–534EZ, and 21P–535 (For Philippine Claims)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 1, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0094'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0094'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 101 and 6104, 38 CFR 3.40.

Title: Supplement to VA Forms 21–526EZ, 21P–534EZ, and 21P–535 (For Philippine Claims) (VA Form 21–4169).

OMB Control Number: 2900–0094.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–4169 is primarily used to gather the necessary information to determine whether a claimant's service qualifies as service in the Commonwealth Army of the Philippines or recognized guerrilla organizations. The form is used for the sole purpose of collecting the information needed to determine eligibility for benefits based on such service, including service information, proof of service, place of residence, and membership in pro-Japanese, pro-German, or anti-American Filipino organizations. Without this information, determination of entitlement would not be possible. No changes have been made to this form. The respondent burden has decreased due to the estimated number of receivables averaged over the past year.

Affected Public: Individuals or Households.

Estimated Annual Burden: 212 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 849 per year.

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. 2024–09376 Filed 4–30–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0094]

Agency Information Collection Activity: Supplement to VA Forms 21–526EZ, 21P–534EZ, and 21P–535 (For Philippine Claims)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 1, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0094'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0094'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 101 and 6104, 38 CFR 3.40.

Title: Supplement to VA Forms 21–526EZ, 21P–534EZ, and 21P–535 (For Philippine Claims) (VA Form 21–4169).

OMB Control Number: 2900–0094.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–4169 is primarily used to gather the necessary information to determine whether a claimant's service qualifies as service in the Commonwealth Army of the Philippines or recognized guerrilla organizations. The form is used for the sole purpose of collecting the information needed to determine eligibility for benefits based on such service, including service information, proof of service, place of residence, and membership in pro-Japanese, pro-German, or anti-American Filipino organizations. Without this information, determination of entitlement would not be possible. No changes have been made to this form. The respondent burden has decreased due to the estimated number of receivables averaged over the past year.

Affected Public: Individuals or Households.

Estimated Annual Burden: 212 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 849 per year.

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. 2024–09375 Filed 4–30–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0666]

Agency Information Collection Activity: Information Regarding Apportionment of Beneficiary's Award

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 1, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0666'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0666'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 5307, 38 CFR 3.450–3.454 and 3.458–3.461.

Title: Information Regarding Apportionment of Beneficiary's Award (VA Form 21–0788).

OMB Control Number: 2900–0666.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–0788 is used to collect the information that is necessary to determine whether an apportionment may be authorized and the reasonable amount that may be awarded. Without this collection of information, VA would be unable to properly authorize apportionments of compensation and pension benefits. No changes have been made to this form. The respondent burden has increased due to the estimated number of receivables averaged over the past year.

Affected Public: Individuals or Households.

Estimated Annual Burden: 5,045 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 10,090 per year.

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. 2024–09377 Filed 4–30–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0101]

Agency Information Collection Activity Under OMB Review: Eligibility Verification Reports (EVRs)

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 (VBA), 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. 2900–0101''.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance

Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.*

Please refer to ''OMB Control No. 2900–0101'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Information is requested by this form under the authority of 38 U.S.C. 1506, regulatory authority is found in 38 CFR 3.277.

Title: Eligibility Verification Reports (EVRs) VA Forms: 21P–0510, 21P–0510 (Spanish), 21P–0512S–1, 21P–0512S–1 (Spanish), VA Form 21P–0512V–1, 21P–0513–1, 21P–0513–1 (Spanish), 21P–0514–1, 21P–0514–1(Spanish), 21P–0516–1, 21P–0516–1 (Spanish), 21P–0517–1, 21P–0517 (Spanish), 21P–0518–1, 21P–0518–1 (Spanish), 21P–0519C–1, 21P–0519C–1 (Spanish), 21P–0519S–1, 21P–0519S–1 (Spanish).

OMB Control Number: 2900–0101.

Type of Review: Extension of a previously approved collection.

Abstract: A claimant's eligibility for Pension is determined, in part, by countable family income and net worth. Any individual who has applied for, or receives, VA Pension or Parents' Dependency and Indemnity Compensation (DIC) must promptly notify the VA in writing of any change in entitlement factors. VBA uses Eligibility Verification Reports (EVRs) to receive income and net worth information from Pension and Parents DIC claimants and beneficiaries to evaluate eligibility for benefits. The reported information can result in increased or decreased benefits. Typically, the claimants and beneficiaries utilize the form to notify the VA of changes in income and net worth, though the forms could be used to reopen a claim for benefits in limited circumstances. This is a request for an extension of the EVR collections with no substantive changes.

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 89 FR 14154 on Monday, February 26, 2024, pages 14154 and 14155.

Affected Public: Individuals or households.

Estimated Annual Burden: 34,500 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 69,000.

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. 2024–09392 Filed 4–30–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0858]

Agency Information Collection Activity Under OMB Review: Authorization and Consent To Release Information to the Department of Veterans Affairs (VA), General Release for Medical Provider Information to the Department of Veterans Affairs (VA)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 1, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0858'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0858'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–191 (''HIPAA''), 42 U.S.C. 290dd–242, 38 CFR part 2, 45 CFR parts 160 and 164.

Title: Authorization and Consent to Release Information to the Department of Veterans Affairs (VA) (VA Form 21–4142), General Release for Medical Provider Information to the Department of Veterans Affairs (VA) (VA Form 21–4142a).

OMB Control Number: 2900–0858.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–4142 is used to authorize the disclosure of information to the VA and VA Form 21–4142a is used to gather the necessary information to request medical provider information to the VA. Without the information solicited by these forms, VA would be unable to determine eligibility, and benefits would not be properly paid. No changes have been made to these forms. The respondent burden has increased due to the estimated number of receivables averaged over the past year.

Affected Public: Individuals and households.

Estimated Annual Burden: 36,687 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 440,246 per year.

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. 2024–09336 Filed 4–30–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0458]

Agency Information Collection Activity: Certification of School Attendance or Termination

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 1, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0458'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0458'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 101(4), 38 CFR 3.667.

Title: Certification of School Attendance or Termination (VA Form 21–8960).

OMB Control Number: 2900–0458.

Type of Review: Revision of a currently approved collection.

Abstract: VA compensation and pension programs require current information to determine eligibility for benefits. VA Form 21–8960 solicits information that is needed to determine continued benefit eligibility for schoolchildren between the ages of 18 and 23. If the collection were not conducted or were conducted less frequently, VA would be unable to verify continued entitlement in a timely manner, and increased overpayments would result. No changes have been made to this form. The respondent burden has decreased due to the estimated number of receivables averaged over the past year.

Affected Public: Individuals or Households.

Estimated Annual Burden: 219 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,314 per year.

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. 2024–09317 Filed 4–30–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0065]

Agency Information Collection Activity: Request for Employment Information in Connection With Claim for Disability Benefits

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 1, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0065'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0065'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 1502, 38 CFR 3.340 through 3.342.

Title: Request for Employment Information in Connection with Claim

for Disability Benefits (VA Form 21–4192).

OMB Control Number: 2900–0065.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–4192 is used to gather necessary employment information from veterans' employers so VA can determine eligibility to increased disability benefits based on unemployability. Without this information, determination of entitlement would not be possible. No changes have been made to this form. The respondent burden has increased due to the estimated number of receivables averaged over the past year.

Affected Public: Private Sector.

Estimated Annual Burden: 12,183 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 48,730 per year.

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. 2024–09378 Filed 4–30–24; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 89 Wednesday,

No. 85 May 1, 2024

Part II

Department of Energy

10 CFR Part 900

Coordination of Federal Authorizations for Electric Transmission Facilities; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 900

[DOE–HQ–2023–0050]

RIN 1901–AB62

Coordination of Federal Authorizations for Electric Transmission Facilities

AGENCY: Grid Deployment Office, U.S. Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its regulations for the timely coordination of Federal authorizations for proposed interstate electric transmission facilities pursuant to the Federal Power Act (FPA). Specifically, DOE is establishing an integrated and comprehensive Coordinated Interagency Transmission Authorizations and Permits Program (CITAP Program); making participation in the Integrated Interagency Pre-Application (IIP) Process a pre-condition for assistance under the CITAP Program; re-establishing the IIP Process as an iterative and collaborative process between the proponent of a proposed electric transmission project and Federal and State agencies to develop information needed for Federal authorizations; requiring the project proponent to engage in robust engagement with the public, communities of interest, and Indian Tribes during the IIP Process; aligning and harmonizing the IIP Process and implementation of the FPA with the Fixing America's Surface Transportation Act; and ensuring that DOE may carry out its statutory obligation to prepare a single environmental review document sufficient for the purposes of all Federal authorizations necessary to site a proposed project.

DATES: This rule is effective May 31, 2024.

FOR FURTHER INFORMATION CONTACT: Liza Reed, U.S. Department of Energy, Grid Deployment Office, 4H–065, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–2006. Email: *CITAP@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

In this final rule, the Department of Energy (DOE) is amending its regulations under section 216(h) of the Federal Power Act (16 U.S.C. 824p(h)) (FPA) to establish a Coordinated Interagency Transmission Authorizations and Permits Program (CITAP Program) under which DOE will coordinate and expedite Federal authorizations and environmental reviews required to site proposed electric transmission facilities, which may include reviews pursuant to the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended, 42 U.S.C. 4321 *et seq.*) (NEPA), the National Historic Preservation Act (Pub. L. 89–665, as amended, 54 U.S.C. 30010 *et seq.*) (NHPA), the Endangered Species Act of 1973 (Pub. L. 93–205, as amended, 16 U.S.C. 1531 *et seq.*) (ESA), and evaluations necessary for authorizations under the Federal Land Policy and Management Act (Pub. L. 94–579, as amended, 43 U.S.C. 1701 *et seq.*). DOE coordination under this final rule will increase the efficiency and effectiveness of the Federal authorization and review process for proposed electric transmission facilities by establishing pre-application procedures designed to collect the information needed to perform efficient and timely Federal authorization and environmental reviews, reducing duplication of effort through preparation of a single environmental review document as the basis for all Federal decisions, and setting binding schedules for the completion of all Federal authorizations and environmental reviews. In doing so, this final rule aims to reduce the time it takes to site and permit the electric transmission infrastructure needed to ensure the delivery of reliable, resilient and low-cost electricity to American homes and businesses.

Actions to enable more rapid deployment of electric transmission are more important than ever. As DOE documented in its 2023 National Transmission Needs Study, additional transmission capacity is needed in nearly every region of the country to improve the reliability and resilience of electric service, alleviate high costs caused by transmission congestion and constraints that prevents low-cost energy from reaching customers, and access new low-cost low carbon energy supplies to serve increasing electricity demands.[1] Over the past decade additional transmission capacity has been added at half the rate of the previous three decades, at a time when electricity demand is increasing and new diverse sources of electricity generation are needed to serve that demand and meet Federal, State, and consumer goals to reduce greenhouse gas emissions from the electricity sector.[2] Accelerating the current pace of transmission infrastructure investment and deployment is needed to meet these objectives and will generate multiple benefits to the public, including improved reliability and resilience, lower electricity costs, additional economic activity, and reduced greenhouse gas emissions. By enabling rapid development of transmission capacity, the CITAP Program will help increase access to a diversity of generation sources, reduce transmission congestion and power-sector emissions, and deliver reliable, affordable power that future consumers will need when and where they need it.

On August 23, 2023, in accordance with section 216(h) of the FPA and a

[1] United States Department of Energy, National Transmission Needs Study (Feb. 2023), available at: *https://www.energy.gov/sites/default/files/2023-02/022423-DRAFTNeedsStudyforPublicComment.pdf.*

[2] Jenkins, J.D. *et al.* (2022) *Electricity transmission is key to unlock the full potential of the Inflation Reduction Act, Zenodo.* Available at: *https://zenodo.org/record/7106176#:~:text=Previously%2C%20REPEAT%20Project%20estimated%20that%20IRA%20could%20cut,from%20electric%20vehicles%2C%20heat%20pumps%2C%20and%20other%20electrification.*

May 2023 Memorandum of Understanding (MOU) among nine Federal agencies committing to expedite the siting, permitting, and construction of electricity transmission infrastructure through more effective implementation of section 216(h) of the FPA, DOE issued a notice of proposed rulemaking (NOPR), to establish the CITAP Program. (88 FR 57011).[3] Under the CITAP Program, the entity or individual heading the project (''project proponent'') will work with DOE and other Federal agencies to gather materials necessary to inform the completion of authorizations and environmental reviews. These materials include thirteen reports the project proponent will prepare that describe the proposed project and its potential impacts on resources including land, water, plant and animal life (''resource reports''); a summary of the proposed project that will include details on which Federal authorizations or permits may be necessary and the anticipated timeline to completion of acquiring the described authorizations and permits; and proposed project participation and public engagement plans, which will outline opportunities for the public to participate in project authorization decisions and ensure sufficient engagement with both communities of interest and relevant stakeholders. This process of collaborative information gathering is referred to as the ''Integrated Interagency Pre-Application Process'' or ''IIP Process.''

Under the CITAP Program, DOE will set intermediate milestones and ultimate deadlines for the review of relevant authorizations and environmental reviews that provide for their completion within two years and establish DOE as the lead agency for the preparation of a single environmental review document, in compliance with NEPA, that supports the decisions of all relevant Federal entities.[4] This final rule confirms the CITAP Program and the restructured and improved IIP Process as described in the NOPR and adopts revisions to the NOPR proposals in response to comments regarding issues such as the Federal evaluation timelines, approaches to environmental reviews, and levels of details required for the Program.

The IIP Process is a project-proponent-driven process. Accordingly, the time to complete the IIP Process and begin the time bound, two-year Federal authorization and environmental review period depends on the preparation and responsiveness of the project proponent. This final rule establishes a series of checkpoints in the IIP Process (the three anchor meetings described below) and requirements for the pre-application materials that project proponents must develop to proceed through the Process (principally, resource reports and public participation and engagement plans, which are to be developed with guidance from Federal entities). The timeline for completing the pre-application process and proceeding through these checkpoints will depend, in large part, on the readiness and responsiveness of project proponents. As discussed further below, DOE has revised the NOPR proposals in this final rule to reduce the time reserved for DOE to review and respond to the requested information within the IIP Process to just over six months. Coupled with the two-year timeline that DOE and signatories to the 2023 Memorandum of Understanding Regarding Facilitating Federal Authorizations for Electric Transmission Facilities (2023 MOU) agreed to for review of applications and related environmental review, DOE expects that the CITAP Program will substantially reduce the time necessary for permitting of transmission facilities.

In response to the NOPR, DOE received 50 comments during the public comment period, as well as stakeholder input during the public webinar and additional briefing provided by the Grid Deployment Office in DOE that will be administering the CITAP Program. In this final rule, DOE is making several changes to the regulatory text proposed in the NOPR in response to public comments.

DOE received 27 comments in support of the CITAP Program, and several specifically supporting the IIP Process, the Federal decision-making timeline, and the requirement for the thirteen resource reports. Commenters specifically lauded the resource reports for their early and meaningful public engagement components, their effectiveness in coordinating decision-making across different Federal agencies, and their essential role in allowing the subsequent authorization and environmental review processes to be completed within two years. Commenters also affirmed the need for DOE to serve as the Lead Agency for NEPA review, section 106 of the NHPA, and section 7 of the ESA for projects in the CITAP Program to ensure that its objective of making transmission permitting processing more effective and efficient is realized.

The received comments were also instrumental in identifying opportunities to streamline the IIP Process further to ensure that these objectives are met. The IIP Process proposed in the NOPR would have provided, at a maximum, 240 days for DOE evaluation and determinations of completeness and readiness to move to the next steps in the process. In response to comments requesting more efficiency, in this final rule that timeline has been reduced by 55 days by streamlining notification and convening timelines to now total 185 days at a maximum. Additional reductions to documentation timelines, which do not impact decision making, total 45 days, reducing all IIP Process activity by 100 days. As noted previously, however, the total timeline to complete the IIP Process will vary in each individual case based on the project proponent's preparation and responsiveness and the project's readiness to proceed to Federal authorization and environmental reviews. Project proponents will move most quickly through the IIP Process and Federal authorization and environment review processes by ensuring their projects are ready to proceed and by ensuring they are responsive to DOE and Federal agency requests for information.

Section VI of this document discusses several other major issues raised by commenters and provides DOE's responses.

II. Background and Authority

The electric transmission system is the backbone of the United States' electricity system, connecting electricity generators to distributors and customers across the nation. Electric transmission facilities often traverse long distances and cross multiple jurisdictions, including Federal, State, Tribal, and private lands. To receive Federal financial support or build electric transmission facilities on or through Federal lands and waters, project

[3] The nine 2023 MOU signatory agencies are USDA, DOC, DOD, DOE, DOI, EPA, Federal Permitting Steering Improvement Steering Council (Permitting Council), CEQ, and the Office of Management and Budget (OMB). The 2023 MOU is publicly available at *https://www.whitehouse.gov/wp-content/uploads/2023/05/Final-Transmission-MOU-with-signatures-5-04-2023.pdf.*

[4] Section 900.2 of the final rule defines ''Federal entity'' as any Federal agency or department. That section also defines ''relevant Federal entity'' as a Federal entity with jurisdictional interests that may have an effect on a proposed electric transmission project, that is responsible for issuing a Federal authorization for the proposed project, that has relevant expertise with respect to environmental and other issues pertinent to or potentially affected by the proposed project, or that provides funding for the proposed project. The term includes participating agencies. The term includes a Federal entity with either permitting or non-permitting authority; for example, those entities with which consultation or review must be completed before a project may commence, such as DOD for an examination of military test, training or operational impacts.

developers often must secure authorizations from one or multiple Federal agencies, which can take considerable time and result in costly delays.

Recognizing the need for increased efficiency in the authorization process for transmission facilities, the Energy Policy Act of 2005 (Pub. L. 109–58) (EPAct) established a national policy to enhance coordination and communication among Federal agencies with authority to site electric transmission facilities. Section 1221(a) of EPAct added a new section 216 to Part II of the FPA, which sets forth provisions relevant to the siting of interstate electric transmission facilities. Section 216(h) of the FPA, ''Coordination of Federal Authorizations for Transmission Facilities,'' requires DOE to coordinate all Federal authorizations and related environmental reviews needed for siting interstate electric transmission projects, including NEPA reviews, permits, special use authorizations, certifications, opinions, or other approvals required under Federal law.

Among other things, it authorizes DOE to act as the lead agency for Federal coordination and reviews and requires the Secretary of Energy, to the maximum extent practicable under Federal law, to coordinate the Federal authorization and review process with any Indian Tribes, multi-state entities, and State agencies that have their own separate permitting and environmental reviews. 16 U.S.C. 824p(h)(2)–(3). Relatedly, section 216(h) requires the Secretary to provide an ''expeditious'' pre-application mechanism for prospective project proponents; directs the Secretary to establish prompt and binding intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to, the proposed facility; and provides a mechanism through which a project proponent or any State where the facility would be located may appeal to the President for review, if an agency fails to act within those deadlines or denies an application. 16 U.S.C. 824p(h)(4), (h)(6). The statute also directs the Secretary to prepare, in consultation with the affected agencies, a single environmental review document to be used as the basis for all decisions on the proposed project under Federal law, and to determine, for each Federal land use authorization that must be issued, whether the duration of such authorization is commensurate with the facility's anticipated use. 16 U.S.C. 824p(h)(5)(A); (h)(8)(A).

As discussed in the proposed rule, in May 2023 DOE entered into an implementing MOU with eight other agencies to unlock these benefits. The 2023 MOU expanded upon prior efforts to ensure pre-construction coordination and provides updated direction to Federal agencies in expediting the siting, permitting, and construction of electric transmission facilities. DOE subsequently published a NOPR in August 2023 to update and expand on its existing pre-application mechanism provided in regulations at 10 CFR part 900. Through this rule, DOE amends its section 216(h) implementing regulations to more effectively implement this authority and better coordinate review of Federal authorizations for proposed interstate electric transmission facilities.

For the reasons explained in the following sections, in this final rule, DOE adopts its proposal in the NOPR, with modifications discussed below.

III. Summary of the Final Rule

This final rule is needed for DOE to update its regulations implementing section 216(h) to establish the CITAP Program, improve the IIP Process, and provide for the coordinated review of applications for Federal authorizations necessary to site transmission facilities. DOE's previous implementing regulations structured the IIP Process around two anchor meetings: the Initial and Close-Out meetings. To inform Federal agency coordination, project proponents were required to submit a project summary, an affected environmental resources and impacts summary, a summary of early identification of project issues, and data including maps and geospatial information. Additionally, the regulations included a process for identifying the NEPA lead agency and for establishing a preliminary NEPA review schedule. These regulations did not establish DOE as the lead agency for NEPA review, nor address important environmental and resource reviews under NHPA or ESA. Notably, these regulations did not establish a process through which DOE would set binding milestones for environmental reviews and Federal permitting and authorization decisions.

In this final rule, DOE first establishes a comprehensive and integrated CITAP Program. The CITAP Program is the vehicle through which DOE will implement its authority as defined in Section 216(h) of the FPA, beginning with the IIP Process through the DOE-led environmental review and including DOE's coordination of the schedule for the Federal decisions on permits and authorizations.

Under the CITAP Program, DOE: (i) provides for an effective IIP Process to facilitate timely submission of materials necessary to inform Federal authorizations and related environmental reviews required under Federal law; (ii) sets intermediate milestones and ultimate deadlines for the review of such authorizations and environmental reviews; and (iii) serves as the lead agency for the preparation of a single environmental review document in compliance with NEPA, designed to serve the needs of all relevant Federal entities and effectively inform their corresponding Federal authorization decisions. These elements of the CITAP Program are described in more detail throughout this rule.

Second, pursuant to the FPA, DOE makes the IIP Process a mandatory precondition for participation in the CITAP Program. A project proponent's participation in the IIP Process is necessary for the success of the other elements of the CITAP Program and for the Secretary's satisfaction of the statutory obligations imposed by section 216(h) and affords a unique opportunity for project proponents to provide essential information and to coordinate with Federal entities prior to submission of applications for Federal authorizations. DOE has determined that it will not be able to fulfill its role as lead agency under section 216(h)—including the establishment of binding deadlines—for projects that do not complete the IIP Process. DOE does not require the participation of any Federal or non-Federal entity in the IIP Process; rather Federal entities have agreed to participate through the 2023 MOU and non-Federal entities may participate at their discretion. As discussed further below, DOE concludes that the benefits of participating in the IIP Process, and the resulting access to the CITAP Program, justify the costs to project proponents. The CITAP Program will substantially accelerate the process by which transmission projects are permitted and developed, and the benefits of the expected reduction in permitting timelines are likely to significantly exceed the cost of participating in the IIP Process.

Third, this final rule improves the IIP Process to ensure that it provides project proponents and Federal entities an opportunity to identify as early as possible potential environmental and community impacts associated with a proposed project. The IIP Process is intended to ensure that necessary information is provided to the relevant Federal entities in a timely and coordinated fashion; it is also intended to avoid the duplication of cost and effort that project proponents and Federal entities face in navigating the

series of authorizations necessary to site a transmission line and to allow both the project proponent and the Federal entities to avoid time- and resource-consuming pitfalls that would otherwise appear during the application process. Accordingly, DOE requires that project proponents submit resource reports and public participation and engagement plans, developed with guidance from Federal entities, and participate in a series of iterative meetings to ensure that Federal entities have ample opportunities to provide this guidance. The resource reports are intended to develop data and materials that will facilitate Federal entities' review of the project proponent's applications under the applicable Federal statutes. The early engagement facilitated by the submission of public participation and engagement plans will inform a project proponent's development of a proposed project. This early engagement begins before an application is submitted to the Federal Government and provides opportunities for Tribes and communities to express their views early in the process and to share their concerns directly with project proponents. However, the IIP Process does not relieve the relevant Federal entities of their legal obligation to comply with applicable requirements to consult with Tribes and engage with communities. This rule provides that the total time for DOE reviews and responses in the IIP Process is 185 days.[5] Based on that timeline for DOE decision-making, DOE expects that a prepared and responsive project proponent could complete the IIP Process within a year.

Fourth, pursuant to Congress's express directive in section 216(h)(4), DOE introduces the standard schedule and project-specific schedules, through which DOE will establish binding intermediate milestones and ultimate deadlines for Federal authorizations and related environmental reviews. The standard schedule identifies the steps generally needed to complete decisions on all Federal environmental reviews and authorizations for a proposed electric transmission project, including recommended timing for each step so as to allow final decisions on all Federal authorizations within two years of the publication of a notice of intent (NOI) to prepare an environmental review document. This document serves as a template for the development of project-specific schedules. During the IIP Process, DOE and relevant Federal entities will prepare a project-specific schedule, informed by the standard schedule, that establishes prompt and binding intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to, a proposed electric transmission project, accounting for relevant factors particular to the specific proposed project, including the need for early and meaningful consultation with potentially affected Indian Tribes and engagement with stakeholders.

Fifth, DOE simplifies the development of an administrative record by incorporating the IIP Process administrative file into a single docket that contains all the information assembled and utilized by the relevant Federal entities as the basis for Federal authorizations and related reviews. DOE will maintain that docket, which will be available to the public upon request except as restricted due to confidentiality or protected information processes. Access to, and restrictions of access to, the docket will be addressed at the time of project-specific implementation.

Sixth, DOE amends its regulations to provide that DOE will serve as the lead NEPA agency and that, in collaboration with any NEPA joint lead agency[6] determined pursuant to procedures established by these regulations and the 2023 MOU and in coordination with the relevant Federal entities, DOE will prepare a single environmental review document to serve as the NEPA document for all required Federal authorizations. DOE will also serve as lead for consultation under section 106 of the NHPA and section 7 of the ESA for projects in the CITAP Program, unless the relevant Federal entities designate otherwise. As additional projects utilize the CITAP Program, DOE anticipates that it will be able to improve upon its NEPA processes, ultimately leading to greater efficiencies for both project proponents and Federal agencies. Relatedly, the rule provides that DOE and the relevant Federal entities shall issue, except where inappropriate or inefficient, a joint decision document.

Finally, DOE provides that the primary scope of the CITAP Program is on-shore high-voltage or regionally or nationally significant transmission projects that are expected to require preparation of an environmental impact statement (EIS) and establishes procedures through which projects outside of that primary scope can seek a determination of qualifying-project status from the Grid Deployment Office on a case-by-case basis.

IV. Tribal Sovereignty

DOE affirms the sovereignty of Federally recognized Indian Tribes and confirms that this final rule makes no changes to Federal agencies' government-to-government responsibilities. Tribal sovereignty refers to Federally recognized Indian Tribes' original, inherent authority to govern themselves, their lands, and their resources. Because of their unique status as sovereigns, Federally recognized Tribes have a direct, government-to-government relationship with the Federal government. The United States has a general, ongoing trust relationship with Indian Tribes as well as with the Native Hawaiian Community. Neither section 216(h) nor this final rule in any way alters that relationship.

Tribal and Native Hawaiian consultation is a process for communication between the Federal government and Indian Tribes and the Native Hawaiian Community that is grounded in the government-to-government or the government-to-sovereign relationship, respectively. Tribal and Native Hawaiian consultation may be required as part of compliance with section 106 of the NHPA, or may arise from other Federal authorities such as Executive Order 13007 or the Presidential Memorandum on Uniform Standards for Tribal Consultation (2022). Agencies often consult with Indian Tribes and the Native Hawaiian Community in conjunction with fulfilling their obligations under NEPA. Consistent with these requirements and authorities, during implementation of the CITAP Program, DOE commits to undertake Tribal and Native Hawaiian consultation as appropriate. Also as appropriate, DOE commits to designate Indian Tribes with special expertise regarding a qualifying project, including knowledge about sacred sites that the project could affect, that are eligible, to become cooperating agencies under NEPA, and to consult with Indian Tribes and Native Hawaiian Organizations as required by the NHPA in the Section 106 process. Finally, DOE clarifies that the IIP Process, resource reports, and other submissions are not

[5] This excludes meeting information summaries, which DOE does not categorize as review and response time that could impact a project timeline, because preparation of required information for subsequent IIP Process steps can happen in parallel.

[6] As discussed in section V.D of this document, DOE is replacing the term ''NEPA co-lead agency'' from the proposed regulatory text with ''NEPA joint lead agency'' in this final rule. The change is non-substantive. For clarity and readability, DOE uses the term ''NEPA joint lead agency'' throughout the preamble in place of ''NEPA co-lead agency'' even when discussing a comment or document that originally referred to a ''NEPA co-lead agency.''

intended to, nor will they, satisfy DOE's or other Federal agencies' legal obligations and responsibilities under the relevant statutes, such as NEPA, NHPA, and ESA. The Federal agencies remain legally responsible for their compliance with the applicable statutes.

V. Terminology and Clarification Changes

In this final rule, DOE has made a number of changes to ensure consistent use of terminology across part 900.

A. ''Project Area'' v. ''Study Corridor'' v. ''Route''

The proposed rule used several terms related to areas. In this final rule, DOE has ensured that the usage of these terms is consistent. DOE clarifies here their meaning and use. For the area containing the study corridors selected by the project proponent for in-depth consideration and the immediate surroundings of the end points of the proposed electric transmission facility, DOE uses the term ''project area.'' For a location within a project area where multiple transmission line designs may be contemplated, DOE used the term ''study corridor''; within the project area, there may be multiple study corridors. Within a given study corridor, DOE refers to ''potential routes'' or ''route segments''; within the study corridor, there may be multiple potential routes or route segments.

Notably, DOE revises the definition of project area from what was proposed by replacing ''containing all study corridors'' with ''containing the study corridors selected by the project proponent for in-depth consideration'' to clarify the scope of this term. Additionally, to clarify the role of study corridors, DOE added to the study corridors definition that ''study corridor does not necessarily coincide with 'permit area,' 'area of potential effect,' 'action area,' or other defined terms that are specific to types of regulatory review.''

The proposed rule used multiple terms to refer to a route of an electric transmission line that is considered during the IIP Process, including ''proposed route'' and ''potential route.'' This final rule replaces these synonymous terms with ''potential route.''

B. ''Potential Project'' v. ''Qualifying Project'' v. ''Transmission Facility''

The proposed rule used several terms to refer to an electric transmission facility that is proposed to be sited and constructed, including ''transmission facility'' and ''electric transmission facility.'' This final rule replaces these terms with ''proposed electric transmission facility,'' which is shortened to ''proposed facility'' when the identity of the facility is clear from the context.

Similarly, the proposed rule included a variety of phrases to refer to an electric transmission project, including ''qualifying project,'' ''electric transmission project,'' ''proposed qualifying project,'' ''proposed undertaking'' and ''project.'' This final rule replaces these terms with ''proposed electric transmission project,'' which is shortened to ''proposed project'' when the identity of the project is clear from the context. While the revision replaces the defined term ''qualifying project'' in a number of instances, the revision has no substantive effect, because any proposed electric transmission project that is accepted into the IIP Process must involve a proposed electric transmission facility that is a qualifying project.

C. ''Plants'' v. ''Vegetation''

The proposed rule used several terms to describe plant life, such as ''plant life,'' ''plants'' and ''vegetation.'' DOE has revised this final rule to consistently use the term ''plants,'' except where the rule uses an established term of art such as ''vegetation management'' or for consistency with Resource Report naming across agencies.

D. ''NEPA Co-Lead Agency'' vs ''NEPA Joint Lead Agency''

The proposed rule used the term ''NEPA co-lead agency'' to refer to a Federal entity that may be designated under § 900.11 to share the responsibilities of DOE as lead agency in preparing an environmental review document. DOE has revised the final rule to replace that term with ''NEPA joint lead agency'' to better conform with the terminology used in NEPA, as amended by Section 321 of the Fiscal Responsibility Act of 2023 (Pub. L. 118–5). The change is non-substantive and only reflects a difference in terminology.

VI. Discussion of Comments

A. General

In response to the NOPR, DOE received 50 sets of comments from the following persons and groups:

Advanced Energy United (AEU), Alan Leiserson, American Clean Power Association (ACP), American Council on Renewable Energy (ACORE), American Electric Power Service Corporation (AEP), Americans for a Clean Energy Grid (ACEG), Arizona Game and Fish Department (AZGFD), Arizona State Historic Preservation Office (Arizona SHPO), California Energy Commission and California Public Utilities Commission (CEC/CPUC), Center for Biological Diversity (CBD), Clean Air Task Force (CATF), Clean Energy Buyers Association (CEBA), ClearPath, Colorado Governor's Office, Conrad Ko, Conservation and Renewable Energy Coalition (CARE—comprised of the National Wildlife Federation, The National Audubon Society, Environmental Law and Policy Center, and The Nature Conservancy), Delaware Division of Historical and Cultural Affairs (Delaware SHPO), EarthGrid PBC, Edison Electric Institute (EEI), Environmental Defense Fund (EDF), Gallatin Power Partners, LLC (Gallatin Power), Grid United LLC (Grid United), Idaho Governor's Office of Energy and Mineral Resources, Idaho Power, James Birdwell, Kentucky SHPO, Kris Pastoriza, Land Trust Alliance (LTA), Large Public Power Council, Los Angeles Department of Water and Power (LADWP), mkron mkron, National Association of Manufacturers, National Association of Tribal Historic Preservation Officers (NATHPO), New Mexico Department of Cultural Affairs Historic Preservation Division (NM SHPO), New York Transmission Owners (NYTO), New York University School of Law Institute for Policy Integrity (Policy Integrity), Niskanen Center, Oceti Sakowin Power Authority (OSPA), Pew Charitable Trusts, PJM Interconnection, LLC (PJM), Public Interest Organizations (PIOs, comprised of Earthjustice, Natural Resources Defense Council, NW Energy Coalition, Southern Environmental Law Center, Sustainable FERC Project, and WeACT for Environmental Justice) (PIO), Santa Rosa Rancheria Tachi Yokut Tribe, Scott Cooley, Solar Energy Industries Association (SEIA), State of Colorado Governor's Office, State of Idaho Energy Office, Stoel Rives, LLP, StopPATH WV, Todd Simmons, VEIR, Inc, and an anonymous commenter.

Of the 50 comments, 27 expressed general support for the proposed rule and many supported specific aspects, including the IIP Process, the Federal decision-making timelines, and the requirement for the thirteen resource reports.[7] Commenters specifically

[7] Advanced Energy United; American Clean Power Association; American Council on Renewable Energy; American Electric Power Service Corporation; American Electric Power Service Corporation; Americans for a Clean Energy Grid; Arizona Game and Fish Department; California Energy Commission joint with California Public Utilities Commission; Clean Air Task Force; Clean Energy Buyers Association; Colorado Energy Office; Conrad Ko; Delaware State Historic Preservation Office; Edison Electric Institute; Environmental Defense Funds; Gallatin Power

lauded the resource reports for their early and meaningful public engagement components, their effectiveness in coordinating decision-making across different Federal agencies, and their essential role in streamlining environmental permitting processes to two years.

Six commenters, NATHPO, Santa Rosa Rancheria Tachi Yokut Tribe, StopPath WV, James Birdwell, ClearPath, and mkron mkron were not supportive of the rulemaking.

The comments and DOE's responses are discussed in detail in the subsequent subsections.

B. Purpose and Scope of Rule

DOE's Proposal

In the NOPR, DOE proposed to establish the CITAP Program; made the IIP Process a mandatory precondition to participate in the CITAP Program; described the procedures and timing of the IIP Process; provided a process to set deadlines and milestones for projects; designated DOE as the lead NEPA agency for the purposes of preparing a single environmental impact statement; provided for earlier coordination of and consultation between relevant Federal entities, relevant non-Federal entities, and others pursuant to section 106 of the NHPA; designated DOE as a co-lead agency for the section 106 process; and clarified applicability to qualifying projects. Finally, DOE proposed to include a provision stating that participation in the IIP Process does not alter any requirements to obtain necessary Federal authorizations for electric transmission facilities nor does it alter any responsibilities of the relevant Federal entities for environmental review or consultation under applicable law.

Summary of Public Comments

DOE received several comments regarding DOE's authority to establish the CITAP Program, the ability of the proposed CITAP Program to meet the goals established by Congress in EPAct 2005, and the scope of the proposed CITAP Program.

Regarding DOE's authority to establish the CITAP Program, EDF, PIOs, and CATF observed that the CITAP Program is consistent with the statutory language of section 216(h) of the FPA and with the 2023 MOU. Pew Charitable Trusts expressed their support for several key elements of the proposed rule, including the creation of a new framework for coordinated Federal authorizations.

PIOs commented that DOE's proposed rule appropriately effectuates the congressional intent underlying section 216(h) of the FPA, and that DOE has sufficiently explained its proposed changes in the rule text by demonstrating awareness of changing its policies and providing sound reasons for doing so. PIOs also noted that although agencies do not need to demonstrate that the reasons for the new policies are better than the reasons for the old policies, they believed DOE has done so in the proposed rule. On the other hand, NATHPO and the Santa Rosa Rancheria Tachi Yokut Tribe requested that DOE withdraw the proposed rule. NATHPO and the Santa Rosa Rancheria Tachi Yokut Tribe found the proposed rule ''opaque'' and stated that they were unable to determine if the rule represented a threat to Tribal Nations' cultural resources and sacred places. Additionally, NATHPO and the Santa Rosa Rancheria Tachi Yokut Tribe objected to the rule on the grounds that it contained ''numerous fundamental flaws,'' but only provided two examples, one concerning the Communities of Interest report and one concerning the Tribal Interests report. Specifically, regarding Communities of Interest, the commenters expressed concern not with the proposed rule text, but with a comment from DOE staff which the commenters believed indicated this resource report would fulfill NHPA ''Section 106 responsibilities for determining the impact of projects on Tribal Nations' cultural resources and sacred places.'' Regarding Resource Report 13, the commenters expressed concerns with a comment from DOE staff which the commenters believe indicated, contrary to the proposed rule text, that this resource report would not include ''the effect of projects on Tribal Nations' cultural resources.'' These concerns are discussed in further detail and addressed in sections VI.J and VI.L.xiii of this document. Finally, NATHPO and the Santa Rosa Rancheria Tachi Yokut Tribe argued that DOE did not effectively engage with Tribal Historic Preservation Officers (THPOs) while drafting the proposed rule.

Regarding the ability of the proposed CITAP Program to meet the stated goals of coordinating Federal authorizations and completing environmental review within a 2-year schedule, PIOs stated they believe the proposed rule will improve efficiency in Federal permitting for transmission projects that are urgently needed to address the climate crisis, improve reliability, and reduce congestion, and that the rule will accelerate the development of infrastructure that will provide the foundation for a clean and equitable energy grid. Pew Charitable Trusts stated that it believes that the proposed rule offers an appropriately streamlined approach to coordinating and facilitating transmission project authorizations. Pew Charitable Trusts further noted that previous studies of various types of infrastructure projects and environmental reviews suggest that an open, transparent, and comprehensive review process can work to the benefit of the public and developers. Pew Charitable Trusts supported that the schedule can be altered by DOE depending on the complexity of the review and other factors. ACEG recommended adding ''prompt and binding'' to describe the milestones and deadlines DOE will set in the schedule for Federal decision-making. The State of Idaho agreed that Federal efforts to reduce the time required for transmission project developers to receive decisions on Federal authorizations are needed and agreed that such actions should be encouraged. However, it also cautioned that those efforts should be implemented in a way that avoids diminishing the benefits of such reform by the addition of new permitting processes or requirements. In contrast, StopPATH WV asked why the NOPR was written in a way that presumes project approval, expressed concern that it was not clear how this rulemaking would speed up timelines, and asserted that if agencies could not change the project or deny it, then this would be a bureaucratic waste of time. Kris Pastoriza requested clarification on how the CITAP Program would change the jurisdiction of the Federal Energy Regulatory Commission (FERC).

Regarding DOE's role as a lead agency for environmental review and preparation of a single EIS, DOE received several comments in support of the role and the consistency of this designation with existing regulations and legislation. EDF commented that the rule is consistent with Section 107 of the Fiscal Responsibility Act of 2023, which amended NEPA to require the designation of a lead agency to coordinate and schedule environmental review, as well as the related amendments to NEPA implementing regulations proposed by the Council for Environmental Quality. AEP, SEIA, Pew Charitable Trusts, EEI, and CEBA each

Partners, LLC; Grid United, LLC; New York Transmission Owners; Niskanen Center; PJM Interconnection, L.L.C.; Public Interest Organizations; Scott Cooley; Solar Energy Industries Association; State of Idaho; Stoel Rives; The Pew Charitable Trusts; and Todd Simmons.

commented in support of DOE serving as the lead agency for developing a single environmental review document. SEIA noted that currently a lack of coordination among agencies causes unpredictability and inefficiency in the environmental review process and effective coordination will provide a more predictable and efficient process, a reduction in unnecessary delays and costs, and heightened allowance for more robust environmental reviews. ACEG recommended replacing the phrase ''environmental impact statement'' with ''NEPA document'' because that phrasing more closely matches the statutory language in section 216(h)(5)(A) and because it accounts for the breadth of reviews organized under the CITAP Program. EEI recommended that DOE must also rely on the expertise of Federal agencies to ensure certainty and minimize risk of post record decision litigation.

Regarding the authority of the Director of the Grid Deployment Office to waive requirements, PIOs recommended establishing specific, transparent criteria by which the Director of the Grid Deployment Office can waive the review requirements for a proposed project that are deemed unnecessary, duplicative, or impracticable and further argued for the establishment of an appeal process for said waivers. PIOs further provided that if DOE declines to implement criteria and an appeals process that this final rule should eliminate the waiver provision.

DOE Response

In this final rule, DOE retains the proposal in the NOPR to establish the CITAP Program, which requires the IIP Process for CITAP Program participation, sets binding schedules for Federal decision making, and through which DOE will serve as lead agency for environmental review and document preparation. In response to comments, DOE makes minor changes to this final rule for clarification but retains the full intent and scope of the proposed rule.

With respect to NATHPO's comment regarding outreach, DOE believes that it engaged with appropriate entities regarding the rulemaking. DOE met with the Advisory Council for Historic Preservation in developing the language of the proposed rule and specifically with respect to addressing potential impacts on cultural resources and consistency of the CITAP Program with the requirements of the NHPA. Further, DOE developed the NOPR with substantive engagement from other Federal entities through the interagency review process. DOE then provided a 45-day public comment period during which DOE noticed and provided a public webinar open to anyone to attend, and organized briefings with interested groups to introduce the proposed rule and listen to comments, to which NATHPO, THPOs, and State Historical Preservation Officers (SHPOs) were invited. In this final rule, DOE has made changes to provide additional clarity in the rule text and resolve ambiguity when possible. In particular, DOE clarifies certain issues relating to Tribal sovereignty, cultural resources, and the section 106 process in response to specific concerns raised by NATHPO, Santa Rosa Rancheria Tachi Yokut Tribe, and other commenters.

In response to the State of Idaho's concerns and Kris Pastoriza's question regarding DOE implementing its coordinating authority, this final rule neither establishes new permitting requirements nor alters FERC's siting authority over transmission lines. Rather, DOE will be coordinating agencies' exercise of their existing authorities. This final rule maintains the NOPR provision that the IIP Process does not alter any requirements to obtain necessary Federal or non-Federal authorizations for electric transmission facilities. Similarly, DOE disagrees with the assertion that the proposed rule presumes project approval. The CITAP Program as described in the proposed rule and confirmed in this final rule coordinates and sets a schedule for Federal decision-making for qualified projects; it does not presume or require the outcome of such Federal decisions. Regarding DOE's schedule setting role in the CITAP Program, DOE agrees with ACEG's recommendation to align the language of this final rule with the authorizing statute and includes ''prompt and binding'' in the description of milestones in this final rule.

Regarding DOE serving as lead agency for environmental review and development of a single EIS designed to serve the needs of all relevant Federal agencies and inform all Federal authorization decisions on the proposed qualifying project, DOE acknowledges that it will rely on other Federal agencies' expertise and believes the CITAP Program and IIP Process confirmed in this final rule will ensure this occurs. DOE agrees with ACEG's recommendation to align the language with the authorizing statute and changes ''EIS'' to ''environmental review document'' throughout this final rule.

DOE makes no changes to the proposal to allow the Director of the Grid Deployment Office to waive requirements of the CITAP Program, nor does DOE adopt specific criteria for such waivers. The purpose of the CITAP Program and IIP Process is to allow DOE to perform a coordinating function for electric transmission facilities seeking Federal authorizations. Giving the Director the discretion to waive requirements of the CITAP Program helps ensure that this coordination function promotes efficiency and reduces duplication, as Congress intended in FPA section 216(h). In addition, it is important to note that a waiver granted by the Director under the CITAP Program would not waive Federal requirements for authorizations or permits. For these reasons, DOE is not persuaded that a lack of specific criteria for waivers in this final rule will substantively harm any entity or party.

C. Qualifying Projects

DOE's Proposal

Section 216(h) of the FPA authorizes DOE to perform its coordinating function for all transmission facilities seeking Federal authorizations. In the NOPR, DOE proposed to prioritize the subset of these facilities that benefit the most from DOE's coordinating role and provide the most benefits to the American public from expeditious environmental review.

In the NOPR, DOE proposed to define the subset of proposed electric transmission facilities for which to perform its coordinating function—called ''qualifying projects''—by defining two types of qualification: qualification by attribute and qualification by request. For qualification by attribute (set out in paragraph (1) of the proposed definition of ''qualifying project''), DOE proposed in the NOPR to categorize a proposed electric transmission facility as a ''qualifying project'' based on the presence of certain enumerated attributes: it must be high-voltage (defined as 230 kV or above) *or* ''regionally or nationally significant''; it will be used for the transmission of electric energy in interstate or international commerce for sale at wholesale; it will need one or more Federal authorizations expected to require preparation of an environmental impact statement (EIS) pursuant to NEPA; it will not require authorization under section 8(p) of the Outer Continental Shelf Lands Act; the developer will not require a construction or modification permit from FERC pursuant to section 216(b) of the FPA; and the proposed transmission facility will not be wholly located within the Electric Reliability Council of Texas interconnection.

DOE proposed that, if a proposed electric transmission facility did not qualify for the CITAP Program by attribute it could still qualify by request, as provided by paragraph (2) of the proposed definition of qualifying project and under the process set out in proposed § 900.3 of the NOPR. Under that process, DOE proposed that the project proponent file a request for coordination under the CITAP Program with the Director of the Grid Deployment Office. Then, the Director of the Grid Deployment Office, in consultation with the relevant Federal entities, determine, within 30 calendar days of receipt of the request, whether the proposed electric transmission facility is a ''qualifying project.'' In the NOPR, DOE proposed that proposed electric transmission facilities requiring a permit from FERC could be qualifying projects if the request came from the FERC Chair. DOE also proposed that projects proposed for authorization under section 8(p) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*) independent of any generation project may be qualifying projects at the discretion of MOU signatory agencies.

DOE proposed to exclude from both types of qualification, and from the CITAP Program altogether, any project proposed to be authorized under section 8(p) of the Outer Continental Shelf Lands Act in conjunction with a generation project and any project for which the proposed transmission facility is wholly located within the Electric Reliability Council of Texas interconnection.

Summary of Public Comments

DOE received several comments on the proposed definition of ''qualifying project.''

Starting with the qualification by attribute in paragraph (1) of the definition, DOE received several comments on the specific proposed attributes. Both AEP and Niskanen Center supported the proposed high-voltage threshold of 230 kV or above. On the other hand, CEC/CPUC opposed limiting eligibility based on a voltage threshold and instead suggest expanding eligibility to proposed electric transmission facilities at any voltage level.

With regard to DOE's proposal for qualification by attribute to require that a proposed electric transmission facility that does not satisfy the voltage threshold must be ''regionally or nationally significant,'' both Niskanen Center and ClearPath asserted that this alternative criterion is ambiguous. ClearPath recommended removing the alternative criterion altogether and only allowing for high-voltage transmission lines (*i.e.,* those that satisfy the 230 kV or above threshold) to be ''qualifying projects.'' Niskanen Center recommended instead that DOE adopt factors that it will consider when determining whether a proposed transmission facility is ''regionally or nationally significant.'' Specifically, Niskanen Center suggested these factors: ''(i) a reduction in the congestion costs for generating and delivering energy; (ii) a mitigation of weather and variable generation uncertainty; (iii) an enhanced diversity of supply; (iv) any reduced or avoided carbon emissions from the increased use of clean energy; and (v) an increased market liquidity and competition.''

Moving to the other attributes, CEC/CPUC asked DOE to clarify how it will determine whether all or part of a proposed electric transmission facility will be ''used for the transmission of electric energy in interstate or international commerce for sale at wholesale.'' Further, CEC/CPUC recommended that DOE expand the attribute list to include a proposed electric transmission facility that will be used in intrastate commerce because, according to CEC/CPUC, intrastate transmission lines can traverse lands managed by several Federal agencies, such that DOE coordination under the CITAP Program would provide benefits to these projects as well. In the alternative, CEC/CPUC asked that DOE clarify how a proposed intrastate transmission facility, such as an onshore, intrastate transmission facility built to support offshore wind development, that traverses Federal lands, could be a ''qualifying project.''

On the proposed attribute that the proposed electric transmission facility would need one or more Federal authorizations that require preparation of an EIS pursuant to NEPA, AEP supported the proposal whereas Niskanen Center and PIOs recommended expanding the proposal to include proposed electric transmission facilities for which preparation of either an environmental assessment (EA) or an EIS is anticipated. PIOs also encouraged DOE to define which proposed electric transmission facilities are ''expected'' to require preparation of an EIS and which are expected to require preparation of an EA. In support of the recommendation to expand eligibility to include proposed electric transmission facilities for which preparation of an EA is expected (in addition to those for which preparation of an EIS is expected), PIOs argued that FERC regulations only require preparation of an EA for proposed electric transmission facilities sited within an existing right-of-way. If DOE adopts the proposal without PIOs' recommended expansion, PIOs explained that such proposed electric transmission facilities may be excluded from the CITAP Program, resulting in the CITAP Program not providing its full purported benefits. Similar to Niskanen Center and PIOs, CEC/CPUC recommended that DOE expand the definition of ''qualifying project'' such that any proposed electric transmission facility for which multiple Federal agency approvals will be required are eligible, regardless of what type of document is required under NEPA.

On qualification by request—*i.e.,* when a project proponent seeks qualifying-project status through a request to the Director of the Grid Deployment Office—several commenters expressed concern about DOE's level of discretion in the proposal. EEI requested examples of the types of proposed electric transmission facilities that may be deemed ''qualifying projects'' by request. PIOs argued that the proposal appears to be wholly discretionary, making it difficult for project proponents, relevant regulators, and members of the public to understand what proposed electric transmission facilities may be eligible to participate in the CITAP Program. PIOs suggested that DOE establish criteria for how DOE will evaluate requests, which would assist project proponents in making well-grounded requests for participation in the CITAP Program. According to PIOs, these criteria should be: if the proposed electric transmission facility will benefit from DOE's coordination in terms of expeditious authorizations; if DOE's coordination will provide benefits that exceed the costs; and, if Federal and non-Federal regulators have sufficient resources to dedicate to the project's participation in the CITAP Program. PIOs also suggested that DOE require project proponents to explain what portions of their proposed electric transmission facility do not meet the ''qualifying project'' definition (*i.e.,* the attributes) and how the CITAP Program will facilitate Federal authorizations for the project or be otherwise beneficial. Further, PIOs recommended that DOE adopt a requirement that the Director of the Grid Deployment Office explain in writing the determination of whether a project is deemed a ''qualifying project'' by request. PIOs also recommended that if DOE rejects a request to participate in the CITAP Program, project proponents should be allowed to appeal the

decision to the Secretary of Energy. Similarly, ACP commented that the proposed rule lacked clarity regarding what can qualify as an ''other project'' and recommended that DOE provide further detail on the aspects which it will consider when making this determination.

As proposed, qualification by request included a limitation in § 900.3(d): for a proposed electric transmission facility seeking a permit from FERC pursuant to section 216(b) of the Federal Power Act, DOE may only consider a request for coordination if the requestor is FERC acting through its chair. ACORE recommended that DOE provide more detailed guidance for this category of proposed electric transmission facilities and for DOE to authorize relevant project proponents to submit a petition requesting such a request from the FERC Chair. Likewise, CEBA urged DOE to clarify the relationship between the section 216(b) and section 216(h) processes and to explain how the FERC Chair can request that a proposed electric transmission facility be eligible to participate in the CITAP Program under section 216(h). Both qualification by attribute and qualification by request included limitations related to offshore transmission facilities. For qualification by attribute, one listed attribute provided that the proposed electric transmission facility would not require authorization under section 8(p) of the Outer Continental Shelf Lands Act. Likewise, for qualification by request, DOE proposed to exclude electric transmission facilities proposed to be authorized under section 8(p) of the Outer Continental Shelf Lands Act in conjunction with a generation project. However, projects proposed to be authorized under section 8(p) of the Outer Continental Shelf Lands Act could be allowed at the discretion of the MOU signatory agencies (as defined in the proposed rule) if the proposed offshore transmission facility is independent of any generation project.

A number of commenters expressed concerns regarding DOE's treatment of proposed offshore transmission facilities. Broadly, ACP, ACORE, and PIOs contended that DOE must explain why the limitations on offshore transmission facilities are included and how the CITAP Program will apply to offshore transmission facilities in practice. ACP and ACORE suggested that DOE establish a process to allow potential State-proposed transmission facilities to participate in the CITAP Program before a project developer is selected and include a process to enable the Bureau of Ocean Energy Management or a State to engage or request that a project participate in the CITAP Program.

More specific to DOE's proposal, NYTOs opposed the offshore transmission facility-related attribute, asserting that its inclusion prevents proposed offshore transmission facilities from benefiting from the CITAP Program for project sections located closer to shore as well as for project sections that fall under the scope of the Outer Continental Shelf Lands Act. PIOs suggested removing the limitations in qualification by request and instead allowing for proposed offshore transmission facilities to take advantage of the CITAP Program without the approval of the MOU signatories. At a minimum, PIOs suggested removing the limitation that proposed offshore transmission facilities tied to generation projects cannot participate in the CITAP Program. Moreover, both PIOs and ACORE requested that DOE revise its proposal from requiring agreement from all MOU signatories and instead only requiring agreement from relevant MOU signatories participating in the environmental review or authorization.

Finally, other commenters proposed revisions to DOE's proposed definition of ''qualifying project'' based on advanced transmission technologies and undergrounding. VEIR recommended that DOE include superconductors in its definition of ''qualifying projects'' because, according to VEIR, a superconductor can transfer more power at lower voltages than qualifying high-voltage transmission lines. EarthGrid asserted that underground transmission projects should be considered as a distinct category. And CBD suggested that DOE require that a proposed electric transmission facility be strictly necessary and that non-transmission alternatives could not adequately address the issue addressed by the proposed electric transmission facility before allowing the project to participate in the CITAP Program.

DOE Response

In this final rule, DOE retains the proposal in the NOPR to provide two types of qualification (qualification by attribute and qualification by request) for proposed electric transmission facilities to be ''qualifying projects.'' In response to commenters, DOE is making the following revisions to the details of those two types of qualification.

First, consistent with commenters' suggestions, DOE has adopted factors that DOE may consider when determining that a proposed electric transmission facility is a qualifying project. For qualification by attribute, this final rule includes factors that DOE may consider when assessing if a proposed electric transmission facility is regionally or nationally significant. Similarly, for qualification by request, this final rule includes factors that DOE may consider when assessing if a proposed electric transmission facility is a qualifying project. Second, this final rule removes the requirement that projects seeking a permit from FERC under FPA section 216(b) may only be accepted into the CITAP Program if requested by FERC acting through its chair and states that the coordination between FERC and DOE on projects seeking permits under FPA section 216(b) will be consistent with the relevant delegation order governing DOE's coordination authority under FPA section 216(h), which may change from time to time. Third, this final rule also states that if DOE does not determine that a project is qualifying project, DOE will provide the reasons for its finding in writing.

DOE believes that the definition of ''qualifying project'' adopted in this final rule appropriately balances the value of focusing DOE's resources on those proposed electric transmission facilities for which Federal coordination will be most impactful with the aims of the broad grant of authority to DOE under FPA section 216(h). By initially limiting the definition of ''qualifying project'' to those proposed electric transmission facilities that qualify by attribute, *i.e.,* those that are high-voltage or regionally or nationally significant and that possess the other listed attributes, DOE is targeting for Federal coordination those complex proposed electric transmission facilities that will reap the greatest benefits from the CITAP Program. DOE believes that these proposed electric transmission facilities are also likely to provide substantial benefits to consumers in the form of congestion relief, emissions reductions, and increased reliability and resilience, among other benefits, to ensure reliable, affordable power can be delivered to consumers when and where they need it. Qualification by request provides DOE with additional flexibility to consider whether projects that do not meet the targeted attributes may be appropriate for participation in the CITAP Program as well, consistent with DOE's authority under section 216(h) to coordinate for all transmission facilities seeking Federal authorizations.

As for specific aspects of the NOPR proposal, starting with qualification by attribute and the voltage threshold therein (*i.e.,* proposed electric transmission facilities must be 230 kV or above), DOE declines to adopt the suggestion by CEC/CPUC to expand

eligibility to proposed transmission facilities at any voltage level. Such an expansion, although permissible by the statute, would not be the most effective use of DOE's authority because it would likely result in DOE providing coordination for proposed transmission facilities that would benefit less from the program. For example, DOE could be obligated to provide coordination for less complex proposed electric transmission facilities for which there is a low risk of protracted Federal authorization and review timelines and thereby have fewer resources to dedicate to those transmission facilities with more complex permitting requirements and/or more Federal authorizations and thus more risk of protracted review timelines in the absence of DOE coordination. Nonetheless, DOE acknowledges that voltage alone does not determine complexity nor whether the proposed transmission facility may benefit from participation in the CITAP Program. That is why this final rule provides multiple avenues for lower-voltage proposed transmission facilities to be ''qualifying projects,'' whether because they are ''regionally or nationally significant'' or because they are determined to be qualifying projects by request to the Director of the Grid Deployment Office, on a case-by-case basis. In addition, satisfying the high-voltage threshold alone does not make a proposed transmission facility a ''qualifying project;'' it still must demonstrate the attributes listed in this final rule.

As for the alternative criterion under qualification by attribute—whether the proposed transmission facility is ''regionally or nationally significant''—DOE declines to remove this criterion but agrees that the proposal was ambiguous and therefore adopts clarifying revisions in this final rule. DOE believes that this alternative to the voltage threshold is important to ensure that lower-voltage transmission facilities that may benefit from participation in the CITAP Program have an avenue to be ''qualifying projects,'' as explained in the prior paragraph. Nevertheless, DOE appreciates commenters' requests for greater transparency and thus adopts factors to guide DOE's determination whether a proposed transmission facility is ''regionally or nationally significant.''

In particular, DOE adopts regulations in this final rule that provide that, in determining whether a proposed transmission facility is ''regionally or nationally significant,'' DOE will consider whether a proposed transmission facility will reduce congestion costs, mitigate uncertainty, and enhance supply diversity. These factors are consistent with the overarching goals of focusing the CITAP Program on proposed transmission facilities for which DOE's coordination will be most impactful. The adopted regulations provide that DOE may consider other factors as well. This discretion is important to ensure that DOE has flexibility to best use its resources to provide Federal coordination where consistent with the goals of the CITAP Program and available resources. As explained in DOE's 2023 Needs Study, transmission infrastructure improvements can benefit consumers by improving grid reliability, resource adequacy, and resilience of the power system, as well as reducing congestion and losses and enabling access to clean, diverse energy supply. While transmission that addresses unnecessarily high costs to consumers may be regionally or nationally significant, so too may be transmission that reduces the vulnerability of the electric system to disruptive events, which risk high costs and service interruptions. The benefits of transmission also extend beyond the power system—to increased employment, tax revenues, and other economic development benefits. These benefits are all relevant to DOE's determination of whether a transmission line is ''regionally or nationally significant.''

Although Niskanen Center suggested two additional factors for DOE to list as part of its determination as to whether a proposed electric transmission facility is ''regionally or nationally significant'' beyond those adopted herein (specifically focused on reduced or avoided carbon emissions and increased market liquidity and competition from the proposed electric transmission facility), DOE declines to adopt additional factors. For one, project proponents are unlikely to have substantial information at the stage of development recommended for initiation of the IIP Process for DOE to evaluate vis-à-vis these recommended factors. If such information is available, though, DOE may nevertheless consider it because, as explained above, DOE is maintaining discretion to consider other factors as part of its assessment of whether a proposed transmission facility is ''regionally or national significant.''

As for the proposed attribute concerning whether all or part of a proposed transmission facility will be ''used for the transmission of electric energy in interstate or international commerce for sale at wholesale,'' DOE declines to provide further clarification in this final rule because this determination will be made based on the facts and circumstances of the proposed electric transmission facility seeking DOE coordination at the time of application. DOE expects that this determination will be informed by relevant precedent interpreting similar language in other provisions of the FPA, though DOE is not bound by that precedent in interpreting its own regulatory language.

DOE declines to expand the listed attributes of a qualifying proposed electric transmission facility to also include intrastate transmission facilities. As previously explained, DOE's intent in defining a subset of electric transmission facilities for which DOE will conduct Federal coordination is to focus on where the CITAP Program is likely to be most impactful. While intrastate transmission facilities can have significant benefits, they are generally less likely to be the types of facilities that DOE expects will reap the greatest benefits from DOE's coordination or that would provide the greatest benefits to consumers as a result of more efficient permitting of critical transmission infrastructure. Nonetheless, DOE does not prohibit proponents of intrastate transmission facilities (*e.g.,* high-voltage intrastate transmission facilities that may require multiple Federal authorizations) from seeking qualification by request.

Regarding the proposed attribute that a proposed electric transmission facility would need one or more Federal authorizations that require preparation of an EIS pursuant to NEPA, DOE declines to make the changes suggested by Niskanen Center, PIOs, and CEC/CPUC. As explained above, DOE is aiming to identify as ''qualifying projects'' those proposed electric transmission facilities for which DOE coordination under the CITAP Program is likely to be most impactful and to yield the greatest benefits for consumers. DOE believes that focusing on proposed electric transmission facilities for which preparation of an EIS is expected is an appropriate factor for narrowing the list of potential electric transmission facilities for DOE coordination because an EIS is typically needed for more complex projects. Preparation of an EIS is also a longer, more involved process and one that poses a greater risk of delays absent interagency coordination. Note that, although qualification by attribute is limited to those for which an EIS is likely required, qualification by request does not have this limitation, such that a project proponent is permitted to request DOE coordination even if an EIS

is not expected and seek a determination from the Director of the Grid Deployment Office on eligibility for the CITAP Program. As for the request that DOE define which proposed transmission facilities are expected to require an EIS, DOE declines to do so in this final rule. DOE and its fellow agencies will apply NEPA and its implementing regulations and will follow applicable regulations pursuant to NEPA, as will other relevant Federal agencies, to determine whether an EIS needs to be prepared, and those same regulations will inform any expectations as to whether an EIS is likely to be required.

Regarding qualification by request, DOE agrees with commenters that criteria regarding the types of proposed electric transmission facilities that may be deemed ''qualifying projects'' under this process would be beneficial to project proponents, and ultimately to DOE in identifying the subset of projects that best suit the CITAP Program's goals. Consequently, DOE adopts criteria in this final rule that the Director of the Grid Deployment Office may consider when evaluating a request to determine whether a proposed electric transmission facility is a ''qualifying project.'' DOE will consider whether a proposed electric transmission facility will benefit from coordination under the CITAP program, reduce congestion costs, mitigate uncertainty, and enhance supply diversity. These factors are consistent with the overarching goals of focusing the CITAP Program on proposed electric transmission facilities for which DOE's coordination will be most impactful, to the ultimate benefit of consumers via reduced congestion and enhanced reliability and resilience, among other benefits. DOE believes the remaining discretion for DOE to determine which proposed electric transmission facilities are ''qualifying projects'' is consistent with the statutory framework that permits DOE to coordinate the Federal authorizations necessary for any transmission facility and the aim of the section 216(h) itself, notably the timely permitting of transmission projects.

DOE agrees that it should explain its determinations of whether qualification by request is granted in writing and consequently establishes a requirement for such an explanation in this final rule.

DOE makes no revisions in response to the suggestion that an appeals process be incorporated into the rule text for non-qualifying projects. DOE notes that any project not accepted under qualification by attribute may seek qualification by request of the Director of the Grid Deployment Office, and that this final rule does not disallow projects from resubmitting materials.

Turning to the proposed limitation to qualification by request for a proposed electric transmission facility seeking a permit from FERC pursuant to section 216(b) of the FPA, which stated that DOE may only consider a request for coordination if the requestor is FERC acting through its chair, DOE revises its proposal in this final rule to clarify that the request for Federal coordination for proposed transmission facilities seeking a permit from FERC under section 216(b) must be consistent with Delegation Order No. 1–DEL–FERC–2006 or any similar, subsequent delegation to FERC, which depend on the mutual and continuing agreement of both agencies. With respect to CEBA and ACORE's requests for more detail on the procedures for the FERC Chair to request that a proposed electric transmission facility be eligible to participate in the CITAP Program, such procedures will depend on the state of any delegations of DOE's authority under FPA section 216(h); therefore, DOE finds that clarifying these procedures is best done through guidance outside the rulemaking process. Similarly, with respect to ACORE's request to be able to submit a petition for the FERC Chair to request DOE to consider a request for assistance under the proposed section, the removal of that section in this final rule obviates the need for such a process to be established by DOE and the establishment of any processes at FERC are outside the scope of this rulemaking.

With respect to the treatment of offshore transmission facilities, commenters expressed concerns with the limitations related to offshore transmission facilities and sought further explanation, at a minimum. DOE adopts the proposal to exclude transmission facilities proposed to be authorized under section 8(p) of the Outer Continental Shelf Lands Act in conjunction with a generation project. DOE and the 2023 MOU signatories determined that offshore transmission facilities connected to generation projects should not be eligible for participation in the CITAP Program because the authorizations of, and permits for, these transmission facilities are typically included in the authorizations and permits for the connected generation projects. Coordinating Federal authorizations for generation projects, and reducing timelines for joint transmission-generation projects with interdependent permitting requirements, are beyond the scope of the 2023 MOU and the CITAP Program. This limitation allows DOE to focus its resources on addressing known challenges for transmission facility permitting.

With respect offshore transmission facilities whose Federal authorizations and project development are independent of generation development, DOE is finalizing an approach consistent with the 2023 MOU. For qualification by attribute, DOE declines to remove the requirement that the proposed electric transmission facility will not require authorization under section 8(p) of the Outer Continental Shelf Lands Act. Excluding offshore transmission from the qualification by attribute will facilitate a more efficient allocation of resources. Shared offshore transmission is a nascent industry with unique and unsettled permitting issues. Considering proposed offshore transmission facilities as potentially eligible for the CITAP Program in consultation with the MOU signatories, which is provided under qualification by request, will allow DOE to adopt a more tailored and responsive approach to this new industry.

In order for offshore transmission facilities to be eligible for the CITAP Program via qualification by request, DOE proposed, and adopts here, the requirement that the MOU signatories must agree to DOE coordination for offshore transmission facilities for the reasons explained in the prior paragraph. DOE declines to only require agreement from those MOU signatories that are authorizing Federal agencies. DOE is unpersuaded that a single, non-authorizing agency would unilaterally hold up a proposed offshore transmission facility's eligibility for the CITAP Program, such that those agencies should not be allowed to participate in the eligibility decision making. Instead, DOE believes that continuing the coordination demonstrated by the MOU is consistent with the spirit of the CITAP Program and important for keeping all relevant agencies involved in ongoing development of offshore transmission permitting.

DOE also declines to establish a process to allow potential State-awarded transmission facilities to participate and to enable the Bureau of Ocean Energy Management or a State to request that a project participate, as ACP and ACORE suggested. At this time, DOE is focusing the CITAP Program on addressing well-documented and understood Federal authorization issues via improved coordination for a subset of proposed electric transmission facilities for which DOE coordination is likely to be most impactful. DOE is not persuaded that

creating a process for entities other than the project proponent to request participation for a proposed project in the CITAP Program is necessary to provide the benefits of the program to a project. DOE may consider revising its approach to offshore transmission facilities in future rulemakings pursuant to FPA section 216(h).

Concerning commenters' proposed revisions to the definition of ''qualifying project'' based on advanced transmission technologies or undergrounding, DOE declines to adopt such revisions. As explained throughout this section, DOE's approach is targeted towards proposed transmission facilities that are likely facing the types of permitting challenges for which FPA section 216(h) and the CITAP Program were created. Commenters provide no evidence to suggest that superconductor permitting or undergrounding are unique as to warrant special recognition within the definition of ''qualifying project.'' This is not to say that a proponent of a transmission facility that contains these features cannot also be a ''qualifying project'' under DOE's adopted definition.

Finally, DOE declines to adopt CBD's suggestion that DOE impose a necessity test for proposed electric transmission facilities compared to non-transmission alternatives as a gateway to participation in the CITAP Program. Congress directed DOE to coordinate the authorizations necessary for the siting of transmission lines. DOE understands that to mean that Congress believes transmission lines are necessary and that Congress did not intend to supplant existing transmission planning processes. Through the CITAP Program, DOE will coordinate authorizations for transmission lines, which remain subject to the statutes relevant to their authorization, including NEPA. Through these statutes and their associated environmental review processes that DOE will coordinate, reasonable alternatives will be considered by the appropriate Federal agency as appropriate, which may or may not include non-transmission alternatives.

D. Purpose and Scope of the IIP Process

DOE's Proposal

Under the proposed rule, the IIP Process is intended for qualifying project proponents who have sufficiently advanced their project such that they have identified potential study corridors and/or potential routes and the proposed locations of any intermediate substations. DOE proposed to establish the IIP Process as a mandatory prerequisite for coordination under the CITAP Program and require the submission of thirteen project proponent resource reports that will serve as inputs, as appropriate, into the relevant Federal analyses and facilitate early identification of project issues. Within these resource reports, DOE proposed to require reasonably foreseeable information in three of them: in the General Project Summary, DOE proposed to require reasonably foreseeable plans for future expansion of facilities and specific generation resources that are known or reasonably foreseen to be developed or interconnected; in the air quality and noise effects report, DOE proposed to require estimates on reasonably foreseeable emissions construction, operation, and maintenance, and reasonably foreseeable changes in greenhouse gas emissions and indirect emissions; and in the Reliability, Resilience, and Safety report, DOE proposed to require a description of the reasonably foreseeable impacts from a failure of the proposed facility.

DOE also proposed to also establish the IIP Process as an iterative process anchored by three meetings, which function as milestones in the process: the initial meeting, review meeting, and close-out meeting. DOE proposed in the NOPR to require the project proponent to submit an initiation request containing certain information to DOE to initiate the IIP Process, including a summary of the qualifying project not to exceed 10 single-spaced pages and a project participation plan not to exceed 10 single-spaced pages. DOE also proposed to require the proponent to submit meeting review requests containing certain information to DOE prior to each of the three meetings. DOE proposed that the project proponent submit incomplete information so long as an acceptable reason for the absence of the information and an acceptable timeline for filing it is provided, and it provided the Director with discretion to waive any requirement imposed on a project proponent if the Director determines that that the requirement is unnecessary, duplicative, or impracticable under the relevant circumstances.

The proposed rule explained that the IIP Process would ensure early interaction between the project proponent, relevant Federal entities, and relevant non-Federal entities, and that DOE would, to the maximum extent practicable and consistent with Federal law, coordinate the IIP Process with any relevant non-Federal entities. DOE also proposed in the NOPR that the IIP Process did not preclude additional communications between the project proponent and relevant Federal entities outside the IIP Process meetings.

Additionally, the NOPR proposed to provide a process by which a person may submit confidential information during the IIP Process or to request designation of information containing Critical Electric Infrastructure Information (CEII); these provisions established the mechanisms through which the IIP Process complied with 10 CFR 1004.11 and 1004.13.

In the NOPR, DOE specifically sought comment on the page limitations and on the resource report requirements to avoid, to the maximum extent practicable, duplication in these requirements.

Summary of Public Comments

DOE received several comments that addressed the purpose and scope of the IIP Process including comments on the IIP Process as a prerequisite for DOE coordination; the level of detail required during the IIP Process and in resource reports, including page limits and reasonably foreseeable impacts; the role of the three anchor meetings; participation of Federal and non-Federal entities; and protection of confidential information and/or CEII. Comments to specific resource report requirements are addressed in section VI.L of this document on an individual report basis.

DOE received many comments in support of the proposed IIP Process. Grid United, PIOs, State of Colorado Governor's Office, EEI, ACP, ACORE, PJM, and CEBA expressed support for the revitalized IIP Process proposed in the NOPR. PIOs stated that the IIP Process will help Federal agencies coordinate information exchange that is necessary to fulfill their individual statutory mandates, avoid duplication of cost and effort for project proponents, and reduce the potential for unexpected delays later in the permitting process. PIOs also agreed with DOE that, by increasing the pace of transmission development through the IIP Process, the proposed rule will confer significant public benefits. The State of Colorado Governor's Office recognized that the IIP Process would provide developers a uniform mechanism for projects to identify siting constraints and opportunities, engage with Indian Tribes, local communities, and other stakeholders, and to gather information that would serve as inputs, as appropriate, into Federal authorization decisions. EEI and ACP recognized the potential benefits to be gained from the IIP Process and encouraged DOE to move swiftly to both finalize the proposed approach and commit to

working closely with project proponents to ensure that the IIP Process produces the promised results. EEI stated its belief that by collaborating with electric companies, DOE can significantly increase the efficiency of the process and reduce the time needed for NEPA reviews while ensuring environmental integrity and project deployment.

ACP and ACORE both supported the mandatory nature of the IIP Process as a prerequisite to participation in the CITAP Program, provided that it serves its intended objective of enhancing coordination, reducing permitting timelines, and minimizing duplication. ACP and ACORE noted that the IIP Process's early environmental review could conserve resources for public and private participations. PJM noted that the requirement should help avoid the current multi-agency piecemeal approach.

DOE also received comments generally in support of the establishment of the resource reports. AEU and the CARE Coalition expressed support for the thirteen resource reports proposed by DOE. AEU commented that the resource reports provided a comprehensive and wide-ranging analysis of the project. CARE Coalition commented that the resource reports were sufficiently comprehensive and detailed to enable Federal agencies, State and Tribal authorities, stakeholders, and the public to adequately review the project. AZGFD explained that the heightened consideration for resources through submitting 13 resource reports early in the process enables coordination and prevents implementation delays. It also stated that in some cases, adequate assessment of resources could take multiple years and multiple revisions before Federal environmental review is complete.

However, while commenters were broadly supportive, some commenters suggested changes to the level of detail required during the IIP Process and resource reports, indicating these would add flexibility and avoid what they perceived as unnecessary or burdensome tasks. Pew Charitable Trusts, in response to potential opposition to the level of information required in the pre-application phase, cited previous studies that conclude that a transparent and thorough siting process can benefit both the public and developers. AEP emphasized that an IIP Process should only be mandatory if it (1) informs the NEPA process and (2) minimizes duplication by project proponents and Federal entities. AEP noted that the IIP Process should also conserve the resources of project developers by actively encouraging permitting authorities to rely on the IIP Process's early environmental review. AEP also urged DOE to coordinate with transmission developers to enhance efficiency and protect environmental objectives. ACP cautioned against a burdensome pre-application phase and encouraged DOE to demand a level of information that is appropriate for NEPA scoping and consistent with the project's development. ACEG agreed with these assertions, adding that the level of information required in the IIP Process should be appropriate to support the relevant Federal entities' reviews and consultations, including under NEPA, ESA, and NHPA. ACEG emphasized the importance of reasonable and flexible demands. Similarly, CEBA cautioned against an IIP Process that was too complicated or time consuming. ACORE noted that the timeline for the submission of information in the IIP Process should align with when developers have the needed information and recommended that DOE provide some flexibility in those instances when the full scope of the information required in the IIP reports is not yet available. The NYTOs also suggested DOE should ensure that its data requests and sufficiency determinations align with the reliable data and information standards now set forth in sections 102(E) and 106(b)(3) of NEPA. These NEPA standards emphasize the use of reliable data and explicitly provide in NEPA section 106(b)(3)(B) that in making a determination regarding the level of review under NEPA, an agency ''is not required to undertake new scientific or technical research unless the new scientific or technical research is essential to a reasoned choice among alternatives, and the overall costs and time frame of obtaining it are not unreasonable.'' Similarly, Grid United recommended that DOE should consider section 106(b)(3) of NEPA in determining the level of information that is sufficient for each IIP Process meeting. AEP cautioned against a CITAP or IIP Process that duplicates or exceeds State regulatory application requirements.

Several comments addressed the level of detail required in the resource reports and the burden this would represent to the project proponent. ACP expressed concerns with the level of time and effort required for the development and submission of DOE's proposed resource reports so early in the process, when their usefulness in NEPA's EIS review process is uncertain, and urged DOE to consider that there may be limited information available in the early stages of permitting. ACP requested that the mandatory ''shall'' language be changed to ''should'' or ''to the extent practicable.'' ACEG, SEIA, and CEBA noted that DOE needs to strike a balance between requiring enough information to be helpful in streamlining the review but not making requirements so strict that project proponents are discouraged. ACEG stated that information required in the resource reports must be limited to the information available at the time of submission, as this is a preliminary stage and developers should not be discouraged from applying if they do not yet have all the information. ACEG recommended that the detail of each resource report must be commensurate with the level of available information at the time of the submission.

Relatedly, DOE received several comments regarding the requirements that project proponents account for reasonably foreseeable effects. PIOs commented in support of the proposed rule's requirement to assess climate impacts. PIOs explained that the proposed rule's requirements that resource reports account for generation resources that are reasonably foreseen to be developed or interconnected and for reasonably foreseeable changes in emissions will ensure a rigorous environmental analysis that properly accounts for the project's climate impacts and are well-founded in NEPA's plain text and implementing regulations, CEQ guidance, and judicial precedent. Policy Integrity provided similar rationale and additionally indicated that providing such data would be ''relatively easy'' for proponents. Policy Integrity elaborated that FERC has historically required such estimates from transmission developers, that developers have previously submitted these data and analysis to both DOE and FERC, and that power system emissions estimates are accessible through readily available modeling software. Along similar lines, AEU commented that the resource reports are comprehensive and require a wide-ranging analysis of the project, and that the requirement to describe reasonably foreseeable generation resources is especially beneficial because it illustrates the project's value and benefits to the larger regional and interregional grid.

On the other hand, CATF suggested that instead of requiring project proponents to describe reasonably foreseeable generation resources, DOE should request this specific information only for generator interconnections designed to connect specific generation resources to the bulk power system.

CATF explained that it may be difficult for certain qualifying projects to determine the scope of what generation resources are reasonably foreseeable. Accordingly, CATF recommended that DOE not require project proponents to determine associated generation resources where burdensome, speculative, and of limited value to decision makers, and revise the provision to include only ''specific'' generation resources. CATF cited to judicial decisions to support the proposition that an analysis of foreseeable generation is not required where the generation would likely have occurred even absent the project. ClearPath offered additional criticisms of the foreseeable generation requirement. ClearPath urged DOE not to exceed its jurisdiction to conduct environmental reviews by including additional requirements without consulting CEQ, and stated that DOE's requirements to consider indirect impacts of the project and identify effects from existing or reasonably foreseeable projects are beyond DOE's statutory authority and are contrary to CEQ Guidance. ClearPath recommended that DOE limit IIP Process requirements, and subsequent review in an EIS, to only an electric transmission line and its attendant facilities within Federal jurisdiction. Finally, the NM SHPO inquired generally about foreseeable generation, and whether foreseeable development will be considered in the assessment of historic properties under NHPA section 106 and its implementing regulations.

DOE also received comments on the iterative nature of the IIP Process and the role and scope of the three anchor meetings. While ACP approved of the general structure of anchor meetings, ACP emphasized the importance of flexibility in order to accommodate proposed projects that already have conducted significant Federal and State outreach or have agency-specific reporting that may differ in approach and timing to the IIP. ACP also suggested that DOE clarify how potential route changes can be accommodated without restarting the process, and that the final rule provide specific criteria that DOE and relevant Federal entities would follow in their consideration of adding, deleting, or modifying these routes.

ACEG suggested that DOE amend the proposed rule to strike or significantly modify its ''sufficiency'' standard for scheduling meetings, which DOE proposed to be required for scheduling each of the three required anchor meeting requests. ACEG and NYTOs commented that DOE should only find a meeting request insufficient when the information provided in the meeting request is insufficient to support a productive meeting, *e.g.,* a review meeting request should only require sufficient information to hold a productive discussion on the initial resource reports. For an example, NYTOs stated that as an ''initial review meeting'' is intended to identify issues of concern, information gaps or data needs—the existence of information gaps or the need for additional data, itself, should not be an appropriate basis for declining to proceed with a review meeting. ACEG expressed concerns that the current approach could allow an application to be indefinitely ''parked'' by unreasonable or overly burdensome demands for more information for purposes of a sufficiency determination. Similarly, Idaho Power asked, recognizing that review under the IIP Process is iterative, what controls there are to avoid continued and repeated refinement of analysis. Idaho Power also asked if the resource report requirement change infers the project proponent will have already identified potential resource concerns by consulting with relevant, Federal land managers.

DOE requested comments on page limits for certain submission in the NOPR and received seven responses. CBD and the CARE Coalition both expressed a general concern with page limits on environmental reviews, with CBD stating that arbitrary limits risk sacrificing detail, undermining public participation, and causing delays. The Kentucky SHPO stated that page limits may be applicable if resource reports will serve only as background information, but page limits may not comply with NHPA or applicable State statutes if documentation is intended to be utilized by the project proponent or Federal agency for section 106 consultation materials. AZGFD noted that the NOPR only mentions page limits in the documents Summary of the Qualifying Project and Project Participation Plan, required by § 900.5, and recommended that DOE not include page limits for resource reports. ACP expressed concern with imposing page limits on project summaries and participations plans required by § 900.5 and instead recommended that DOE allow for flexibility and allow for page-limit carve outs for appendices where appropriate. Gallatin Power stated that the page limits for the Summary of the Qualifying Project and Project Participation Plan are reasonable but noted that the scope of transmission projects will vary greatly and suggested that DOE allow project proponents to request additional pages if deemed necessary. The CEC/CPUC stated that the page limit for the Summary of the Qualifying Project is appropriate but the limit for the Project Participation Plan may be limiting. Similarly, EDF raised a concern that the ten-page limitation for a Project Participation Plan might constrain the level of detail needed to comprehensively and holistically assess the project's impact and may signal to project proponents that only a cursory assessment is needed.

DOE received one comment regarding the participation of relevant Federal entities. EEI noted that transmission projects that interconnect, parallel, or cross facilities owned or operated by Federal power marketing administrations, such as Bonneville Power Administration and the Western Area Power Administration, may also be qualifying projects under the CITAP Program as proposed. EEI suggested that in such cases, the Federal power marketing administrations must be involved in some manner as relevant Federal entities, either as joint lead agency with DOE or otherwise, and should remain actively involved in the coordination process. EEI further noted that providing a coordination role for Federal power marketing administrations is consistent with section 216(h).

DOE received comments from ACEG, AEP, and PIOs that addressed participation of relevant non-Federal entities. AEP urged DOE to be mindful of the important and necessary roles State and local decisionmakers play in the proposed transmission project approval process. ACEG and PIOs generally supported the clear and increased role for non-Federal entities, including Indian Tribes, SHPOs, and THPOs, in the IIP Process but noted that the important role of these additional entities in the process can also complicate reviews. ACEG recommended that DOE ensure that these non-Federal entities not only have but also use their seat at the IIP Process table and have necessary resources to fully participate in the process. PIOs stated that such improved coordination will be essential to ensure that resource reports provide all the necessary analysis and information to enable project proponents to receive all relevant authorizations. ACEG also noted that one way DOE can facilitate this participation is by effectively implementing its grant funding opportunities for transmission siting and permitting participation.

Regarding confidential information and/or CEII, the CARE Coalition recommended that DOE specifically

invite comments from Indian Tribes regarding best practices around outreach by project proponents and prioritize Tribal recommendations. The CARE Coalition also recommended that DOE create a list of best practices; add free, prior, and informed consent (FPIC) to that list; and add language stating agencies must apply FPIC to all interactions between agencies and Tribal governments. The CARE Coalition believes that these changes will ensure that agencies adhere to both the United Nations Declaration on the Rights of Indigenous Peoples and the Federal trust responsibility to Tribal governments. Relatedly, PIOs recommended that DOE adopt language from the Washington State Attorney General's Centennial Accord Plan, Indigenous Knowledge requirements, and requirements from the 2022 Biden Memorandum on Uniform Consultation Standards. The CARE Coalition recommended that DOE add a separate provision requiring agencies to clearly articulate the levels of confidentiality afforded to the public and governmental engagement for the information shared therein. The CARE Coalition recommended that DOE ensure that sacred sites, locations, and Indigenous Knowledge are protected from public disclosure to the greatest extent practicable. The NM SHPO added that agency officials should address concerns about confidentiality with Tribes.

DOE received comments requesting clarification on how the proposed rule would affect transmission projects that are already in the permitting process from Stoel Rives LLP and Idaho Power and a comment from Gallatin Power regarding the interaction of the IIP Process with other permitting processes. Stoel Rives argued that these projects should also be eligible for DOE's improved and expedited approval process, under the CITAP Program or otherwise. Stoel Rives encouraged DOE to consider these projects in this final rule and provide a roadmap detailing how they can be integrated into the process. Gallatin Power raised a concern that under the current provisions, a project proponent will not be able to submit applications to relevant Federal agencies for necessary Federal authorizations until after the completion of the IIP Process. Gallatin Power contended that the submission of an authorization application and supporting materials allows for the developer to identify its interest in a right-of-way path impacting Federal land and be designated the ''first-in-line'' for review. Forcing the application submittal to later in the process could result in multiple developers attempting to complete the IIP Process, including the intensive resource reports, for the same lands at the same time. This would create substantial inefficiencies for both the project proponents and the agencies involved. Gallatin Power suggested that to avoid this, DOE should either continue to allow developers to submit applications to Federal agencies prior to initiating the IIP Process or institute a similar ''first-in-line'' approach based on when projects are proposed for the CITAP Program. Gallatin Power also proposed that the transmission projects that have already submitted applications for authorizations to relevant Federal agencies should not be forced to redo their application process or have their applications invalidated until the IIP Process is completed. They argued that doing so would be highly disruptive to development efforts and counterproductive to DOE's goals.

DOE also received comments regarding studies that may be undertaken during the IIP Process. The CEC/CPUC encouraged early coordination and review of a project proponent's supporting study methods for the IIP Process because reviewing study methods and securing necessary approvals for field review, before a proponent has conducted its studies, could reduce later delays. Additionally, the CEC/CPUC encouraged DOE to help other Federal agencies set schedules for timely study authorizations and afford exemptions to allow project proponents to initiate the IIP/CITAP Process if other Federal agency authorizations are delayed. Idaho Power asked DOE to clarify if the level of study is assumed to be desktop/GIS-informed or if there an expectation that field surveys will be completed for all project alternatives. Idaho Power also asked if DOE would be the final arbiter of completeness for studies or if each relevant Federal land management agency would have the authority to request additional information. Gallatin Power commented that DOE should clarify when the project proponent will receive authorization from Federal agencies to complete field resource surveys. Gallatin Power further stated that a lack of structure could allow for the permitting timelines to remain the same since uncertainty would be shifted to before the start of the rule's proposed two-year NEPA deadline.

Five commenters provided responses to DOE's request regarding the duplicative aspects of the NOPR. ACP commented that project proponents should be permitted to incorporate by reference existing data, environmental reviews, and public engagement efforts to streamline the process. ACEG recommended that the specific language regarding incorporation by reference be clarified so that incorporation by reference is permissible for all data, not just material in other resource reports and provided some suggested edits to the provision. CEC/CPUC stated that duplicative aspects of reports should be eliminated to limit inconsistencies in review, providing as an example that the Cultural Resources resource report, the Tribal Resources resource report, the Communities of Interest resource report, and the Socioeconomic resource report all overlap but may not be reviewed by the same agency subject matter experts, which may result in inconsistent evaluations.

ClearPath stated that the requirement for project proponents to list and describe all dwellings and related structures or other structures normally or intended to be inhabited by humans within a 0.5-mile-wide corridor centered on the proposed transmission line was duplicative of information regarding affected landowners required in General Project Description resource report and should be omitted.

ACP recommended that DOE not require the public disclosure of names of people project proponents spoke to in preparing the resource reports, as this is overly onerous and lack of detail in this section should not be a basis to legally challenge DOE's eventual determination.

DOE Response

In this final rule, DOE retains the purpose and scope of the IIP Process as proposed in the NOPR, including the three-anchor-meeting structure and information requirements for progressing through the process, with minor revisions. DOE revises this final rule for clarity and to reduce burdensome and duplicative requirements in response to comments, as described below. DOE revises the page limits in this final rule to allow for project proponents to request a waiver. DOE makes no other revisions in response to these comments but notes that revisions to resource reports and IIP Process meetings in response to other, specific comments received on those aspects are addressed in sections VI.N and G of this document.

DOE declines to act on those comments urging greater flexibility in the IIP Process and in the content of resource reports because it believes such measures are unnecessary. This final rule confirms the provisions in the NOPR that provide for sufficient

flexibility: the three anchor meetings, which provide structured opportunities to discuss and establish expectations; the provision permitting the project proponent to submit resource reports missing discrete pieces of information so long as the project proponent provides an acceptable reason for the omission and an acceptable timeline for curing the omission; and the provision granting the Director of the Grid Deployment Office with discretion to waive any requirement imposed on a project proponent if the Director of the Grid Deployment Office determines that that it is unnecessary, duplicative, or impracticable under the relevant circumstances. DOE finds that together these provisions provided the flexibility necessary to respond to a wide variety of circumstances.

Regarding comments from ACP, ACEG, ACORE, SEIA, and CEBA on the level of detail requested in resource reports and specifically the availability of information based on project maturity and compliance with NEPA regulations, DOE makes no revisions in response to these comments. First, DOE believes the level of detail in the resource reports is necessary for DOE to implement its authority under section 216(h), which includes both environmental review and the coordination of decision making with relevant Federal entities. Second, this final rule adopts the proposed provision that project proponents may address and justify omissions or incomplete information. DOE believes this provides sufficient flexibility to accommodate project differences without further revision. Regarding ACP's request to modify language from shall to ''should'' or ''to the extent practicable'', where DOE intends to impose a mandatory obligation, it uses appropriate language, including ''shall.''

Regarding the inclusion of reasonably foreseeable effects, DOE declines to make changes to the requirements that project proponents identify certain reasonably foreseeable effects. DOE's obligations under NEPA, as well as corresponding obligations under section 106 of the NHPA and the ESA, require the Department to consider the reasonably foreseeable effects of major Federal actions affecting the quality of the human environment, as noted in PIOs' comment. While the scope of any NEPA review will be determined at the close of the IIP Process and on a case-by-case basis, the information required for inclusion within the resource reports discussed in this section is likely to be relevant for preparation of environmental review documents necessary for authorizations subject to this rule. In order to assist DOE in fully considering this relevant information, DOE seeks input from project proponents to identify reasonably foreseeable generation projects that may be caused by a Federal authorization. Even when DOE determines a particular generation resource to be outside the scope of review DOE may still need to identify the resource and explain its conclusion. The language of the rule tracks these statutory obligations, and is consistent with the Secretary of Energy's authority under section 216(h) to require the submission of all data considered necessary.

Regarding the iterative nature and level of information requested for the three anchor meetings, DOE makes minor changes in this final rule regarding the discussion of and criteria for modifying study corridors in response to comments. DOE restates that the IIP Process is designed to allow for flexibility throughout the process while maintaining sufficient review periods to ensure that the project proponent is taking the steps necessary to complete the required Federal authorization processes.

In response to ACP's concern on how route changes will be accommodated without restarting the IIP Process, DOE believes the iterative nature of the IIP Process provides mechanisms to account for route changes, including: meetings, the use of analysis areas for resource report assessments (discussed in section VI.K.ii of this document in detail), study corridors that may contain multiple routes, and the resubmission of resources reports, none of which require a restart to the IIP Process. Accordingly, DOE makes no changes in response. Regarding ACP's request for criteria on adding or deleting routes, DOE revises the rule for clarity. First, DOE relocates the list of criteria from the initial meeting to § 900.4, Purpose and Scope of the IIP Process, and clarifies in the text that these are the initial list of criteria the project proponent should consider when developing potential study corridors and potential routes for the IIP Process. The change encourages the project proponent to utilize the criteria in identifying routes and corridors throughout the IIP Process, rather than just after the initial meeting. Second, DOE removes ''deleting'' from the initial meeting discussion topic to clarify that the IIP Process does not include a Federal entity deleting any corridors or routes. This final rule retains the requirement for DOE and other agencies to identify other criteria for adding or modifying potential routes and includes that the agencies should also identify criteria for potential study corridors as well. DOE makes no further revisions as these changes sufficiently clarify the criteria recommended and how they will be considered, and any additional criteria will be discussed on a project-by-project basis.

DOE makes no changes to the final rule in response to comments from ACEG and NYTO regarding establishing a standard for determining the sufficiency of materials required for each IIP Process meeting. DOE requests the information it deems necessary and sufficient for each meeting as described in the rule and has chosen not to provide a specific standard in order to maintain flexibility to evaluate submitted materials depending on the specific needs and circumstances of each project. As previously noted, IIP Process materials may be submitted with omissions provided that the omission is noted, a reason is given, and reasonable timeline for curing the omission is provided. Additionally, the final rule confirms the proposed provisions through which DOE will provide reasons for finding the submissions deficient and how such deficiencies may be addressed by the project proponent. DOE believes these provisions provide flexibility for a wide range of project circumstances.

Regarding concerns from Idaho Power and ACEG that projects could be ''parked'' in the IIP Process, DOE makes no revisions to the final rule. This final rule confirms the intended iterative nature of the IIP Process and the interests of DOE in engaging in communications that are not limited to the three anchor meetings. These provisions are intended to prevent the situation described by the commenters where a request is rejected due to information or knowledge gaps or continued study refinement, by providing a communication mechanism through which such gaps could be discussed in advance. Additionally, as previously explained, DOE provides sufficient flexibility to the IIP Process to accommodate unique circumstances.

Regarding Idaho Power's question as to whether project proponents are expected to engage with agencies prior to the IIP Process, DOE responds that project proponents may choose to consult with relevant entities prior to IIP Process at their discretion, but are not required or expected to do so.

Regarding page limits, DOE believes that the limitation on the number of pages in the Summary of the Qualifying Project and the Project Participation Plan is generally useful and appropriate, but agrees with commenters that some complex projects may require additional pages to address pertinent information for the project and the project

proponent's outreach. Accordingly, DOE revises this final rule to allow for project proponents to request waivers to the page limitations of the Summary of the Qualifying Project and the Project Participation Plan. As the proposed rule established no specific page limitations on the environmental review document or resource reports, DOE makes no additional revisions in response to comments on those documents but acknowledges that relevant statutory page limits for environmental review documents will be followed.

Regarding the participation of relevant Federal entities, DOE has made no changes in response to EEI's suggestion to include Federal power marketing administrations because DOE has determined that such a scenario is already allowed by the regulatory text in the definition of relevant Federal entity.

Regarding the participation of relevant non-Federal entities, DOE agrees that not all relevant non-Federal entities will have the resources available to participate in the IIP Process. DOE makes no changes to this final rule, however, because provisions for cost-recovery and contribution of funds, which may assist in those entities' participation, are already included in the IIP Process. The recommendation of coordination of grant funding is outside the scope of this rulemaking, which is limited to implementation of DOE's coordinating authority under section 216(h) of the FPA. DOE has made no changes in response to this comment. DOE encourages non-Federal entities with authority to make permitting decisions regarding proposed electric transmission projects (*e.g.,* State siting authorities) to actively participate in the CITAP Program, and will continue to seek ways to support such participation as the Program is implemented.

Regarding confidentiality of information and recommendations from the CARE Coalition among others, DOE makes no changes to this final rule. DOE finds that existing statutory provisions referenced in the proposed rule and confirmed in this final rule provide a framework for the protection of certain sensitive information from public disclosure. DOE recognizes that Indian Tribes are entitled to decline to provide information potentially at issue in the resource reports and IIP Process, and notes that this final rule does not mandate that Indian Tribes provide any material or information to project proponents. DOE will work with Indian Tribes to access relevant material and incorporate it into relevant decision-making while protecting the confidential and sensitive nature of that information as necessary and legally permitted. Additionally, as noted in section IV of this document, DOE affirms the sovereignty of Federally recognized Indian Tribes and confirms that the rule makes no changes to Federal agencies' government-to-government responsibilities. DOE commits to undertake Tribal consultation as appropriate, including as required by applicable authorities such as Executive Order 13007 or the Presidential Memorandum on Uniform Standards for Tribal Consultation, and commits to designate Indian Tribes with special expertise regarding a qualifying project, including knowledge about sacred sites that the project could affect, that are eligible, to become cooperating agencies under NEPA. DOE declines to include in the final rule best practices around outreach by project proponents or to import existing requirements related to Tribal engagement into this rule. The form and scope of outreach may vary by project and DOE believes these issues are best addressed on a project-by-project basis or in guidance outside of this rule.

Regarding participation of projects already undergoing a permitting process, DOE notes that nothing in the definition of qualifying project excludes such projects from participation and that the flexibility provided for in the IIP Process will allow DOE to determine accommodations for such projects on a project-by-project basis. DOE disagrees with Gallatin Power's interpretation that the CITAP Program would disallow or invalidate permitting applications previously submitted prior to initiation of the IIP Process or submitted during the IIP Process. DOE acknowledges that some applications for authorizations may already be submitted prior to initiation of the IIP Process or may be submitted during the IIP Process and accommodates for such scenarios in the rule. For example, this final rule confirms the NOPR provisions that the initiation request and the review meeting request require the project proponent to provide a list of anticipated and completed dates of applications for authorizations or permits. Further, the rule specifically provides in § 900.5(h)(2) that at the initial meeting DOE will identify any Federal applications that must be submitted during the IIP Process to enable relevant Federal entities to begin work on the review process. DOE finds that these provisions sufficiently provide that this final rule will not impede developers' strategies for seeking authorizations for their projects. Nowhere in the rule does DOE indicate that these applications will be invalidated or require resubmission, nor does DOE have authority to do so.

Regarding study methods and approvals as raised by CEC/CPUC, Idaho Power, and Gallatin Power, DOE revises this final rule to provide clarity on the extent to which analysis of alternatives is expected (discussed in more detail in section VI.L.xi of this document) and to specify that required or recommended surveys or studies will be discussed in the IIP Process during the initial and review meeting. DOE makes no further revisions to this final rule in response to these comments as study methods and authorization timelines are specific to project circumstances and DOE will address these on a project-by-project basis. DOE clarifies here that DOE leads the IIP Process and will determine the completeness of documents and studies for the purpose of progressing through the milestones, while relevant Federal entities maintain statutory authority for determining the completeness of information needed for their decision-making.

Regarding the duplicative nature of some resources reports, DOE makes minor revisions in response to these comments. DOE agrees that incorporation by reference should extend to publicly available sources, such as existing data and environmental reviews, but only if they exist in electronic form (to ensure relevant entities can reasonably access the material), and revises this final rule to allow for such references. In response to the request to combine resource reports to assure consistent review, DOE makes no revisions in response to this comment as DOE believes the division of resource reports will provide specific information pertinent to that resource topic that is necessary for DOE to implement its coordination authority. Further DOE believes the coordination of reviews within the IIP Process with relevant Federal entities will provide consistency of evaluation, and notes that the review of project proponent resource reports does not replace or supplant Federal entities' responsibilities to evaluate necessary information for decision making on authorizations and permits under their purview. Regarding the request to remove duplication in reporting of affected landowners and dwellings proximate to the proposed route, DOE makes no revisions in this final rule. DOE does not agree that these are duplicative requests, as affected landowner describes a person or entity and dwelling describes a building.

In response to ACP's concern about the burden of providing detailed information on all persons contacted in

development of the resource reports, DOE agrees that this provision represents an unnecessary burden on project proponents and removes it from this final rule.

E. Public Participation in the IIP Process

DOE's Proposal

The proposed rule included several provisions addressing public participation. In the NOPR, DOE proposed the project proponent submit, as part of the initiation request, a project participation plan. The proposed project participation plan included the project proponent's history of engagement with communities of interest and stakeholders, and a public engagement plan for the project proponent's future engagement with communities of interest and with Indian Tribes that would be affected by a proposed qualifying project. Before the review and close-out meetings, DOE proposed that the project proponent provide an updated public engagement plan to reflect any activities during the IIP Process. Additionally, the proposed rule required the standard schedule to take into consideration the need for early and meaningful consultation with Indian Tribes and engagement with stakeholders and communities of interest. Likewise, the project-specific schedule was required to account for early and meaningful consultation with Indian Tribes and engagement with stakeholders.

Summary of Public Comments

DOE received several comments addressing public participation during the IIP Process, including the requirement of project proponents to plan for and report on engagement with various groups, and recommendations for modifications, clarifications, expansions, and reductions of the proposed public engagement reporting requirements.

Many commenters supported DOE's requirement to have a project proponent submit project participation and engagement plans. ACP, AEU, ACEG, SEIA, Pew Charitable Trusts, CEBA, and PIOs all expressed support for the requirement, expressing that such engagement would build trust and allow prompt response to concerns. PIOs expressed that they believe DOE is correct to require project proponents to furnish ''specific information on the proponent's engagement with communities of interest and with Indian Tribes'' and that requiring a public participation plan is well-grounded in binding Federal authorities. Additionally, PIOs expressed appreciation to DOE for noting that project proponent outreach efforts are merely complementary and not substitutive for Federal agencies' own engagement with communities and Indian Tribes nor are they substitutive for formal requirements under NEPA or other laws that provide formal avenues for community input. ACP supported DOE's efforts to encourage early and consistent engagement by project proponents with affected communities, as this represents a best practice for identifying, mitigating, and avoiding risks of sometimes-contentious transmission project development.

DOE received several comments recommending changes to the role of public participation and the scope of participants. EDF stated that the project participation plan is too narrowly focused, as public input should be expansive and not limited to ''project engineering and route planning.'' The CARE Coalition encouraged DOE to require that project participation and public engagement plans include information about engagement with advocates for the public interest, such as advocates for wildlife protection, who may not be covered under the definition of ''communities of interest.'' The CARE Coalition argued that the inclusion of these groups and individuals in the project participation and public engagement plans would help develop resource reports, reduce litigation risk, reduce delays, and reduce overall project costs. PIOs recommended that DOE require separate engagement plans for Indian Tribes and communities of interest.

Commenters requested more guidance on public engagement, including parameters, minimum requirements, metrics, and best practices. EDF commented that proposed rule does not require the project proponent to strictly define communities of interest and recommended that the communities considered should be based on CEQ's Climate and Economic Justice Screening Tool or a comparable tool. EDF further recommended refining the public engagement plan to include mandatory deadlines or frequency of outreach requirements, to specify when communities of interest will have an opportunity to raise concerns, and to list additional tools that would facilitate communication in order to improve the efficacy of the plan. EDF expressed concern that the project participation plan did not require project proponents to engage with communities before substantive plans were solidified or require that input from communities of interest is taken into account in the beginning stages of plan development. Similarly, Niskanen Center was concerned that the proposed rule did not have sufficient notification or consultation requirements regarding the proposed public engagement plan, such that a project proponent would actually have to engage early or meaningfully with impacted parties or communities of interest. Niskanen Center accordingly recommended adopting notice requirements with defined timing and linked to specific milestones such as the notice of an initiation request. The CARE Coalition recommended that DOE adopt a definition of ''early and meaningful engagement'' similar to EPA's definition of ''meaningful involvement'' in its Environmental Justice 2020 Glossary and stated that providing a definition will ensure that engagement with communities does not simply consist of ''check-the-box'' exercises without meaningfully engaging with communities that are disproportionately and adversely affected by certain Federal activities. ACP suggested that DOE should provide additional clarity as to what specific steps are required for engagement, and what DOE considers as ''successful'' engagement, and AEU echoed this comment. ACP, AEU and ACEG requested that DOE expressly recognize that engagement with potentially affected parties does not necessarily mean that all parties will reach a consensus on all issues. The CARE Coalition suggested DOE require submission of an ''Applicant Code of Conduct'' with additional information collection and sharing requirements for engagement, which would bring the rule into better alignment with FERC's proposed backstop permitting rule. Similarly, PIOs suggested that DOE require project proponents to adhere to a rigorous ethical code of conduct. Additionally, EDF suggested that the proposed rule might benefit from the expertise of DOE's Office of Economic Impact and Diversity.

The CARE Coalition, CBD, and CEBA suggested including best practices for public engagement and providing guidelines for project proponents as to what activities are considered engagement.

Commenters also expressed concern about the extent and approach to public engagement. AEP cautioned against a CITAP Program or IIP Process that duplicates or exceeds the RTO stakeholder process or required State and local permitting functions that ensure robust community and landowner engagement and outreach. ClearPath expressed opposition to requirements in the project participation plan and public engagement plan that

create duplicative engagement requirements and institute different standards of engagement for different population segments. ClearPath specifically took issue with the different standards for ''communities of interest'' and ''stakeholders'' in the plans and suggested that the distinction was counterproductive to development of transmission projects and possibly unconstitutional. ClearPath also recommended amending the requirement that a project participation plan must include ''[a] description of . . . any entities and organizations interested in the proposed undertaking.'' ClearPath stated that it was impossible to describe *any* interested entities and organizations because DOE did not provide a threshold for what actions constitute a demonstration of interest. ClearPath recommended reevaluating whether this requirement was feasible and overly burdensome. StopPATH WV expressed its view that the project participation plan described in the NOPR is one-sided given that the developer and agencies have primary decision-making power and suggested that the name should be changed.

DOE received three comments regarding the role of community benefits plans. Alan Leiserson commented that the public engagement plans should require that the project proponent propose a community benefit plan and consider affected communities' suggestions for it. EDF also proposed that CITAP project participation plans and public engagement plans be required to include information on any potential community benefits agreements and the process that would be used to work with communities of interest in developing such agreements. EDF reasoned that information about any community benefit agreement or plan would support the CITAP review process and allow for coordinated review of the compliance of those plans with any other legal requirements. ACP supported DOE's efforts to encourage early and consistent engagement by project sponsors with affected communities. ACP expressed that DOE should consider environmental mitigation and community benefits developed under this community engagement process as project mitigation and/or design features in NEPA reviews.

PIOs, CARE Coalition, CBD, and Policy Integrity recommended that DOE incorporate additional opportunities for public participation in the IIP Process. PIOs stated that communities and organizations with relevant expertise should be allowed to participate in the three required meetings. CARE Coalition and PIOs suggested that DOE add an opportunity for public comment on project proponents' compliance with their participation plans and provide a mechanism for affected communities to make concerns known if proponents interact with the communities in a manner that is aggressive, coercive, dishonest, or otherwise unethical or if stakeholders disagree with project proponents over the scope or nature of a project's impacts. Similarly, CBD suggested including junctures at which the public could provide input into the resource reports and public participation plan. Policy Integrity also recommended that DOE modify the proposed IIP Process to allow for early public comments, arguing that early community feedback and expert opinion could reveal pitfalls in a project in the pre-application stage. Without this step, Policy Integrity expressed concern that the public would have no voice until after the participating agencies have deliberated and potentially come to a consensus on certain issues in the pre-application stage. For example, Policy Integrity noted that agencies may deem project proponents' Alternatives Report as complete once they ratify it during the IIP Process, without any consideration for public input. Additionally, Policy Integrity argued that its proposed revision would bring the IIP Process into closer alignment with the pre-filing process for natural gas infrastructure at FERC, which accepts formal public comment, and suggested the consolidated administrative docket be allowed to provide public feedback.

DOE Response

In this final rule, DOE retains the proposals in the NOPR to require a project participation plan and a public engagement plan, and the provisions in the NOPR addressing engagement with communities of interest, Indian Tribes, potentially affected landowners, and stakeholders. In response to these comments, DOE makes minor changes to this final rule to clarify the scope of topics on which project proponents should seek public engagement, for the reasons discussed below. Revisions to the definitions of communities of interest, potentially affected landowners, stakeholders, and to the resource reports are addressed in sections VI.J and VI.K of this document in response to other comments.

Regarding the role of public participation and the scope of participants, DOE makes minor changes in response to these comments. DOE clarifies that the project participation plan may include—but is not limited to—engagement related to project engineering and route planning and strikes ''project engineering and route planning'' from this final rule to reflect this. DOE makes no changes in response to the request to require engagement with advocates for the public interest because DOE believes further expanding the required engagement creates an undue burden on project proponents without substantial benefit to communities of interest. Furthermore, DOE understands that these advocates may, and often do, act as representatives on behalf of communities of interest and are therefore likely to be engaged through those relationships. DOE is unpersuaded that two public engagement plans, one for communities of interest and another for Tribal engagement, are necessary and believes that the proposed resource report requirements for communities of interest and Tribal interests allow for sufficient differentiation on the topics for DOE's consideration.

Regarding requests for minimum standards, deadlines, frequency, specific steps, use of tools for identifying communities of interest, and notice requirements, from CARE Coalition, CBD, CEBA, EDF, and Niskanen Center, DOE makes no revisions in this final rule in response to these comments. DOE believes the provisions for public engagement in the proposed rule and confirmed here establish sufficiently clear expectations for project proponent activities while maintaining flexibility for the project proponent to shape engagement consistent with the project circumstances and development. These provisions as proposed and now finalized sufficiently support the goals of the CITAP Program by encouraging engagement on the part of the project proponent to identify concerns early and to allow for the project proponent to consider adjustments in a timely and responsive manner. Additionally, these provisions are complementary and additional to Federal agencies' own engagement with communities and Indian Tribes and the requirements under NEPA or other laws that provide formal avenues for public input including notice and consultation requirements. DOE is not persuaded that additional requirements are necessary or appropriate for the IIP Process.

Regarding codes of conduct, DOE has determined that defining a singular code within the regulatory text is unnecessary at this time. In its role coordinating the IIP Process and the CITAP Program, DOE will work closely with project proponents, relevant

Federal entities, communities, and other stakeholders. In that role, DOE will endeavor to ensure that project proponents engage in good faith with all participants. In contrast to FERC, DOE does not have specific statutory authority regarding eminent domain and thus alignment with all aspects of FERC's proposed rulemaking pursuant to engagement practices is not appropriate but may be addressed on a project-by-project basis where relevant. With experience, DOE may find it appropriate to provide code-of-conduct or ethical guidance and may rely on the resources provided by commenters. DOE also clarifies, in response to EDF's concern, that offices across the agency, including the Office of Energy Justice and Equity (formerly Economic Impact and Diversity), were consulted in the development of the rule.

DOE declines to define ''successful,'' as requested by ACP, or ''early and meaningful'' engagement as requested by the CARE Coalition, because DOE believes the required information on engagement (including what groups and individuals were engaged, how they were identified, topics that were raised, and the project proponent's responses) provides sufficient clarity and additional definitions are unnecessary. DOE declines to include the statement requested by ACP, AEU and ACEG that engagement with potentially affected parties does not necessarily mean that all parties will reach a consensus on all issues because DOE is not persuaded that the proposed rule indicates that all parties will reach a consensus on all issues and therefore finds such a statement unnecessary.

DOE believes that best practices are best provided in guidance rather than regulatory text to allow for flexibility and evolution of such practices and makes no changes in this final rule in response to the comments by CARE Coalition, CBD, and CEBA. In the future, DOE may issue guidance for community-led engagement, measuring engagement, identifying communities of interest, and ethical and meaningful engagement, which may include or reference the sources provided by commenters as necessary for implementation of the CITAP Program.

In response to ClearPath's concern about different standards of engagement, DOE reiterates that the various requirements, including the resource reports and public engagement plan, are tailored to fulfill various, not mutually exclusive, purposes to facilitate transmission authorizations pursuant to the CITAP Program, and are not intended to, nor do they, establish a hierarchy of treatment and consideration of impacts across population segments.

In response to StopPath WV's objection to the project participation plan, DOE declines to change the name of the project participation plan because DOE is not persuaded that the phrase implies any decision-making authority.

Regarding the role of community benefits and community benefits plans, DOE makes no changes to this final rule. DOE believes that the public participation provisions proposed and confirmed here are sufficient to allow project proponents to engage with communities in the development of plans or agreements and for compliance to be evaluated in the CITAP Program where relevant for Federal permitting or authorization decisions. DOE does not agree that additional requirements are needed, as the comments suggest that the situations described are not universal but rather depend on the project, and therefore are best addressed on a project-by-project basis.

Regarding recommendations for inclusion of expert groups in the IIP Process meetings and providing avenues for public comments, DOE makes no changes in this final rule in response to these comments. First, as noted previously, DOE believes the provisions in the proposed rule and confirmed here are sufficient to support the goals of the CITAP Program. DOE has structured the three IIP Process meetings to serve as milestones for coordination between the project proponent and the relevant Federal and non-Federal entities to ensure DOE can meet its obligations under FPA section 216(h) and DOE does not intend to use these meetings to solicit feedback from communities of interest or receive expert input from other organizations. The public participation plan is designed with the intent to identify issues well ahead of the IIP Process meetings for this reason, as the meetings themselves are not intended to serve as avenues for broader input. Second, as noted by DOE throughout the rule and supported by commenters, the CITAP Program public participation requirements are complementary and additional to Federal agencies' own engagement with communities and Indian Tribes and the requirements under NEPA or other laws that provide formal avenues for public input and public comment, including on project impacts.

DOE disagrees with Policy Integrity's interpretation that agencies will make decisions on Federal authorizations during the IIP Process. Federal agency decisions remain subject to distinct decision-making processes with requirements under NEPA and other laws that provide formal avenues for public input. Furthermore, with respect to Policy Integrity's specific concern regarding project proponent's Alternatives resource report, as discussed in further detail below, *see* section VI.K.xi of this document, the project proponent's Alternatives resource report must discuss alternatives identified and considered by the project proponent. However, while a project proponent's study corridors, potential routes, and range of potential routes are relevant information, they do not displace the overall alternatives development process that must take place in consultation with relevant Federal and non-Federal entities, stakeholders, and the public. That process remains subject to public comment pursuant to NEPA and other laws.

F. Timing of IIP Process and NOI Issuance

DOE's Proposal

The proposed rule included several provisions addressing the IIP Process timeline. In the NOPR, DOE proposed to, within 15 calendar days of receiving an IIP Process initiation request, notify relevant Federal entities and relevant non-Federal entities of the initiation request along with a determination that the recipient is either a relevant Federal entity or a relevant non-Federal entity and whether the project proponent should participate in the IIP Process. Also, DOE proposed to, within 30 calendar days of receiving the request, notify the project proponent and all relevant Federal entities and relevant non-Federal entities whether the initiation request meets the applicable requirements. If the request is found to meet the applicable requirements, DOE proposed, in consultation with the identified relevant Federal entities, to convene the IIP Process initial meeting within 30 days of providing notice to the project proponent.

In the NOPR, DOE proposed to, within 15 calendar days after the initial meeting with the project proponent and relevant entities, prepare and deliver a draft initial meeting summary to the project proponent, relevant federal entities, and any non-Federal entities that participated in the meeting. The proposed rule provided a period of 15 calendar days after receipt of the draft initial meeting summary for relevant entities to review and provide corrections to DOE.

In the NOPR, DOE proposed, within 15 calendar days of the close of the 15-day review period, to prepare a final meeting summary that incorporates

received corrections, as appropriate, and incorporate the final summary into the consolidated administrative docket.

DOE proposed in the NOPR to, within 60 calendar days after receiving a project proponent's review meeting request, notify the project proponent and all relevant Federal entities and relevant non-Federal entities that the review meeting request has been accepted. In the NOPR, DOE proposed, within 30 calendar days after DOE provides notice that the review meeting request has been accepted, to convene the review meeting with the project proponent and relevant Federal agencies.

DOE proposed in the NOPR to, within 15 calendar days after the review meeting, prepare and deliver a draft review meeting summary to the project proponent, relevant Federal entities, and any non-Federal entities that participated in the meeting. In the NOPR, DOE proposed to provide a period of 15 calendar days after receipt of the draft review meeting summary for relevant entities to review and provide corrections to DOE.

DOE proposed in the NOPR to, within 15 calendar days of the close of the 15-day review period, prepare a final review meeting summary that incorporates received corrections, as appropriate, and to incorporate the final summary into the consolidated administrative docket.

In the NOPR, DOE proposed to, within 60 calendar days after receipt of the close-out meeting request, notify the project proponent and all relevant Federal entities and relevant non-Federal entities that the close-out meeting request has been accepted. DOE also proposed to, within 30 calendar days of DOE notifying the project proponent that the close-out meeting request has been accepted, convene the close-out meeting with the project proponent and all relevant Federal entities.

DOE proposed in the NOPR to, within 15 calendar days after the close-out meeting, prepare and deliver a draft close-out meeting summary to the project proponent, relevant federal entities, and any non-Federal entities that participated in the meeting. In the NOPR, DOE provided a period of 15 calendar days after receipt of the draft close-out meeting summary for relevant entities to review and provide corrections to DOE.

In the NOPR, DOE proposed to, within 15 calendar days of the close of the 15-day review period, prepare a final close-out meeting summary that incorporates received corrections, as appropriate, and to incorporate the final summary into the consolidated administrative docket.

Summary of Public Comments

DOE received comments from PIOs, SEIA, ClearPath, and AEU that expressed general support for DOE's proposed IIP Process timelines.

Several commenters suggested specific changes to the IIP Process timelines proposed in the NOPR. Grid United and ACP recommended reducing the time between receipt of an initiation request and the date of the initial meeting to no more than 30 calendar days. NYTOs recommended that DOE adopt a 60-day maximum period between receipt of a review meeting request and the convening of the review meeting because a significant amount of the information would have already been reviewed as part of the initial meeting.

ACEG suggested that DOE reduce the 45-day summary and report process after each of the three anchor meetings (initial meeting, the review meeting, and the close-out meeting) and further suggested that DOE require a real-time wrap-up at the end of each meeting during which DOE would provide a meeting summary and participating entities would immediately make any needed corrections. ACEG also recommended that DOE reduce the number of days between the initiation request and initial meeting to 15 days, and reduce the number of days between the close out meeting request and that meeting to 30 days. Grid United also suggested shortening the meeting summary process by emphasizing close-out and action item discussions at the meeting and designating a 15-day period, thereafter, for finalizing the meeting report.

Several commenters requested more information on the total timeline for the IIP Process and the CITAP Program. ACP recommended that the IIP Process include a general timetable to ensure that it does not add unnecessary costs or delays. Similarly, ACEG and CEBA recommended that the rule establish a presumptive one-year limit for completion of the IIP Process. ACORE commented that it supports ACEG's recommendation that DOE commit that any transmission project will be fully authorized in under three years and not longer than five years (from initiation of the pre-application process through issuance of all required Federal authorizations, including any required notice to proceed). CEBA argued that, ideally, the IIP Process and application process, including all environmental review procedures, would be completed within three years. CEBA added that DOE should work with the project developer on a joint schedule that may better accommodate the unique nature of the proposed project. Similarly, ClearPath suggested that the IIP Process timeline in the rule could serve as a baseline and that DOE should allow a project proponent to submit a proposed IIP Process schedule. EDF noted that the IIP Process could take more than one year given the lack of specific deadlines for specific IIP Process steps. EDF stated that there are IIP Process requirements such as the project participation plan that require significant effort and time to develop and that this development time is not captured in the IIP Process schedule. EDF recommended that DOE consider specifying a time period for when a developer must resubmit its review meeting request and close-out meeting request if either request does not meet the specified requirements.

CEBA noted that the burden of completing the IIP Process in a timely manner is highly dependent on the level of effort and resources brought to bear by the project proponent and suggested that DOE should anticipate and recognize a broad diversity of project proposals and afford maximum flexibility for the developer. CEBA further encouraged DOE to ensure that the IIP Process does not become too complicated and time consuming, which could undermine the objective reflected in recent law to shorten the Federal authorization process. Gallatin Power stated that a lack of structure could allow for the permitting timelines to remain the same because timeline uncertainty would be shifted to before the start of the rule's proposed two-year NEPA deadline.

PJM noted that although the NOPR describes the CITAP Program deadlines as ''binding,'' the May 2023 MOU contemplates a process to modify the project-specific deadlines. PJM believes that due to this and the fact that the extensive, mandatory IIP Process is not factored into the two-year timeline, the actual review and approval process will most likely take longer than two years. Hence, PJM requested that DOE carefully reexamine that the proposed revisions will actually aid in accelerating the current process in a way that will ensure that, at a minimum, the CITAP Program is able, in all but the most unusual of cases, to be completed within the two-year time frame or less.

Four commenters, NYTOs, Grid United, ACEG, and ClearPath, expressed concern over the lack of a deadline for DOE to issue the NOI. Grid United recommended that the presumptive deadline should be 90 days after the

close-out meeting. The NYTOs recommended a presumptive deadline of 45 days after either the close-out meeting or the project proponent's completion of applicable filing procedures for each involved Federal agency. ACEG suggested that DOE require the NOI to be issued within 90 days of the project proponent filing all applications and resource reports. ACP recommended that DOE ensure that as little time as possible elapses between submittal of an application for an EIS Scoping NOI, and the subsequent publication in the **Federal Register**.

DOE Response

This final rule makes several revisions to the DOE decision-making timelines that reduce the total time for DOE reviews and responses in the IIP Process by 55 days and the total time for all IIP Process steps by 100 days. DOE also revises this final rule to establish a deadline for DOE and any NEPA joint lead agency to issue an NOI to prepare an environmental review document for the proposed project. That deadline is established as within 90 days of the later of the IIP Process close-out meeting or the receipt of a complete application for a Federal authorization for which NEPA review will be required. DOE makes no revisions to establish timelines for project proponents or to set a timeline for the IIP Process or overall CITAP Program. DOE recognizes that some of the IIP Process is within the government's control, and, where reasonable, for those pieces of the process this final rule adopts shorter timelines. For other pieces of the process, however, the pace is dictated by the project proponent (or factors outside anyone's control, like inclement weather). For those pieces, DOE has not set timelines.

Regarding reducing time between meeting requests and meeting convenings, DOE makes several revisions. DOE agrees that the deadlines for determining the sufficiency of the initiation request and convening the initial meeting can be moved forward to streamline evaluation and coordination. To simplify the initiation request review and reduce the timeline, in this final rule DOE is combining the deadline for providing notice to Federal and non-Federal entities under § 900.5(f) of the NOPR with the deadline for providing notice of the sufficiency determination. Further, this final rule reduces the timeline for making a sufficiency determination on the initiation request from 30 calendar days after receiving the initiation request to 20 calendar days. Finally, DOE revises the timeline for convening the initial meeting from 30 calendar days after providing notice of the sufficiency determination to 15 calendar days. In sum, the revisions reduce the maximum time period between receiving the initiation request and the initial meeting from 60 calendar days to 35 calendar days.

DOE also agrees that the other IIP Process meetings can be convened in less time. Accordingly, the final rule revises the timeline for convening the review meeting and close-out meeting from within 30 calendar days of sufficiency determination to within 15 calendar days. Regarding NYTO's comment that the time between a review meeting request and the review meeting could be reduced, in this final rule DOE shortens the period from 90 days to 75 days by convening the review meeting within 15 days rather than 30 days. However, DOE maintains the review period for the meeting request at a maximum of 60 days because DOE and the relevant Federal and relevant non-Federal entities will be reviewing both the meeting request and the draft submission of the 13 resource reports, which will be substantial and will benefit from careful review. The review meeting timeline may be significantly reduced if the project proponent chooses to submit resource reports in advance, and communicates with DOE, as provided for in the IIP Process.

DOE declines to adopt an immediate meeting summary review process as suggested by ACEG and Grid United because the content of each of the meetings is likely to be substantial, with multiple subject matter experts likely to attend from the relevant Federal entities and relevant non-Federal entities. DOE does not agree that immediate summaries will adequately capture an initial draft of the meeting outcomes. DOE also wishes to clarify that the meeting summary timelines do not add to the total time of the IIP Process because they are not precursors to any subsequent milestones. That is, while DOE is preparing summaries of each meeting, preparation or revisions to the resource reports or other materials needed for subsequent IIP Process steps can and should continue. Nonetheless, DOE does agree that these timelines should be reduced. Consequently, this final rule changes the deadline for DOE to deliver a meeting summary from 15 calendar days after the meeting to 10 calendar days after the meeting, for all three of the IIP Process meetings. Similarly, this final rule shortens the deadline for a project proponent and other entities to review the meeting summary from 15 calendar days after receiving the summary to 10 calendar days after receiving the summary. Finally, the deadline for DOE to provide the final meeting summary is changed from 15 calendar days after the period for corrections to 10 calendar days after the period for corrections. DOE notes that since these deadlines are expressed as calendar days, not work days, DOE is declining additional reductions to ensure the expectations can be met. In sum, the revisions reduce the maximum time period between the conclusion of an IIP Process meeting and the finalization of the meeting summary from 45 calendar days to 30 calendar days.

In response to comments requesting a general timetable or presumptive timeline for the IIP Process or the CITAP Program, DOE makes no changes in this final rule. In the proposed rule and confirmed here, DOE provides decision-making timelines for DOE's responsibilities in the IIP Process, leaving the timing of project proponent actions to trigger the next milestone flexible to account for differences in projects. When factoring the changes described above, the maximum total time for DOE reviews and responses in the IIP Process in this final rule is 185 days. Based on that timeline for DOE decision-making, DOE expects that a prepared and responsive project proponent could readily complete the IIP Process within a year.

DOE does not agree that this final rule should set a total time for the IIP Process or CITAP Program. DOE has chosen to set expeditious timelines for the actions it and its fellow agencies can control. But the time required for each IIP process will ultimately depend on the needs and capabilities of the project proponent. Some projects will be able to move quickly and complete the process well within a year, while others may need more time. Even the best-prepared project proponents may need time to accommodate re-routing or design changes that result from unforeseen developments in the land acquisition process, the interconnection process, or other activities that they pursue in parallel to the IIP Process and that are not entirely within their control. DOE makes no revisions to establish timelines for project proponents to resubmit materials in response to EDF's request to accommodate project proponents with different capabilities. DOE is also declining to make revisions in response to ClearPath's or CEBA's recommendations to allow for individualized IIP Process schedules; again, the overall schedule for the IIP Process will ultimately be determined by the project proponent. Regarding PJM's comment that the IIP Process is not accounted for in the two-year

schedule described in the 2023 MOU, DOE confirms that this is accurate and reflects the agreement in the 2023 MOU. DOE clarifies that the two-year timeline begins with the publication of an NOI to prepare an environmental review document; the IIP Process is intended to precede the publication of the NOI. As discussed in this section and section VI.H addressing the standard schedule and project-specific schedules, DOE has reviewed the timelines set out in this rule and modified certain timelines in the IIP Process to further streamline where appropriate.

In response to comments requesting a timeline for NOI issuance, DOE revises this final rule to state that DOE will issue an NOI within 90 days of the later of the IIP Process close-out meeting or the receipt of a complete application for a Federal authorization for which NEPA review will be required. This 90-day timeline aligns with recommended performance schedules established by the Federal Permitting Improvement Steering Council (FPISC). DOE does not adopt the recommendation to time the issuance of the NOI on the receipt of all applications, because some applications may require more information or project development before filing. For instance, both the FPISC-recommended performance schedules [8] and DOE's draft standard schedule indicate that applications for Clean Water Act (33 U.S.C. 1251 *et seq.*) (CWA) or Rivers and Harbors Act (33 U.S.C. 401 *et seq.*) permit applications may be filed after the NOI is issued.[9]

G. IIP Process Initiation Request

DOE's Proposal

To participate in the CITAP Program, DOE proposed to require a project proponent to submit an IIP Process initiation request to DOE that included a summary of the qualifying project; associated maps, geospatial information, and studies (provided in electronic format); a project participation plan; and a statement regarding the proposed qualifying project's status pursuant to Title 41 of the Fixing America's Surface Transportation Act (FAST–41) (42 U.S.C. 4370m–2(b)(2)).

Summary of Public Comments

DOE received two comments on the contents of the initiation request for the IIP Process. LTA recommended that DOE add sufficient and satisfactory title work for the real property through which an electric transmission facility will pass to the list of required materials for an initiation request in order to identify conserved lands. ACEG stated that additional clarity is needed on how the CITAP program will align with FAST–41 and stated that a project proponent might not be able to state whether the project is covered under FAST–41 in the IIP Process initiation request. ACEG also stated it is unclear how DOE will coordinate with FPISC if the project is covered under the CITAP Program and FAST–41.

DOE Response

In this final rule DOE maintains the required initiation request materials proposed in the NOPR with no revisions.

In response to the request to add title work to the requirements, DOE does not make this revision because DOE believes this would be overly burdensome on the project proponent at the initiation stage of the IIP Process, when a project proponent may not have a finalized route.

In response to the request for more information on alignment with FAST–41, DOE first provides clarification on the provision in the proposed rule. In the proposed rule, DOE would request the status of a project under FAST–41 at the time of the initiation request. But this provision would not ask the project proponent to speculate as to whether the project may be covered in the future. DOE believes the project proponent will be able to state if the project has applied for coverage under FAST–41 and if a coverage determination has been made at the time of the initiation request, and therefore DOE makes no changes in this final rule. Additionally, DOE provides no revisions regarding coordination with the Permitting Council because, as noted by the commenter, a project's FAST–41 status may change during the CITAP Program and therefore DOE expects that coordination between the Permitting Council and DOE will vary on a project-by-project basis. Examples of such coordination are described in the 2023 MOU, and DOE designed the CITAP Program timelines to work in harmony with the Permitting Council processes accordingly.

H. Standard and Project-Specific Schedules

DOE's Proposal

In the NOPR, DOE proposed to establish intermediate milestones and ultimate deadlines for Federal authorizations and related environmental reviews through the introduction of standard and project-specific schedules in accordance with the terms of FPA section 216(h)(4) and of the 2023 MOU. Specifically, DOE proposed to periodically publish a standard schedule identifying the steps needed to complete decisions on all Federal environmental reviews and authorizations for a qualifying project along with the recommended timing for each step. In addition, DOE proposed to establish project-specific schedules for each project participating in the IIP Process, to set binding deadlines by which Federal authorizations and related environmental reviews for a particular project must be completed. DOE proposed to base the project-specific schedule on the standard schedule, to develop it in consultation with the project proponent and other Federal agencies, and to finalize it at the conclusion of the IIP Process.

Summary of Public Comments

DOE received several comments regarding the standard schedule and the development of project-specific schedules. Two commenters supported these provisions. The State of Colorado Governor's Office stated its belief that the standard schedule and the project-specific schedule will provide added flexibility to each project and expressed hope that doing so will minimize the time of the approval process. ClearPath expressed its support for the development of the standard schedule to serve as a baseline for developing project-specific schedules.

Three commenters raised concerns that the two-year timeline in the standard schedule and presumed for the project-specific schedules was too long, and a fourth commenter, PJM, commented in favor of the two-year timeline, but expressed concerns that it may still not adequately expedite the Federal permitting process. OSPA stated that the proposed two-year EIS process is still too long. Alan Leiserson recommended that the standard schedule deadline should be set at one year, or as soon thereafter as practicable, to be consistent with section 216(h). AEP recommended setting one-year timelines for environmental assessments and two years for environmental impact statements. PJM proposed that DOE clarify in the proposed revisions that

[8] ''Recommended Performance Schedules.'' *Permitting Dashboard: Federal Infrastructure Projects,* FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL, Nov. 2023, *www.permits.performance.gov/sites/permits.dot.gov/files/2023-11/RPS_November%202023.pdf.*

[9] ''Draft Standard Schedule.'' *Grid Deployment Office,* United States Department of Energy, Aug. 2023, *www.energy.gov/sites/default/files/2023-08/CITAP-Standard-Schedule-Draft.pdf.*

while developing the binding, project-specific milestones the relevant agencies will endeavor to shorten the two-year timeline based on the proposed project's scope and location in conjunction with the relevant statutory requirements.

On the other hand, two commenters raised concerns that the two-year timeline was too short. CBD cautioned against setting any timelines for environmental reviews because it could cause agencies to cut corners and result in increased opposition to proposed projects. Similarly, AZGFD expressed concerns that expediting the approval process to facilitate rapid transmission infrastructure development may have unforeseen impacts on wildlife resources. AZGFD argued that although establishing a standard schedule would help in streamlining the process, some projects might require additional time for completion of the NEPA analysis and identification of appropriate conservation measures. AZGFD encouraged DOE to have provisions for independent process-specific timeframes, rather than a standard schedule, to allow adequate time for evaluation and assessment of potential impacts. AZGFD requested DOE to provide clear guidelines on establishment of review times for cooperating or participating agencies with statutory authority or special expertise related to proposed actions. AZGFD further mentioned that it is unclear whether the proposed two-year timeframe applies to the IIP Process, the NEPA process, or the combined process.

Three commenters suggested the project proponent provide more input into the development of the project-specific schedule. ClearPath recommended that DOE allow project proponents to propose a project-specific schedule. Similarly, ACEG and Grid United proposed that the project proponent have the opportunity to provide DOE and the relevant entities with a draft project-specific schedule before the initial meeting, which would be discussed at the initial meeting. Grid United also suggested requiring ongoing consultation between the project proponent, DOE, and the relevant agencies as part of finalizing the project-specific schedule. PJM suggested that DOE include a provision for revisiting the CITAP Program at least every two years to gauge whether the process is meeting its intended goals.

DOE Response

In this final rule, DOE retains without revision the proposal in the NOPR to publish a standard schedule for completing environmental review and decision making for Federal authorizations for qualifying projects within two-years and to develop a proposed schedule with the NEPA joint lead agency and the relevant Federal entities on a project-specific basis during the IIP Process.

Regarding requests to reduce the two-year time frame to complete environmental reviews, DOE makes no changes to this final rule because DOE maintains its conviction that, as a general matter, for transmission projects of the type that meet the qualifying project definition, a two-year timeframe is the shortest practicable length of time necessary to consider applications for authorizations under relevant Federal laws and complete the necessary environmental reviews. Accordingly, DOE concludes that a two-year timeline is likely to be consistent with DOE's statutory obligations under FPA section 216(h). However, DOE notes that the rule does not preclude DOE, in consultation with relevant agencies, from setting project-specific timelines that are shorter than the two-year timeline, should such a timeline be practicable.

Regarding concerns that the two-year timeframe is too short and could reduce the quality of environmental review or impact wildlife resources, DOE makes no changes to final rule because the CITAP Program does not alter any Federal environmental review standards or responsibilities towards wildlife resources. Additionally, this two-year timeline is consistent with the timelines established by the Fiscal Responsibility Act of 2023. Further, DOE notes that the standard schedule is a general framework for environmental review and authorizations, but that the proposed and now this final rule require that DOE develop a schedule specific to each project that addresses the unique permitting and review requirements for that project. In addition, as explained in the proposed rule, DOE anticipates that the IIP Process will inform the environmental review process, such that a two-year timeline is reasonable. DOE believes this structure sufficiently addresses AZGFD's concerns.

Regarding the request to establish a standard schedule for EAs, DOE makes no changes to this final rule because the CITAP Program focuses DOE resources on projects expecting to complete an EIS, and adjustments, including to schedules, for any project requiring an EA will be addressed on a project-specific basis. Accordingly, DOE finds it unnecessary to establish a timeline for EAs in the text of this final rule but notes that the rule does not prevent DOE from publishing a standard schedule for EAs if the agency finds it necessary.

Regarding the suggestions that DOE allow the project proponent to propose a project-specific schedule or provide additional opportunities for the project proponent to discuss the project-specific schedule with DOE and the relevant Federal entities, DOE notes that nothing in the rule prevents the project proponent from proposing a schedule but DOE maintains the statutory authority to set and maintain the schedule. Additionally, as proposed and finalized here, DOE requires the project proponent to submit information on the intended or desired timelines for various Federal applications as part of each meeting request during the IIP Process. DOE is required to present a proposed project-specific schedule at the review meeting and a final project-specific schedule at the close-out meeting. Project proponents are encouraged to communicate with DOE and relevant entities throughout the IIP Process. Project proponents are welcome to submit any information they believe will help DOE create the project-specific schedule, including a draft schedule, through any of these mechanisms. DOE believes these requirements provide sufficient opportunity for the project proponent to give input on the schedule and therefore makes no changes to the rule in response to these comments.

In response to PJM's suggestion that DOE revisit the CITAP Program every two years, DOE makes no revisions in this final rule. DOE will evaluate the CITAP Program as appropriate, which may be based on time, the number of projects DOE has coordinated in the process, or other relevant factors.

I. Selection of NEPA Lead and Joint Lead Agencies and Environmental Review

DOE's Proposal

Section 216(h)(2) of the FPA authorizes DOE to act as the lead agency to coordinate Federal authorizations and related environmental reviews required to site an interstate electric transmission facility. DOE proposed in the NOPR that DOE serve as the NEPA lead agency to prepare an EIS to serve the needs of all relevant entities. In the NOPR, DOE proposed that a NEPA joint lead agency may be designated no later than the IIP Process review meeting. The NEPA joint lead agency, if any, would be the Federal entity with the most significant interest in the management of the Federal lands or waters that would be traversed or affected by the qualifying project, and DOE would make this determination in consultation with all Federal entities that manage Federal

lands or waters affected. The proposed rule also provided that for all qualifying projects, DOE and the relevant Federal entity or entities would serve as co-lead agencies for consultation under the ESA and for compliance with section 106 of the NHPA.

After the IIP Process close-out meeting and once an application has been received in accordance with the project-specific schedule, the proposed rule would require DOE and the NEPA joint lead agency to prepare an EIS for the qualifying project, which is meant to serve the needs of all relevant Federal entities. The proposed rule would also require DOE and the NEPA joint lead agency to consider the materials developed throughout the IIP Process; consult with relevant Federal entities and relevant non-Federal entities; draft the EIS, working with contractors, as appropriate; publish all completed environmental review documents; and identify the full scope of alternatives for analysis in consultation with the relevant Federal entities.

Finally, the proposed rule would also require the Federal entities or non-Federal entities that are responsible for issuing a Federal authorization for the qualifying project to identify all information and analysis needed to make the authorization decision, identify all alternatives that need to be included, and to use the EIS as the basis for their Federal authorization decision on the qualifying project to the extent permitted by law.

Summary of Public Comments

DOE received several comments addressing NEPA lead and joint lead designation and the environmental review DOE will undertake following the IIP Process.

Regarding the proposal to establish DOE as the NEPA lead agency, PJM and the State of Colorado Governor's Office expressed support. The State of Colorado Governor's Office noted that DOE as the lead NEPA agency could effectively lead an iterative, interagency process to ensure applications for Federal authorizations are ready for review and can meet the specified timelines. It also noted that having one agency leading the NEPA process reduces duplication of work and improves efficiency.

DOE received comments from CBD, PIOs, and Gallatin Power regarding the process for designation of a joint lead agency. CBD expressed concern that DOE would not have the expertise to evaluate impacts of transmission projects on ecosystems, species, and the environment, and recommended that the rules should require the designation of a land use agency as the NEPA joint lead agency. Gallatin Power commented that DOE should designate a joint lead agency that has experience permitting transmission projects during the promulgation of the rule and should implement a practice of identifying a joint lead agency prior to an IIP Initial Meeting instead of after the completion of the IIP Process. Gallatin Power argues that these joint lead agency designations will allow DOE to rely on Federal agencies with substantial experience in permitting and enable DOE to expedite approvals through the adoption of invaluable insights and best practices. PIOs challenged the proposed rule's assumption that only one agency can serve as a joint lead agency on the basis that the assumption is a departure from the statute and CEQ regulations both of which allow multiple agencies to serve as ''joint lead agencies.'' PIOs encouraged DOE to consider whether allowing multiple joint lead agencies could better comport with NEPA and CEQ regulations and better realize the proposed rule's goal of improving efficiency in Federal analysis and decision-making.

Three commenters suggested that the CITAP Program issue a joint record of decision for projects. CATF, PIOs, and SEIA recommended that DOE should ensure that the CITAP Program is in alignment with the congressional direction and best practices for NEPA. They recommended that DOE provide that, where feasible, agency decisions should be issued together in a joint record of decision, or provide greater clarity as to why DOE declines to require a joint record of decision. These commenters noted that requiring a joint record of decision aligns with recent revisions to NEPA and CEQ's NEPA regulations and promotes efficiency and coordination. They also suggested that a joint record of decision effectuates Congressional direction that the basis for all decisions under Federal law use DOE's environmental review and reduces confusion about how to seek judicial review.

Multiple commenters submitted comments on the scope of environmental reviews and considerations. AEP agreed that DOE should carry out its statutory obligation to prepare a single EIS sufficient for the purposes of all Federal authorizations necessary to site a qualifying project. AEP further added that, to the extent practicable, the EIS should also include any relevant information to satisfy state permitting requirements to avoid duplication of reporting requirements. PIOs noted that the rule's inclusion of a requirement to assess climate impacts is well-founded in NEPA's plain text, its implementing regulations, authoritative guidance, and judicial precedent. PIOs further stated that DOE has both the authority and the responsibility to require assessments of climate related impacts, as NEPA's plain text explicitly includes ''reasonable foreseeable environment effects.'' However, PIOs also stated that DOE should use existing regulatory and scientific tools that CEQ makes available to assist other Federal agencies with their legally required analysis, and that the resulting analysis of climate impacts need not be perfect. AZGFD noted that when completing the IIP Process and developing the EIS, it is important to ensure that adequate consideration is given to wildlife and wildlife habitat resources along the project route, that effects to those resources and areas are not generalized for the full project route, and that, as necessary, suitable conservation measures are identified for specific areas and resources. AZGFD stated that it is also important to consider the varying purposes, management plans, and land use goals or mandates for lands managed by different Federal agencies. Hence, AZGFD requested further information on how the proposed rule and development of a single EIS by DOE will ensure that wildlife and wildlife habitat resources are considered and accommodated through the IIP Process. ACP mentioned that CEQ is simultaneously conducting revisions to its regulations implementing NEPA and suggested that DOE should ensure that the CITAP Program and any potential DOE rulemaking aligns with CEQ's NEPA rulemaking.

DOE received multiple recommendations for streamlining environmental review. OSPA asserted that a Programmatic Environmental Impact Statement (PEIS) would dramatically speed the deployment of transmission in chronically underserved areas of the Upper Great Plains. Similarly, ACP suggested that DOE develop resource-specific programmatic NEPA reviews to reduce the administrative burden and legal risk of project-specific reviews. AEP recommended allowing for greater use of programmatic reviews and categorical exclusions. Alan Leiserson said DOE should use more categorical exclusions for clean energy projects. AEP recommended modifying thresholds for Federal agencies when determining what requires development of an environmental document. OSPA additionally recommended that DOE should expressly make EIS underlying

data available to Federal and non-Federal permitting entities for purposes of developing a PEIS. OSPA recommended that THPOs explicitly have access to this data as well as well as any consultants hired by THPOs.

Three commenters suggested DOE include statements about what information or resources could be used in the environmental review. ACP argued that the resource reports are useful beyond the IIP Process and so this final rule should require that materials and findings in resource reports be used in the NEPA EIS process. ACP further noted that ideally this authority for consideration of the resource reports would be DOE's alone rather than DOE and the joint lead agency. AEP recommended stating that Federal agencies can use existing data and studies in determining when to develop an environmental document. AEP also recommended allowing for greater project proponent involvement in preparing environmental documents. DOE received the following additional comments:

CBD recommended that DOE prioritize development on already degraded lands, existing rights of way, and other areas where communities will not object to new infrastructure. ACORE noted that there may be projects that do not participate in the CITAP Program, but that will still have DOE as the lead agency. Accordingly, ACORE recommended that DOE clarify which of CEQ's NEPA provisions, including timing requirements, would apply to these types of projects.

DOE Response

In this final rule, DOE confirms its role as NEPA lead agency, the process for selecting a joint lead agency, and the responsibilities DOE will undertake for environmental review, with minor revisions in response to these comments. DOE revises this final rule to state that DOE and relevant Federal entities shall issue, except where inappropriate or inefficient, a joint decision document.

Regarding the joint lead agency selection process, DOE makes no revisions in response to these comments. As proposed and confirmed here, the designation of a joint lead agency will be determined by DOE and Federal entities that manage Federal lands or waters by no later than the IIP Process review meeting. DOE believes the process for designating a joint lead, if any, is consistent with NEPA implementing regulations and provides flexibility to identify the relevant expertise among the relevant entities. Further, since the rule requires DOE to engage Federal land- and water-management agencies in the process, DOE is not persuaded that including a joint lead requirement is necessary, as suggested by CBD and Gallatin Power, and instead believes it is best to leave that determination up to the Federal entities on a project-specific basis. Regarding the timing of the designation, DOE notes that this final rule confirms the same timing as the proposed rule, requiring the designation by the review meeting, not the completion of the IIP Process as indicated by the commenter. DOE does not agree that a designation requirement is appropriate before the initial meeting because DOE believes the initial meeting provides important project information that could inform any joint lead designation. In response to the PIO's comment about multiple joint leads, DOE maintains the presumption in the rule that no more than one joint lead agency will be designated to ensure efficiency and effectiveness, which will enable DOE to meet its coordination and scheduling obligations under FPA section 216(h).

In response to the recommendation that the CITAP Program issue joint records of decision, DOE agrees with the commenters that this would be consistent with NEPA as amended by the Fiscal Responsibility Act of 2023. DOE also agrees that a policy in favor of joint records of decision would be consistent with the purpose of FPA section 216(h) and would enhance DOE's coordinating function. Accordingly, DOE revises this final rule to provide that, except where inappropriate or inefficient, the Federal agencies shall issue a joint record of decision that includes all relevant Federal authorizations and, to ensure consistency with the requirements of section 216(h), includes, if applicable, the determination by the Secretary of Energy of a duration for each land use authorization issued under section 216(h)(8)(A)(i).

Regarding the scope of environmental reviews, DOE makes no changes to this final rule because the rule as proposed did not change any of DOE or other Federal entities' responsibilities to comply with existing NEPA regulations and environmental review laws. DOE will endeavor to incorporate State requirements in the environmental review and makes no revisions to address this because DOE believes this will be accomplished through the inclusion of relevant non-Federal entities in the IIP Process. Similarly, DOE will endeavor to follow NEPA best practices and use available tools and does not find that these comments require any revisions to the rule.

Regarding ACP's request to require the use of resource reports in the preparation of the environmental review document, AEP's request that DOE include a provision that existing data can be used, and AEP's recommendation that DOE allow for greater project proponent involvement in preparing environmental documents, DOE makes no changes in this final rule. Data requirements for environmental reviews are outside of scope of this rulemaking, which concerns only the implementation of DOE's coordinating authority under FPA section 216(h) and does not address the substance of NEPA compliance by DOE or its fellow agencies. But DOE reiterates that the purpose of the resource reports is to inform environmental review (and agency authorizations), and affirms its commitment to adhering to best practices for leveraging existing data sources. Comments suggesting revised environmental review thresholds, the use of categorical exclusions, and PEISs, are likewise outside the scope of this rulemaking.

In response to CBD's request that DOE prioritize development on already degraded lands, DOE makes no changes to this final rule as this is beyond the scope of DOE's coordinating authority. While DOE and its fellow agencies may encourage development on degraded lands, DOE lacks authority to impose any requirement to that effect in the final rule. In response to ACORE's request for more information on how DOE will serve as lead agency for projects that are not in the CITAP Program, DOE makes no changes to this final rule as this is beyond the scope of the rulemaking, which is the implementation of DOE's coordinating authority under FPA section 216(h).

J. Section 106 of the NHPA

DOE's Proposal

In the NOPR, DOE explained that the project proponent resource reports are intended to develop data and materials that will facilitate Federal entities' review of the project proponent's applications under a number of Federal statutes, including section 106 of the NHPA. DOE also explained that this initial information-gathering phase precedes the formal consultation process under section 106. DOE proposed to authorize project proponents, as applicants to the CITAP Program, to begin section 106 consultation during the IIP Process, but only at such time as a project is sufficiently well developed to allow formal consultation to begin. DOE proposed to make this determination

within 45 days of the IIP Process review meeting. Finally, DOE affirmed that DOE would remain legally responsible for all findings and determinations charged to the agency under section 106.

Summary of Public Comments

DOE received multiple comments related to section 106 of the NHPA. First, multiple commenters requested clarification regarding whether, and the extent to which, the resource reports would fulfill agencies' and project proponents' section 106 obligations. For instance, the Kentucky SHPO sought clarification of whether the resource reports will serve as only background information, or if they are intended to be utilized by the project proponent or agencies for section 106 consultation materials, as their purpose would affect DOE's ability to impose page limits. It also stated that it is unclear whether DOE proposes to frontload NPS National Historic Landmarks (NHL) review under section 106, and that doing so is not feasible from a regulatory standpoint. The NM SHPO commented that it is not clear, as proposed, whether the rule authorizes the project proponent to initiate consultation with the SHPO and elicit comments on the resource reports, and noted that it may not be possible to account for all of the section 106 impacts of a project at the initiation stage. The NM SHPO suggested that this may need to be stipulated in a Programmatic Agreement and asked how other agency reviews will be conducted. Relatedly, the Arizona SHPO stated that DOE intends to authorize all project proponents to act on its behalf and with procedures that deviate from the standard 36 CFR 800 Subpart B compliance process, and hence it advised that DOE consult with the National Conference of State Historic Preservation Officers (NCSHPO), NATHPO, and ACHP to develop a CITAP Program Alternative in accordance with 36 CFR 800.14. DOE also received comments from the Delaware SHPO and NM SHPO suggesting that DOE consult with ACHP and other entities regarding NHPA compliance.

DOE also received comments on the resource reports as they relate to section 106. The Delaware SHPO recommended that the requirements of the proposed ''Resource Report 4: Cultural Resources'' be explicitly defined as cultural resources identification and evaluation level surveys, determined necessary through consultation with consulting parties, that meet the relevant Secretary of the Interior Standards and applicable State and Tribal guidelines. The Delaware SHPO expressed concern that the provision in its current form might lead to a scenario wherein the project proponent could be required to redo cultural resource reports if initiation occurs after the submission and review of resource reports, which would cause duplication of effort, leading to unnecessary delays and frustration for all parties. Conversely, NATHPO and the Santa Rosa Rancheria Tachi Yokut Tribe expressed concern regarding a comment by Department of Energy staff because they believed it indicated that the Communities of Interest resource report would satisfy section 106 conditions for examining the impacts of projects on Tribal Nations' cultural resources and sacred places. The commenters also stated that the proposed resource reports are not a Program Alternative approved by the ACHP under 36 CFR 800 and cannot be used to satisfy DOE requirements under NHPA section 106.

DOE received comments on the timing of the section 106 process in relation to the CITAP Program process. The Delaware SHPO noted that the current CITAP Program's schedule would cause the project to experience significant delays when complying with section 106 of NHPA. The Delaware SHPO explained that, as proposed, project proponents would be required to complete resource reports to allow DOE to determine whether there is an undertaking. But, the Delaware SHPO argued, the presence of historic properties is not a determining factor to establish an undertaking. Rather, the Delaware SHPO noted that, per 36 CFR 800.3(a) and 800.16(y), an undertaking is an action with a Federal nexus, which is the type of activity with the potential to cause an effect on historic property. The Delaware SHPO stated that all above-ground transmission lines eligible for the CITAP Program would be undertakings and the initiation of consultation should occur concurrently with or immediately after the first CITAP Program meeting for a project. This process would set up the project proponent, DOE, and all consulting parties to begin consultation on the level of survey needed to identify historic properties early in the process. The Delaware SHPO noted that earlier consultation will allow the project to meet CITAP and NEPA deadlines and further noted that, with larger transmission projects, multiple SHPOs and numerous consulting parties will be involved and that property access would need to be arranged for surveys and longer reports, all of which may require longer review times. In addition, if a memorandum of agreement is needed due to any adverse effects to historic properties, negotiating and executing such an agreement could be time-consuming.

DOE received comments from the Arizona SHPO and the Kentucky SHPO indicating that only one agency could be selected as lead agency for section 106 consultations as the process did not allow for co-lead agencies.

Finally, DOE received comments regarding SHPOs' resource constraints. The Arizona SHPO expressed concerns that due to staffing and budgeting constraints it would not have adequate resources to conduct preliminary review of NHPA section 106 for project proponents prior to the establishment of a Federal undertaking by Federal agency.

DOE Response

In this final rule, DOE maintains the structure and purpose of the resource reports. DOE revises this final rule as discussed below to adjust the timeline for DOE to make a determination of an undertaking pursuant to section 106 and to designate DOE as the lead agency for section 106.

DOE clarifies that the resource reports are not intended to fulfill the agencies' section 106 responsibilities. Instead, the information provided in the Cultural Resources resource report, and the other resource reports as applicable, will contribute to the satisfaction of DOE's and relevant Federal entities' obligations under section 106. As the lead agency for section 106, DOE remains legally responsible for all findings and determinations charged to the agency under section 106. The function of the resource reports is to gather information to contribute to DOE's subsequent section 106 compliance. DOE appreciates that project proponents may not have access to all information required for DOE's section 106 compliance at the time the proponents submit their resource reports. This final rule adopts, as proposed, that a project proponent may file incomplete information but must address the reason for the omission. The final rule also provides the Director of the Grid Deployment Office the discretion to allow the project to proceed to the next milestone and provides that the Director of the Grid Deployment Office may waive requirements as appropriate, providing flexibility to the IIP Process to accommodate unique circumstances.

Regarding the comments on particular resource reports, DOE declines to revise the definition of cultural resources in the Cultural Resources resource report

in this final rule. That resource report is intended to inform not only DOE's section 106 compliance but also the environmental review document. Given that the timing of consultation under section 106 may vary based on the project and that this resource report is intended to fulfill multiple purposes, DOE necessarily retains its broader scope. Additionally, as previously noted, neither the Communities of Interest resource report nor any other resource report is intended to fulfill DOE's or relevant Federal entities' obligations under section 106.

As for the comments related to program alternatives, DOE submitted the proposed and final rules for interagency review under E.O. 12866 and intends to work collaboratively with ACHP and other relevant entities to develop mechanisms for efficient and effective implementation of section 106, which may include program alternatives. DOE, however, does not modify this final rule to provide for a particular program alternative under the section 106 implementing regulations [10] nor does DOE intend for the resource reports to serve as a program alternative; DOE wishes to inform its approach through initial implementation and further collaboration with relevant entities. DOE believes this part provides sufficient flexibility to allow for an appropriate alternative without specifying one at this time.

DOE agrees that initiating the NHPA section 106 consultation process earlier than DOE had proposed may be feasible and beneficial for certain project proposals that are sufficiently mature for DOE to determine there is an undertaking pursuant to the regulations implementing section 106.[11] DOE has accordingly revised this final rule to remove the requirement that DOE make the undertaking determination only after the IIP Process review meeting. As revised, the final rule allows DOE to make the determination at any point in the IIP Process, but no later than 10 calendar days following the close of the 10-day review period.

Regarding resource constraint concerns, DOE understands the staffing and budgeting constraints that SHPOs and THPOs may face. DOE does not intend for the IIP Process to create additional or preliminary review requirements for SHPOs and THPOs, and has designed the IIP Process with the intention of avoiding doing so. Rather, the intent of the IIP Process is to align the NHPA section 106 review with other Federal permitting and authorization processes. DOE notes that SHPOs and THPOs may consult with DOE and other relevant Federal agencies as to the range of possible assistance and resources that may be available.

Finally, DOE modifies this final rule to indicate that DOE intends to serve as lead agency for section 106 of the NHPA as section 106 does not provide for a co-lead agency. The modification aligns this final rule and regulatory path with section 106's statutory language and procedures.

K. Definitions

i. Affected Landowner

DOE's Proposal

In the NOPR, DOE proposed to define ''affected landowner'' as an owner of real property interests who is usually referenced in the most recent county or city tax records, and whose real property (1) is located within either 0.25 miles of a proposed study corridor or route of a qualifying project or at a minimum distance specified by State law, whichever is greater; or (2) contains a residence within 3,000 feet of a proposed construction work area for a qualifying project.

Summary of Public Comments

Commenters made multiple suggestions for revisions to the definition.

ACP recommended that DOE use the term ''potentially impacted landowner'' instead of ''affected landowner,'' given that ''affected landowner'' might carry some implication of an obligation for compensation.

ClearPath recommended that DOE adopt the definition of ''affected landowner'' used in FERC's natural gas pipeline permitting regulations and FERC's proposed rule for implementing section 216(b) of the FPA. ClearPath suggested that the effective use of ''affected landowner'' in FERC's natural gas pipeline permitting demonstrates that definition's legal durability and thereby bolsters the legal durability and predictability of this final rule.

Some commenters recommended that DOE revise the distances included in the proposed definition of affected landowner. To that end, SEIA, for instance, expressed support for a rule that considers the proposed project scale, geographic considerations, and resource usage of landowners to determine if a landowner falls under an ''affected landowner.'' Niskanen Center described the definition of ''affected landowner'' as nebulous and thus impracticable and overly burdensome, and recommended proximity qualifiers and a measure of immediate impact to the definition. LTA recommended that the rule should move away from a one-size-fits-all distance for the definition of landowner, and instead require project proponents to engage with communities of interest to assist in identifying potential impacts to landowners and the distance within which notifications to landowners would be appropriate. LTA specifically proposed that DOE expand the definition of ''affected landowner'' to include areas that a community of interest has identified as having one or more resources likely to be impacted by a proposed project. Grid United commented that the specific distances expressed in the definition of ''analysis area'' were not standard for high voltage transmission lines and could result in unnecessary data collection, burdens, and complexity for the project. Grid United suggested lowering the distances in the definition to 500 feet and likewise recommended establishing 500 feet as a presumptive radius for identification of affected resources unless existing practices dictated otherwise. ACP commented that the 0.25-mile distance provided is both too broad and too rigid and proposed that DOE remove references to a particular distance from the definition and instead base the required distance on the physical characteristics of the project and resource evaluated in each report.

Commenters also recommended that DOE include or omit certain considerations from the definition. LTA recommended that DOE remove the reference to county and city tax records because many owners of real property interests are not listed in these records. LTA also suggested that DOE explicitly include in the definition of ''affected landowner'' conservation easement holders and landowners whose viewshed or other ecosystem services may be impacted by the transmission facility. ACP requested that DOE explicitly exclude landowners affected through owning mineral estate property interests, given the possibility of a project involving broad areas of potentially unoccupied land, and exclude additional areas of potential construction work, including roads and ancillary facilities, that may be preliminary prior to completion of a NEPA review.

Finally, PIOs recommended that DOE require project proponents to provide a landowner bill of rights in transmission permitting processes to ensure affected landowners are informed of their rights in dealings with the proponent and attached a draft landowner bill of rights they submitted for FERC's proposed backstop permitting rule for reference. PIOs outlined that the landowner bill of

[10] See 36 CFR 800.14.

[11] See 36 CFR 800.3(a) and 800.16(y).

rights should include any information on requirements to obtain party status prior to appeal, how to obtain such status, and if and how a party can participate in the presidential appeal process.

DOE Response

In this final rule, DOE revises the definition of affected landowner, for the reasons described below, to the following:

Potentially affected landowner means an owner of a real property interest that is potentially affected directly (*e.g.,* crossed or used) or indirectly (*e.g.,* changed in use) by a project right-of-way, potential route, or proposed ancillary or access site, as identified in § 900.6.

At the outset, DOE clarifies that the project proponent is responsible for identifying potentially affected landowners based on the definition provided in this final rule. Nevertheless, as provided in this final rule, the project proponent must provide, as part of the IIP Process, the methodology by which potentially affected landowners were identified, which will allow DOE to evaluate the completeness of the process. Additionally, while the project proponent makes this determination, this final rule provides avenues for communities of interest and stakeholders to comment on the proposed project and engage with the project proponent; this definition does not limit those avenues.

DOE has also made edits to this definition in response to comments. First, DOE agrees with ACP that, at this stage, landowners are not necessarily affected, but are only ''potentially'' affected. Accordingly, DOE changes the defined term from ''affected landowner'' to ''potentially affected landowner'' and includes a reference to ''potential indirect and direct effects'' in the new definition.

Second, in response to ClearPath's comment, DOE has also revised the definition in this final rule to broaden how real property interests can be potentially impacted by the proposed project, which aligns more closely with FERC's definition of ''affected landowner.'' DOE declines to adopt the exact same definition as FERC, reflecting that FERC's permitting and siting rules do not have an identical purpose to this final rule, which is to coordinate Federal authorizations for transmission facilities.

Relatedly, DOE agrees with the commenters that suggested DOE revise the distance referenced in the affected landowner definition. DOE agrees that in certain instances the distances in the proposed rule will be overinclusive and overly burdensome, but also that a one-size-fits-all distance will not adequately capture all landowners that are potentially affected by the transmission project. Because a single distance does not provide sufficient flexibility to account for differences in projects, DOE declines to adopt the 500-foot presumptive distance proposed by Grid United. Instead, DOE has removed distances from the definition of ''potentially affected landowner,'' and provides that a potentially affected landowner is one whose real property interest is either potentially affected directly or indirectly by the proposed project. In addition, this final rule requires the project proponent to describe the methodology used to identify potentially affected landowners. This definition allows project proponents to more precisely identify landowners who are most likely to be potentially affected by the project, because those real property interests may not always align with the distances included in the proposed rule and any prescribed distances may be under or overinclusive depending on the particulars of a project.

Additionally, DOE agrees with LTA's comment that the reference to county and city tax records should be removed. As LTA noted, tax records may not, depending on the circumstances, accurately include the potentially affected real property interests. Accordingly, DOE has revised this final rule to remove the requirement that the owner of the real property interests is one who is usually referenced in the most recent county or city tax records. However, this final rule does not preclude the project proponent from referencing recent tax records. DOE declines to require the involvement of communities of interest in the identification of potentially affected landowners because this is an unnecessary step for identifying real property interests. The term ''potentially affected landowners'' is not intended to refer to all potential impacts; therefore, additional engagement on impacts of a proposed project is not needed to satisfy this definition. Stakeholders and communities of interest are among the terms that capture a broader scope of potential impacts. This final rule also does not preclude project proponents from involving communities of interest in this process.

DOE also declines LTA's suggestion to include conservation easement holders and landowners whose viewshed or other ecosystem services may be impacted by the proposed electric transmission facility. DOE defines potentially affected landowners in the context of real property interests. In some cases, conservation easements may be considered a real property interest and certain landowners whose viewshed or other ecosystem services may be affected may fall within the definition of a potentially affected landowner, but DOE declines to require that project proponents always include these landowners since these landowners may not always be owners of real property interests that are potentially affected. Additionally, DOE has not adopted ACP's suggestion to explicitly exclude mineral interest holders from the definition, as notice to such parties is still important for understanding reasonably foreseeable effects related to mineral entry and exploration. Nor has DOE adopted ACP's recommendation to exclude additional areas of potential construction work, because these areas are potentially relevant for environmental review and these landowners could be affected by the project.

Finally, DOE declines to require project proponents to provide a landowner bill of rights. DOE disagrees with PIOs that a landowner bill of rights is needed or useful for this process, because DOE's exercise of its authority under section 216(h) does not confer eminent domain authority. Although DOE declines to require the provision of a landowner bill of rights, in response to PIOs' request that such a bill of rights include information on the rehearing and review process and the presidential appeals process, DOE notes that these topics are discussed in Sections VI.O.i and ii of this document, respectively. However, in response to both PIOs and LTA, DOE encourages all interested parties to proactively engage transparently and in good faith with appropriate stakeholders, including potentially affected landowners, and may issue best practices on engagement as discussed in section VI.E of this document.

ii. Analysis Area

DOE's Proposal

The NOPR did not provide a definition for ''analysis area'' nor did it use this specific term. However, DOE sought comment from the public on whether distances included in the proposed rule were appropriate, which informed the definition of this term and are discussed below.

Summary of Public Comments

DOE requested specific comment on whether distances included in the

proposed rule were appropriate and received numerous recommendations on changes to distances in this final rule.

ACEG commented that the 0.25-mile distance is too narrow in some contexts or overly broad in others (*e.g.,* affected landowners), and that the distance should be determined by the impacts of the project. Pew Charitable Trusts recommended that DOE allow greater flexibility, stating that while the proposed distance comports with the distance FERC would use for project notification requirements in the context of National Interest Electric Transmission Corridors (NIETCs), some cases warrant a wider area of review, including in areas that include National Wildlife Refuges, designated wilderness areas, cultural resources, or indigenous sacred sites. Pew Charitable Trusts suggested that the distance proposal could be managed like the standard template schedule, which is open to change depending on the project.

DOE received three comments specifically on the Land Use, Recreation, and Aesthetics resource report. LTA supported the use of a 0.25-mile distance, but because the distance will vary based on the specifics of each project and site, proposed that project proponents also consider an area that a community of interest, including experts from local conservation organizations, has identified as having one or more resources likely to be impacted by a proposed project.

PIOs submitted that whether 0.25 miles is a sufficient distance is largely dependent on the nature of the impacts that DOE is attempting to identify. PIOs stated that wilderness areas are particularly vulnerable to visual impacts and proposed that DOE use distances of 5–10 miles for when considering visual impacts of proposed projects. Relatedly, PIOs noted that certain areas preserved for wildlife habitat may be vulnerable to adverse impacts from transmission projects at distances greater than 0.25 miles, and accordingly, recommended that areas with valuable habitat for migratory birds, such as National Wildlife Refuges, should generally be identified no less than 10 miles from the proposed transmission project, and that DOE should consult with the relevant agencies and organizations to identify appropriate distances.

The CARE Coalition stated that the 0.25-mile distance in the Land Use, Recreation, and Aesthetics resource report is arbitrary and unsuitable for several of the resources listed in that section, including visual resources and wildlife habitat. Referencing research at Argonne National Laboratory, the CARE Coalition suggested that a minimum distance of 10 miles for 500 kV or greater lines and at least five miles for 230–500 kV lines be used to identify sensitive visual resources. Additionally, citing concerns over project impacts to bird species, the CARE Coalition recommended DOE require proponents to identify key habitats for migratory birds and mammals, such as National Parks and National Wildlife Refuges, within 10 miles of proposed projects or consult with the U.S. Fish and Wildlife Service (USFWS) to identify adequate distances for critical migratory bird nesting and stopover habitats, as well as for large mammal migration corridors.

The CEC/CPUC also stated that a 0.25-mile distance is often too narrow and may not capture all indirect impacts, including visual impacts on National Historical Landmarks. CEC/CPUC recommended that distances should be developed with consideration to the scale and scope of the proposed project and the specific resources evaluated.

The Arizona SHPO and CEC/CPUC proposed that DOE align distance requirements with the Area of Potential Effect (APE) under section 106 of the NHPA. The Arizona SHPO recommended that DOE provide guidance to project proponents to develop study areas that conform to the NEPA definition of affected environment as applicable to resource type, and for cultural resource assessments, includes the definition of an APE. Relatedly, the Kentucky SHPO further noted that an APE of 0.25 miles may be acceptable, depending on the type of transmission activities proposed, whether it is new construction or a rebuild, the applicable SHPO's guidance/standards, and any known resources near the proposed project area. On the other hand, the NM SHPO stated that the 0.25-mile distance is not adequate to address effects to cultural resources and landscapes, National Historic Trails, and National Monuments, especially in western states where the viewshed is expansive.

DOE Response

In this final rule, DOE removes the distances proposed, and adds a defined term, ''analysis area.'' This approach allows the participants in the IIP Process to determine the appropriate analysis area based on project-specific factors.

DOE agrees with the many commenters who indicated the distances should allow for more flexibility. Accordingly, DOE has determined that specific distances should be removed from the final rule, as the appropriate distances for various analyses depend on the relevant physical characteristics and needs of the given project and resource at issue. Instead, as discussed in the revisions to §§ 900.5 and 900.8, DOE and the project proponent must, at the initial meeting, establish initial analysis areas for each resource as determined by project-specific factors like ecology, land use and ownership, and other physical characteristics of the landscape. The proposed analysis areas for each resource may then be refined and finalized during the IIP Process review meeting. DOE confirms that establishment of such analysis areas for wildlife, fish, and plant life will involve not only the project proponent but the appropriate Federal and non-Federal entities, like the USFWS and relevant State and local agencies, to ensure analysis areas are adequate and consistent with those agencies' requirements and appropriate guidance. Relatedly, DOE declines to align the distance requirements with the APE under section 106 of the NHPA or to add any other method of identifying distances, including relying on distances identified by communities of interest, in favor of providing greater flexibility for the reasons stated above. DOE notes that where a legal standard exists for defining the area of analysis for a particular resource, as in the case of the APE for historic properties, the determination of the analysis area for that resource will take into account that legal standard.

DOE is adding the defined term ''analysis area'' to account for the removal of the distances, and provide a consistent use of terminology throughout the final rule that accounts for the project's characteristics and needs and the resources at issue. DOE defines analysis area to mean an area established for a resource report at the IIP Process initial meeting and modified at the IIP Process review meeting, as applicable. Discussion of specific uses of this term is included in section VII of this document.

iii. Communities of Interest

DOE's Proposal

In the NOPR, DOE proposed to add a definition for ''communities of interest'' to ensure broad coverage of potentially impacted populations during the public engagement process and establishment of the public engagement plan. In the NOPR, DOE also proposed to define communities of interest to include disadvantaged, fossil energy, rural, Tribal, indigenous, geographically proximate, or communities with environmental justice concerns that

could be affected by the qualifying project.

Summary of Public Comments

DOE received multiple comments suggesting amendments or clarifications to the definition of ''communities of interest'' in the proposed rule.

ClearPath opposed DOE's definition of communities of interest, commenting that the definition is ambiguous and lacks ''legal durability.'' ClearPath pointed specifically to the phrase ''geographically proximate'' as ambiguous and commented that the phrase, ''communities with environmental justice concerns'' provides no methodology for project proponents to adequately identify these communities. Niskanen Center proposed that further guidance on the term might include precise parameters such as defining it as being within 0.25 miles of a study corridor or potential route. Niskanen Center also indicated that the precise meaning of the terms ''disadvantaged,'' ''fossil energy,'' ''rural,'' ''geographically proximate,'' or ''communities with environmental justice concerns'' is unclear, potentially leading to confusion and litigation in the IIP Process and CITAP Program.

EDF stated that the broad proposed definition of ''communities of interest'' could potentially overlook key differences among and within the identified communities. Referencing several White House commitments and executive orders concerning impacts on communities with environmental justice concerns, EDF advised DOE to ensure it carefully addresses the concerns of those communities in the proposed rule.

PIOs lauded the proposed rule's definition of communities of interest for broadly including Indigenous communities. Similar to EDF's comments, PIOs maintained that DOE revise its definition of ''communities of interest'' to better reflect environmental justice issues. PIOs recommended that DOE remove the term ''disadvantaged,'' specifically include ''communities of Color'' and ''low-income or low-wealth communities'' in the definition, and capitalize the terms ''Color'' and ''Indigenous.''

PIOs also suggested that DOE clarify and ''equitably describe'' the definition of ''fossil energy'' and align the definition of ''overburdened'' with the U.S. Environmental Protection Agency (EPA) EJ 2020 Glossary. PIOs then urged DOE to specifically require project proponents to describe how they will reach out to communities of interest about mitigation and require the resource report to describe proposed measures or community concerns. PIOs also recommended that DOE require project proponents to solicit community comments regarding their preferred form of mitigation and to respond to those comments.

Policy Integrity suggested that for project proponents to identify communities of interest more accurately—especially given that DOE does not define ''disadvantaged,'' ''fossil energy,'' ''rural,'' or ''communities with ''environmental justice concerns''—DOE should provide administrable criteria, such as project proponents locating ''disadvantaged'' communities via the Climate and Economic Justice Screening Tool. Policy Integrity also recommended that DOE consider allowing communities to self-identify, which would ensure that communities are not excluded because of limitations of existing identification tools or methods. The commenter also indicated it would be more appropriate for DOE to adjudicate whether a community should be considered as having environmental justice concerns based on evidence submitted rather than allowing the project proponent to make this determination.

LTA suggested that the definition of communities of interest should include local nonprofit conservation organizations to ensure that the conservation and working lands community is included early in the IIP Process.

Finally, NATHPO and the Santa Rosa Rancheria Tachi Yokut Tribe commented that categorizing Tribal Nations as ''Communities of Interest'' fails to recognize the sovereignty of Tribal Nations. By doing so, NATHPO and the Santa Rosa Rancheria Tachi Yokut Tribe argued that the proposed rule neglects distinct nation-to-nation responsibilities.

DOE Response

In this final rule DOE has revised the definition of ''communities of interest'' to improve readability and ensure consistency with the Inflation Reduction Act (Pub. L. 117–169) (IRA) but has retained the communities identified in the proposed rule, as discussed below. DOE notes that the project proponent is responsible for identifying communities of interest and taking the required actions with respect to these communities for purposes of complying with the proponent's responsibilities under these regulations, but through the IIP Process, DOE and the relevant Federal entities and relevant non-Federal entities will have the opportunity to assess the processes by which proponents identify and engage with communities of interest.

To improve the readability of the definition, DOE has revised the structure of the definition to provide a list of the types of communities that are communities of interest. To that end, to clarify that the communities listed in the definition is the exclusive set of communities to which this definition applies, this final rule edits the definition to note that communities of interest ''means'' rather than ''includes'' the listed communities. Finally, DOE has changed the reference to ''fossil energy'' communities to ''energy communities'' to align the terminology with that used throughout the IRA's programs.

DOE appreciates the comments regarding the scope of ''communities of interest'' and the communities included in the definition. DOE declines to revise the communities included within the definition beyond the revision to ''fossil energy'' communities discussed above. DOE declines to prescribe a particular distance for ''geographically proximate'' communities for reasons similar to those explained above in connection with ''analysis area.'' For any given project or community, a set 0.25-mile distance could be over- or under-inclusive. Instead, the current definition provides flexibility and broad coverage for the project proponent to identify the communities that could be affected by a given project.

DOE also declines to provide definitions for the terms used in the definition of communities of interest, or to otherwise narrow the definition. As written, the definition of communities of interest provides broad coverage of various communities and flexibility to consider relevant groups that may fall within such communities. Because the ways in which a project may affect certain communities varies, DOE believes that the definition in this final rule appropriately provides flexibility to encompass the potentially varied affected communities of interest. Relatedly, DOE declines to provide particular criteria that a project proponent must consider in identifying communities of interest, to permit communities to self-identify or to require that proponents engage further with community members, or to administer in the first instance whether a particular community qualifies, in favor of providing flexibility to the project proponent and the ability of DOE and the relevant Federal entities and relevant non-Federal entities to assess and refine the identification as needed throughout the IIP Process.

DOE declines to remove or replace the term ''disadvantaged'' and declines to include ''communities of Color'' and

''low-income or low-wealth communities.'' The term provides flexibility for the project proponent to consider a broad range of disadvantaged communities that could be affected by the proposed project. Consistent with its usage throughout this rule, as well as in rules promulgated by other agencies such as FERC, DOE declines to capitalize the term ''indigenous.'' Whether or not the term is capitalized, project proponents have the same responsibilities to these communities.

Additionally, DOE declines to include nonprofit groups, as requested by LTA, as the definition is focused on communities, not organizations or entities. Nevertheless, this final rule does not preclude an organization from representing a community during IIP Process engagement, and additionally provides a definition of stakeholder that could include the type of organization LTA describes.

Lastly, DOE affirms the sovereignty of Indian Tribes. DOE clarifies that the inclusion of Tribal communities in the definition of communities of interest is not intended to, nor does it, neglect the nation-to-nation responsibilities of Federal agencies when engaging with Indian Tribes, which are distinct from the project proponent's responsibilities under the CITAP Program. The CITAP Program and final rule make no changes to Federal agencies' nation-to-nation responsibilities. DOE's intent in including Tribal communities in the definition is to establish an expectation that project proponents engage with and consider the impacts of proposed projects on Tribal communities.

iv. Other Definition Changes

1. Mitigation Approach and Mitigation Strategies or Plans

DOE's Proposal

The NOPR included definitions for two terms, ''landscape mitigation approach'' and ''landscape mitigation strategies or plans.'' In the NOPR, DOE proposed to define landscape mitigation approach to mean an approach that applies the mitigation hierarchy to develop mitigation measures for impacts to resources from a qualifying project at the relevant scale, however narrow or broad, that is necessary to sustain those resources, or otherwise achieve established resources. Among other things, the definition explained that the mitigation hierarchy refers to an approach that first seeks to avoid, then minimize impacts, and then, when necessary, compensate for residual impacts; while a landscape mitigation approach identifies the needs and baseline conditions of targeted resources, potential impacts from the qualifying project, cumulative impacts of past and likely projected disturbances to those resources, and future disturbance trends, then uses this information to identify priorities for mitigation measures across the relevant area to provide the maximum benefit to the impacted resources.

In the NOPR, DOE proposed to define landscape mitigation strategies or plans as documents developed through, or external to, the NEPA process that apply a landscape mitigation approach to identify appropriate mitigation measures in advance of potential impacts to resources from qualifying projects.

Summary of Public Comments

ACP recommended that DOE cabin the definition of landscape mitigation approach. Specifically, ACP suggested that the definition include a materiality threshold for all references to impacts to limit overreach and include language regarding the practicability of such an approach. ACP elaborated that the definition should also permit mitigation efforts to be conducted following stakeholder engagement, allow for a deferral of such approach to mitigation in lieu of agency-driven mitigation approaches, and, where stakeholder engagement efforts are ongoing, allow for those processes to fully inform the selected mitigation measures.

DOE Response

In this final rule, DOE has revised ''landscape mitigation approach'' to a more general term ''mitigation approach'' and removed the defined term ''landscape mitigation strategies or plans.''

DOE revised the definition for ''landscape mitigation approach'' because limiting mitigation approaches to only landscape-level approaches and strategies may not be sufficiently flexible to account for the variety of needs implicated by this rule. Rather than prescribe a single approach, DOE believes that this final rule should create an opportunity for consideration and discussion of multiple types of proposed mitigation for a given proposed project. In addition, DOE has revised this definition for clarity and to more closely align with existing NEPA regulations regarding mitigation.

DOE declines to implement ACP's suggestion to include a materiality threshold and a discussion of the practicability of any proposed mitigation approaches to limit overreach, because no decisions are being made on mitigation during the IIP Process. Instead, as part of the IIP Process, the project proponent is expected to bring to DOE and any relevant Federal entities and relevant non-Federal entities a proposed mitigation approach, which will facilitate the development of a shared understanding of project needs and expectations.

DOE also disagrees with ACP's suggestion to include stakeholder engagement in development of proposed mitigation approaches both ongoing and future. This final rule encourages stakeholder engagement by the project proponent throughout the IIP Process and the rule does not preclude the engagement described in ACP's comment. DOE avoids codifying a particular mitigation approach process in regulatory text, as this process may inaccurately indicate a preference or priority for the approach.

Because the revisions to mitigation approach rendered ''landscape mitigation strategies or plans'' redundant, DOE has removed this defined term from this final rule.

2. MOU Signatory Agency

DOE's Proposal

In the NOPR, DOE proposed to define ''MOU Signatory Agency'' to mean a signatory of the interagency Memorandum of Understanding executed in May 2023, titled ''Memorandum of Understanding among the U.S. Department of Agriculture, Department of Commerce, Department of Defense, Department of Energy, the Environmental Protection Agency, the Council on Environmental Quality, the Federal Permitting Improvement Steering Council, Department of the Interior, and the Office of Management and Budget Regarding Facilitating Federal Authorizations for Electric Transmission Facilities.''

Summary of Public Comments

ACP submitted that, in addition to the nine agencies that signed the 2023 MOU, the definition should include any signatories to similar or subsequent MOUs entered into in the future.

DOE Response

DOE agrees with ACP's comment that MOU Signatory Agency should be sufficiently broad to cover not only those signatories to the MOU executed in May 2023, but also to cover signatories to potential similar or subsequent MOUs entered into pursuant to section 216(h)(7)(B)(i) of the FPA later in time. This final rule revises this definition to provide this flexibility, such that if a future MOU includes additional or different agencies, the

definition in this final rule will not need to be revised accordingly.

3. Relevant Non-Federal Entity

DOE's Proposal

In the NOPR, DOE proposed to define ''non-Federal entity'' as an Indian Tribe, multi-State governmental entity, State agency, or local government agency, and to define ''relevant non-Federal entity'' as a non-Federal entity with relevant expertise or jurisdiction within the project area, that is responsible for issuing an authorization for the qualifying project, that has special expertise with respect to environmental and other issues pertinent to or potentially affected by the qualifying project, or that provides funding for the qualifying project. The NOPR also proposed to provide that term includes an entity with either permitting or non-permitting authority, such as an Indian Tribe, Native Hawaiian Organization, or State or Tribal Historic Preservation Offices, with whom consultation must be completed in accordance with section 106 of the NHPA prior to approval of a permit, right-of-way, or other authorization required for a Federal authorization.

Summary of Public Comments

DOE received two comments on the definition of relevant non-Federal entity. AZGFD recommended that DOE include State wildlife agencies as standard non-Federal entities engaged in the IIP Process. AZGFD noted that State wildlife agencies can provide project-specific special expertise on wildlife species occurrence and distributions, areas of potential concern, wildlife connectivity, and more, as well as advise on potential conservation measures to avoid, minimize, or offset potential impacts. PIOs commented that DOE should expand the definition to allow certain members of the public to participate in the IIP Process. PIOs noted that, as drafted, the definition excludes community groups or public interest organizations because they are not regulators, even if they have special expertise with respect to environmental and other issues pertinent to or potentially affected by the qualifying project. Instead, the proposed rule would consider these entities as stakeholders, who, as PIOs argued, have significantly less access to the IIP Process compared with relevant non-Federal entities. PIOs believe that allowing community and public interest groups with special expertise to participate in the IIP Process would further the rule's aim to create an opportunity to identify as early as possible potential environmental and community impacts associated with a proposed project. Relatedly, PIOs recommended that DOE define the term ''special expertise'' to help project proponents, affected communities, and public interest organizations in better understanding what groups may meet this definition and allow community or public interest groups to request that they be permitted to participate in the IIP/CITAP Process by explaining what special expertise they possess.

DOE Response

DOE revises the definition of relevant non-Federal entity to replace ''special expertise'' with ''relevant expertise'' to avoid confusion with the NEPA-defined term ''special expertise.'' DOE declines any further revisions to the definition of relevant non-Federal entity that would expand its scope in this final rule.

First, DOE notes that because State wildlife agencies are likely to have relevant expertise or jurisdiction within the proposed project area, may be responsible for issuing an authorization for the qualifying project, may have relevant expertise with respect to environmental and other issues pertinent to or potentially affected by the qualifying project, or may provide funding for the qualifying project, such agencies may meet the definition of a relevant non-Federal entity. The list of non-Federal entities included in the definition merely provides examples and is not a comprehensive list.

Next, DOE appreciates the expertise of community groups and public interest organizations. Rather than expand the definition of relevant non-Federal entity, DOE believes that the IIP Process, coupled with existing avenues for public comment, will best integrate the expertise and input of community groups and public interest organizations. The IIP Process provides for timely and focused pre-application meetings with relevant Federal entities and relevant non-Federal entities, as well as for early identification of potential siting constraints and opportunities, and seeks to promote thorough and consistent stakeholder engagement by a project proponent. The IIP process is not, however, intended to supplant existing public comment processes afforded by relevant statutes, such as NEPA. DOE believes that it has appropriately defined relevant non-Federal entity to provide the necessary information to fulfill its obligations under section 216(h) and facilitate the pre-application process, while still providing sufficient avenues for others to participate as stakeholders and through those existing public-comment processes. DOE declines to provide a definition for special expertise because the term has been removed from the rule. DOE does not expand the definition of non-Federal entity to explicitly include non-regulating or non-permitting entities as the current definition may already include those entities as long as they meet additional criteria.

4. Stakeholder

DOE's Proposal

In the NOPR, DOE proposed to define the term ''stakeholder'' to mean any relevant non-Federal entity, any non-governmental organization, affected landowner, or other person potentially affected by a proposed qualifying project.

Summary of Public Comments

ACP commented that the proposed definition of ''stakeholder'' is overly broad, including its reference to anyone ''potentially affected by the proposed qualifying project.'' ACP suggested that DOE narrow the definition to a party able to show some cognizable interest potentially being affected by the project.

DOE Response

In this final rule, DOE revises the definition of ''stakeholder'' to provide that the term means any relevant non-Federal entity, interested non-governmental organization, potentially affected landowner, or other interested person or organization.

In part, DOE has revised this definition to reflect the revision to terminology used in this final rule, *i.e.,* replacing ''affected landowner'' with ''potentially affected landowner,'' for the reasons explained above. DOE has also revised the definition to provide more precise parameters for who is a stakeholder for purposes of this final rule, in some instances narrowing the definition and in others, broadening it. Specifically, the definition clarifies that only ''interested,'' rather than ''all,'' non-governmental organizations are stakeholders, which appropriately limits coverage to only those non-governmental organizations that have interest in the proposed project. Additionally, DOE revises the definition to provide that any other stakeholders must be ''interested'' and provides that stakeholders may be interested persons or organizations. This revision broadens the scope of other stakeholders beyond only persons, allowing those organizations that do not fall within the scope of relevant non-Federal entity, non-governmental organization, or potentially affected landowner to be considered stakeholders. DOE believes

this revision is appropriate given the diversity of entities that may be affected by or interested in a proposed project. Additionally, the revision broadens the definition beyond those who are potentially affected to those who are interested. Again, DOE believes this expansion is appropriate in light of various entities that may have equities in a proposed project. For instance, LTA raised in its comment that local conservation organizations may have relevant expertise and views on a proposed project.

DOE disagrees with ACP's proposal to narrow the definition to only those parties able to show some cognizable interest potentially being affected by the project. First, DOE does not discern a practical difference in requiring that an interest be ''cognizable,'' and believes that DOE's definition is consistent with ACP's intent to ensure stakeholders have an interest in or are potentially affected by a proposed project. Second, DOE believes ACP's proposal is unnecessarily narrow and may potentially exclude relevant persons, organizations, or entities from the CITAP Program, including relevant non-Federal entities. Finally, DOE clarifies that this definition does not determine who is a party or has standing to challenge a relevant authorization or related environmental review document issued under section 216(h).

5. Study Corridor

DOE's Proposal

DOE proposed to define study corridor as a contiguous area (not to exceed one mile in width) within the project area where alternative routes or route segments may be considered for further study.

Summary of Public Comments

DOE received two comments on the definition of the term study corridor. ACP recommended that the definition regarding consideration of NEPA alternative routes should be restricted to only those within the study corridor. ACP also recommended that the definition of study corridor be limited to alternative routes already within consideration of the study corridors, because, as ACP argued, this would cabin the scope of review and is necessary to avoid potential litigation risk if the rule were to require proponents to consider all potential alternative routes. OSPA requested that this final rule allow for study corridors wider than one mile to consider more alternative transmission paths. OSPA described that the one-mile width restriction is inconsistent with the broad definition of ''project area,'' which may limit the evaluation of potential transmission sites. OSPA therefore urged DOE to either change the definition or allow proponents to request exemptions from the one-mile restriction.

DOE Response

In this final rule, DOE revises the definition of study corridor to clarify the role of study corridors and the relationship between this term and other NEPA-related terms, as provided in section IV of this document.

DOE declines to revise the definition as ACP recommended. First, DOE clarifies that the project area may contain multiple study corridors and that those study corridors may include multiple potential routes. Additionally, DOE notes that study corridors are proposed by the project proponent, and the number of such study corridors will be driven by the project proponent, depending on the level of development of the project design at the time of IIP Process initiation. While these study corridors are developed by the project proponent, nothing in this rule commits DOE to limiting NEPA alternatives to these study corridors. The definition suffices to allow DOE and the relevant Federal entities to evaluate the study corridor and potential NEPA alternatives through the IIP Process.

DOE declines to implement OSPA's recommendation that the definition allow for study corridors wider than one mile. DOE assesses that the one-mile distance suffices to provide DOE and the relevant Federal entities with the information necessary to make the relevant determinations and issue the relevant authorizations, while avoiding overburdening the project proponent.

6. Resilience

DOE's Proposal

As noted, DOE proposed to require the submission of 13 resource reports, one of which would be titled Reliability, Resilience, and Safety.

Summary of Public Comments

One anonymous commenter noted that DOE did not provide a definition of the term ''resilience'' and requested that DOE define the term.

DOE Response

DOE declines in the final rule to provide a definition for the term ''resilience.'' This term does not appear outside of the Reliability, Resilience, and Safety resource report and its meaning is evident from the substance of that report.

7. Proposed Facility

DOE's Proposal

In the NOPR, DOE used the term ''proposed facility'' to delineate the scope of certain information project proponents would be required to submit. For instance, the NOPR proposed in § 900.3(b) to require the project proponent to provide a concise description of the proposed facility and a list of anticipated relevant Federal and non-Federal entities involved in the proposed facility.

Summary of Public Comments

CARE Coalition requested that DOE provide a definition of the term ''proposed facility.''

DOE Response

DOE declines in the final rule to provide a definition for proposed facility. DOE believes that the meaning of this term is sufficiently clear from the context and notes that through the IIP Process, project proponents will be able to refine the scope of the proposed facility as needed.

L. Resource Reports

The PIOs noted that DOE's resource reports are similar to the resource reports required under FERC's proposed rule regarding FERC's siting authority in NIETCs, per FPA section 216(b). The PIOs recommended that DOE align the numbering of resource reports with the numbering in FERC's proposed rule. DOE agrees with the suggested numbering change and has renumbered the reports accordingly. The following table catalogs the renumbering.

Resource report name	Proposed rule numbering	Final rule numbering
General Project Description	Resource Report 1	Resource Report 1.
Water Use and Quality	Resource Report 2	Resource Report 2.
Fish, Wildlife, and Vegetation	Resource Report 3	Resource Report 3.
Cultural Resources	Resource Report 4	Resource Report 4.
Socioeconomics	Resource Report 5	Resource Report 5.
Geological Resources	Resource Report 6	Resource Report 8.

Resource report name	Proposed rule numbering	Final rule numbering
Soil Resources	Resource Report 7	Resource Report 9.
Land Use, Recreation, and Aesthetics	Resource Report 8	Resource Report 10.
Communities of interest	Resource Report 9	Resource Report 7.
Air Quality and Noise Effects	Resource Report 10	Resource Report 11.
Alternatives	Resource Report 11	Resource Report 12.
Reliability, Resilience, and Safety	Resource Report 12	Resource Report 13.
Tribal Interests	Resource Report 13	Resource Report 6.

In this final rule, DOE also makes non-substantive edits to the proposed rule text of the resource reports to clarify the intent of the reports and clearly state the information that must be included in the reports. Across the resource reports, DOE reorganizes the proposed paragraphs to state the purpose of the resource report in the introductory paragraph (*e.g.,* paragraph (j)) and list all requirements for the resource report in subparagraphs (*e.g.,* paragraphs (j)(1), (2), etc.).

DOE's responses to comments on the resource report requirements as well as additional changes to the resource report requirements are discussed as follows. The ordering of the discussion follows the ordering of the resource reports in the NOPR.

i. General Project Description Resource Report

DOE's Proposal

In the NOPR, DOE proposed to require the submission of a resource report containing a general project description. The NOPR proposed that this report describe facilities associated with the project, special construction and operation procedures, construction timetables, future plans for related construction, compliance with regulations and codes, and permits that must be obtained.

In the NOPR, DOE proposed 12 topics that would be required as part of the report. The NOPR required that the project proponent: describe and provide location maps of all relevant facilities, access roads, and infrastructure; describe specific generation resources that are known or reasonably foreseen to be developed or interconnected; identify other companies that may construct facilities related to the project and where those facilities would be located; provide certain information regarding the facilities identified; provide certain information if the project is considering abandonment of certain resources; describe proposed construction and restoration methods; describe estimated workforce requirements; describe reasonably foreseeable plans for future expansion of facilities; describe all authorizations required and identify environmental mitigation requirements; provide the names and mailing addresses of all affected landowners; summarize any relevant potential avoidance, minimization, and conservation measures; and describe how the project will reduce capacity constraints and congestion on the transmission system, meet unmet demand, or connect generation resources to load, as appropriate.

Summary of Public Comments

DOE received one comment addressing the General Project Description resource report that is not already addressed in other sections of the discussion. ClearPath opposed the requirement that project proponents ''describe how the project will reduce capacity constraints and congestion on the transmission system, meet unmet demand, or connect generation resources (including the expected type of generation, if known) to load, as appropriate,'' arguing that this information is outside the scope of Federal jurisdiction under FPA 216(h).

That comment and others addressing reasonable and foreseeable generation are discussed in section VI.D of this document.

DOE Response and Summary of Other Changes

In this final rule, DOE retains the scope and purpose of this resource report with no revisions in response to ClearPath's comment because information may be helpful for understanding the project proponent's purpose and need and the potential scope of the environmental review, consistent with DOE's coordinating obligations under FPA section 216(h).

Additionally, DOE is eliminating a requirement from the NOPR for this report to include correspondence with the USFWS and National Marine Fisheries Service regarding potential impacts of the proposed facility on federally listed threatened and endangered species and their designated critical habitats because that correspondence is already required in Resource Report 3: Fish, Wildlife, and Vegetation, thereby reducing duplication of requirements.

ii. Water Use and Quality Resource Report

DOE's Proposal

In the NOPR, DOE proposed requiring project proponents to submit a report on existing water resources that may be impacted by the proposed project, the impacts of the proposed project on those resources, and proposed mitigation, enhancement, or protective measures to address those impacts.

Summary of Changes

DOE did not receive any comments on the Water Use and Quality Report that have not been addressed in another section of this final rule. However, DOE has made several changes to the requirements for the resource report between the NOPR and this final rule.

In keeping with the discussion in section VI.K.ii of this document, DOE is replacing two distances included in the proposed rule with ''in the applicable analysis area'' to give DOE, the project proponent, and appropriate Federal and non-Federal entities flexibility to set these distances based on the physical characteristics and needs of the project. A project proponent must now identify the location of known public and private groundwater supply wells or springs within the applicable analysis area rather than within ''150 feet of proposed construction areas.'' A project proponent must now identify any downstream potable water intake sources within the applicable analysis area, rather than ''three miles downstream'' of a surface water crossing.

DOE is making several terminology changes to clarify the scope of the analyses required by the report. The report now requires the project proponent to identify surface water resources crossed by a ''potential route'' rather than ''the project.'' The report also requires wetland maps showing ''study corridors and potential routes'' rather than just a ''proposed route.'' Finally, the report requires identification of aquifers and wellhead protection area crossed by a ''potential route,'' rather than ''proposed facilities.''

Lastly, DOE is relocating a requirement to indicate whether a water quality certification under section 401 of the CWA will be required for any potential routes. This requirement was proposed for the General Project Description resource report but has been moved into the requirements for this report because it deals directly with water resources.

iii. Fish, Wildlife, and Vegetation Resource Report

DOE's Proposal

In the NOPR, DOE proposed to require the submission of a resource report on fish, wildlife, and vegetation. As proposed, DOE required this report to include a description of aquatic life, wildlife, and vegetation in the proposed project area; expected impacts on these resources including potential effects on biodiversity; and proposed mitigation, enhancement, avoidance, or protection measures. DOE also proposed that this resource report may require species surveys to determine significant habitats or communities of species of special concern to Federal, Tribe, State or local agencies, or field surveys to determine the presence of suitable habitat. Finally, DOE proposed requiring the project proponent to provide a description of the proposed measures to avoid and minimize incidental take of Federally protected species, including eagles and migratory birds as part of this resource report.

Summary of Public Comments

DOE received two comments on the Fish, Wildlife, and Vegetation resource report, from AZGFD and the CARE Coalition.

AZGFD encouraged DOE to include State wildlife sensitive species, especially those classified as of Greatest Conservation Need in individual State Wildlife Action Plans. AZGFD also recommended that potential impacts from habitat loss and fragmentation, including potential impacts on wildlife connectivity, identified habitat linkages or wildlife corridors, be analyzed in the report, considering that transmission infrastructure affects wildlife movements and habitat use. It suggested that DOE provide guidance in the rule regarding coordination with State wildlife agencies on conservation measures necessary for adequate wildlife connectivity.

The CARE Coalition suggested that the report should describe known migratory corridors for large mammals within three kilometers of the proposed line. The CARE Coalition also suggested that project proponents should consult with USFWS to determine a distance at which the project proponent should identify Federally listed or proposed endangered or threatened species and critical habitats in the report.

DOE Response and Summary of Other Changes

DOE makes minor revisions in response to these comments. In response to AZGFD's request to include classifications like ''Greatest Conservation Need,'' DOE revises this final rule to request relevant information on ''State, Tribal, and local species of concern and those species' habitats'' because DOE believes this broader terminology addresses the concern raised by the commenter and additionally extends to consider species, habitats, or communities of species of concern to Federal, Tribal, State, or local agencies. DOE also agrees that habitat fragmentation impacts are relevant to the resource report and revises this final rule to include information on the potential effects of the proposed project on habitats, including effects related to habitat loss and fragmentation. Regarding AZGFD's request for guidance on coordination with State wildlife agencies, DOE makes no changes to this final rule as such coordination will depend on project specific circumstances, for example if a wildlife agency in the State participates as a relevant non-Federal entity in the IIP Process.

In response to CARE Coalition's request to include mammalian migratory corridors, DOE makes no revisions to this final rule. DOE believes the detail requested in the resource report is sufficient to provide such information if it is relevant to the project.

DOE is also making changes to the proposed rule text that are not in response to a specific comment. DOE is making several changes to clarify the scope of the analyses required in the report. The rule now requires the project proponent to identify aquatic habitats in the ''applicable analysis area'' rather than in the ''affected area'' and cabins the requirement to identify terrestrial habitats to only those terrestrial habitats in the project area. The rule also requires information on essential fish habitat which may be adversely affected by ''potential routes,'' rather than ''the project.''

In keeping with the discussion in section VI.K.ii of this document, DOE is replacing four distances and areas included in the proposed rule with ''in the applicable analysis area'' to give DOE, the project proponent, and appropriate Federal and non-Federal entities flexibility to set these distances based on the physical characteristics and needs of the project. DOE is now requiring a project proponent to identify aquatic habitats that occur in the ''applicable analysis area'' rather than in the ''affected area.'' Additionally, DOE is requiring the project proponent to identify proposed or designated critical habitats that potentially occur in the ''applicable analysis area'' rather than the ''project area.'' DOE is also now requiring a project proponent to identify the location of potential bald and golden eagle nesting and roosting sites, migratory bird flyways, and any sites important to migratory bird breeding, feeding, and sheltering within the ''applicable analysis areas,'' rather than within ''10 miles of the proposed project area.'' While 10 miles is currently the USFWS standard, DOE opts to leave establishment of these boundaries flexible for future project needs as well as any future updates to USFWS requirements. Likewise, DOE is requiring the project proponent to identify all Federally designated essential fish habitat that occurs in the ''applicable analysis area'' whereas in the proposed text, the scope of that identification was undefined.

Lastly, the rule clarifies the role of surveys in the resource report. The rule provides that the project proponent must include the results of any appropriate surveys that have already been conducted and provide protocols for future surveys. The rule maintains the provision that if potentially suitable habitat is present, species-specific surveys may be required.

iv. Cultural Resources Resource Report

DOE's Proposal

In the NOPR, DOE proposed to require the submission of a resource report on cultural resources, which would contribute to the satisfaction of DOE's and other relevant Federal entities' obligations under section 106 of the NHPA. The NOPR required the resource report to describe known cultural and historic resources in the affected environment, including those listed or eligible for listing on the National Register of Historic Places (NRHP), potential adverse effects to those resources, and recommended avoidance and minimization measures to address those potential effects. It also required the resource report to document the project proponent's initial communications and engagement with and comments from Indian Tribes, indigenous peoples, THPOs, SHPOs, communities of interest, and other relevant entities, and provide details

regarding surveys. Finally, the NOPR required that the project proponent request confidential treatment for all materials filed with DOE containing location, character, and ownership information about cultural resources.

Summary of Public Comments

DOE received one comment on the Cultural Resources Resource Report from NM SHPO that is not otherwise addressed in section VI.J of this document.

NM SHPO appreciated DOE's requirement for project proponents to consider treatments to avoid, minimize, or mitigate harmful impacts to the landscape, but encouraged DOE to also require project proponents to consider these treatments for individual historic properties eligible for or listed in the NRHP. This inclusion would require that resource reports begin with historic contexts for landscape-level evaluations and that other Federal agencies examine landscape-level eligibility and effects during the review of resource reports. The NM SHPO noted that in New Mexico, consultants are required to meet State documentation guidelines before accessing cultural resource records to produce a cultural resources report, and subsequently questioned whether DOE's regulation will acknowledge or supersede State statutes, regulations, or guidelines.

DOE Response and Summary of Other Changes

DOE makes no revisions in response to NM SHPO's comment. DOE clarifies that while the CITAP Program is intended to facilitate coordination with relevant State statutes, regulations, and guidelines, the rule does not supersede State statutes, regulations, or guidelines. Regarding the NM SHPO's request that the rule should consider treatments to mitigate harmful impacts on certain individual properties, DOE notes that the rule does not preclude this sort of action, but makes no revisions to mandate a particular approach to mitigation because DOE believes these approaches are more appropriate to discuss in the context of project-specific circumstances. The updated definition of mitigation approach in this final rule is intended to create an opportunity for consideration and discussion of multiple types of mitigation strategies for a proposed project. DOE also notes that no decisions are made on mitigation during the IIP Process; rather, the IIP Process facilitates the development of a shared understanding of project needs and expectations.

DOE is also making several changes to the proposed rule text that are not in response to a specific comment. In keeping with the discussion in section VI.K.ii of this document, DOE is now requiring a summary of known cultural and historic resources in the ''applicable analysis area'' rather than in the ''affected environment.''

Furthermore, in the requirement to provide a summary of known cultural and historic resources, DOE is adding as an example of those resources, properties of religious and cultural significance to Indian Tribes, and any material remains of past human life or activities that are of an archeological interest. This change was made to broaden and clarify the definition of cultural resources included in the rule.

v. Socioeconomics Resource Report

DOE's Proposal

In the NOPR, DOE proposed to require the submission of a resource report on socioeconomics. DOE proposed to require in this resource report the identification and quantification of the impacts of constructing and operating the proposed project on the demographics and economics of communities in the project area, including minority and underrepresented communities.

Summary of Public Comments

DOE received one comment addressing the required elements of the Socioeconomics resource report. ClearPath recommended that DOE exclude the requirement for project proponents to ''evaluate the impact of any substantial migration of people into the proposed project area on governmental facilities and services and describe plans to reduce the impact on the local infrastructure'' because it is ambiguous and beyond DOE's statutory authority. Furthermore, ClearPath noted the project proponent is not responsible for minimizing the impact on local infrastructure from the significant migration of people.

DOE Response

DOE makes no revisions in response to this comment because DOE finds this information is commonly requested for evaluating the impacts of infrastructure permitting.[12]

DOE is making several changes to the proposed rule text that are not in response to a specific comment. In keeping with the discussion in section VI.K.ii of this document, DOE is replacing multiple areas of study included in the proposed rule with ''in the applicable analysis area'' to give DOE, the project proponent, and appropriate Federal and non-Federal entities flexibility to set these distances based on the physical characteristics and needs of the project. The rule now requires the project proponent to describe the socioeconomic resources that may be affected in the ''applicable analysis area'' rather than in the ''project area.'' Likewise, the rule requires the project proponent to evaluate the impact of any substantial migration of people into the ''applicable analysis area'' rather than the ''proposed project area.'' Finally, the rule replaces ''impact area'' with ''applicable analysis area'' in several instances because ''impact area'' is not defined in the rule.

vi. Geological Resources and Hazards Resource Report

DOE's Proposal

The NOPR proposed requiring project proponents to submit a resource report on geological resources that might be affected by the proposed project and geological hazards that might put the proposed project at risk. As written, the NOPR required the resource report to include a description of methods to reduce the effects on geological resources and reduce the risks posed by the hazards.

Summary of Changes

DOE did not receive any comments on the Geological Resources resource report that have not been addressed in another section of this final rule. However, DOE has made minor changes to the requirements and description for the resource report between the NOPR and this final rule.

The title of this resource report has been updated to ''Geological Resources and Hazards'' to better reflect the scope of the report. Additionally, in keeping with the discussion in section VI.K.ii of this document, DOE is clarifying that the project proponent only needs to describe geological resources and hazards ''in the applicable analysis area.'' The proposed rule did not provide a definite boundary for these identifications.

vii. Soil Resources Resource Report

DOE's Proposal

The NOPR proposed requiring project proponents to submit a resource report on soil resources that might be affected by the proposed project, the effect on those soils, and measures proposed to avoid, minimize, or mitigate impact.

Summary of Changes

DOE did not receive any comments on the Soil Resources resource report that have not been addressed in another

[12] See, for example, 10 CFR 380.16(g).

section of this final rule. However, DOE has made one substantive change to the requirements for the resource report between the NOPR and this final rule.

The NOPR proposed that a project proponent would need to list and describe soil series for any ''site larger than five acres.'' However, because almost all projects in the CITAP Program would cover more than five acres, this distinction would not set an effective boundary on the area of the requirement. Therefore, this final rule requires identification and description of soil series within ''the applicable analysis area'' to allow DOE, the project proponent, and relevant Federal and non-Federal entities to determine the scope of the analysis needed.

viii. Land Use, Recreation, and Aesthetics Resource Report

DOE's Proposal

DOE proposed to require the submission of a resource report on land use, recreation, and aesthetics. DOE also proposed to require in this resource report a description of the existing uses of land on, and within various distances, the proposed project and changes to those land uses and impacts to inhabitants and users that would occur if the project were approved. The NOPR also required the report to describe proposed mitigation measures, including protection and enhancement of existing land use.

DOE sought comment on whether further revisions were needed to proposed § 900.6(m)(8), which proposed that the project proponent identify, by milepost and length of crossing, the area of direct effect of each proposed facility and operational site on lands owned or controlled by Federal or State agencies with special designations not otherwise mentioned in other resource reports, as well as lands controlled by private preservation groups (examples include sugar maple stands, orchards and nurseries, landfills, hazardous waste sites, nature preserves, game management areas, remnant prairie, old-growth forest, national or State forests, parks, designated natural, recreational or scenic areas, registered natural landmarks, or areas managed by Federal entities under existing land use plans as Visual Resource Management Class I or Class II areas), and identify if any of those areas are located within 0.25 mile of any proposed facility.

Summary of Public Comments

DOE received several comments on required elements of the Land Use, Recreation, and Aesthetics Resource Report. LTA expressed support for the inclusion of this resource report and commented specifically in support of retaining multiple provisions of this report.

DOE received responses on whether revisions were needed to paragraph (m)(8) from LTA and CEC/CPUC. The CEC/CPUC advised DOE to divide § 900.6(m)(8) into two sections: one about conservation lands and another about lands with protective covenants due to distinct management practices. LTA recommended adding ''conservation or agricultural lands subject to state statutorily enabled conservation or agricultural easements or restrictions'' to the list of examples. CEC/CPUC recommended DOE include lands conserved and held by local focus on land use restrictions, and include more specific provisions that agricultural conservation lands described should only include those with formal designations.

LTA recommended requiring the project proponent to describe ''an area a Community of Interest has identified as having one or more resources likely to be impacted by a proposed project'' in addition to the specifically listed areas under the list of Federal designations in paragraph (10). LTA also recommended adding to the specifically listed areas ''National Forests and Grasslands'' and ''lands in easement programs managed by the Natural Resource Conservation Service or the U.S. Forest Service'' to this paragraph.

LTA recommended DOE revise its request for a detailed operations and maintenance plan for vegetation management to include, ''that utilizes native species to the maximum extent practical.''

ACP stated that the requirement that proponents identify all residences and buildings within 200 feet of the edge of the proposed transmission line construction right-of-way was ''excessively onerous'' and impractical. ACP suggested that the transmission right-of-way is a more appropriate boundary than the construction right-of-way.

AZGFD recommended that this resource report identify potential impacts to access for State wildlife agencies to carry out their responsibilities, outdoor recreation, and recreational access. AZGFD urged DOE to coordinate with State wildlife agencies to ensure actions do not prevent State agencies from conducting their responsibilities.

DOE Response and Summary of Other Changes

DOE retains the scope and purpose of the Land Use, Recreation, and Aesthetics Resource Report with minor revisions in response to these comments.

In response to the comments on revisions to paragraph (8), which includes a list of example specially designated areas, DOE has made overall changes to the structure and language of the paragraph to improve the clarity and readability of the requested information, to reduce emphasis on the specific types of land ownership or use, and to clarify that the resource report provides details regarding lands with explicit status through Federal, state, or local formal designation, as well as lands owned or controlled by Federal, State or local agencies or private preservation groups. DOE has also added that the proposed list is not exhaustive of the types of lands that should be identified in this section, but rather identifies examples of the types of lands that may meet the criteria now more clearly listed. DOE disagrees with CEC/CPUC that this resource report should only include lands with a formal agricultural conservation designations because the intent of this provision and its list of examples is to capture lands with special status not typically contemplated by Federal or State law but agrees with LTA that ''conservation or agricultural lands subject to State statutorily enabled conservation or agricultural easements or restrictions'' is a helpful additional example and includes this in this final rule.

In response to comments on the list of Federal statutory designations in paragraph (10), DOE makes minor revisions to include forests and grasslands. DOE agrees that specifically listed areas should include Forest and Grasslands and lands in easement programs managed by the Natural Resource Conservation Service or the U.S. Forest Service and includes those in this final rule. DOE does not include areas identified by communities of interest because the intent of this resource report requirement is to identify areas that fall under specific Federal statutes and regulations to assist DOE in implementing its environmental review and coordination authority. In response to LTA's request that the vegetation management provision include a prioritization of the use of native species, DOE makes no revisions in this final rule because DOE believes specific prescriptions for project management practices should be addressed on a project-specific basis.

In response to ACP's comment on the appropriate area for building identification DOE revises the proposed distance-based requirement but maintains construction right-of-way

because the effects of construction on buildings is information that DOE believes is necessary to inform DOE's environmental review.

In response to AZGFD's request that this final rule consider impacts to State wildlife agencies, DOE makes no revisions because the agency believes that the text is sufficiently clear on the need for project proponents to provide such information in the resource report. Further, DOE believes that the coordination with non-Federal entities in the IIP Process sufficiently addresses the concern of coordination with State wildlife agencies and makes no further revisions.

DOE is also making several changes to the proposed rule text that are not in response to a specific comment. DOE significantly reorganizes portions of the resource report requirements for clarity but does not make any substantive changes through the reorganization.

In keeping with the discussion in section VI.K.ii of this document, DOE is replacing multiple distances included in the proposed rule with ''in the applicable analysis area'' to give DOE, the project proponent, and appropriate Federal and non-Federal entities flexibility to set these distances based on the physical characteristics and needs of the project. A project proponent must now identify certain planned development within ''the applicable analysis area'' rather than within ''0.25 mile of proposed facilities.'' Likewise, the requirement for a project proponent to identify directly affected areas that are owned or controlled by a governmental entity or private preservation group within ''0.25 miles of any proposed facility'' has been changed to within ''applicable analysis areas.'' The final rule also requires the project proponent to identify resources within ''the applicable analysis area'' that are included in or designated for study for inclusion in certain Federal land and water management statutes. The proposed rule asked for the project proponent to identify the same types of resources ''crossed by or within 0.25 mile of the proposed transmission project facilities.''

ix. Communities of Interest Resource Report

DOE's Proposal

DOE proposed to require the submission of a resource report on communities of interest. DOE proposed to require in this resource report a summary of known information about the presence of communities of interest that could be affected by the qualifying project; identification and description of the potential impacts of constructing, operating, and maintaining the project on communities of interest; a description of any proposed measures intended to avoid, minimize, or mitigate such impacts or community concerns; and a discussion of any disproportionate and/or adverse human health or environmental impacts to communities of interest.

Summary of Public Comments

DOE received three comments on the Communities of Interest Resource Report that are not already addressed in the discussion regarding the definition of communities of interest in section VI.K.iii of this document.

LTA expressed support for retaining this resource report. ClearPath opposed the addition of this resource report because ''by proposing separate requirements for Communities of Interest in Project Participation plans and outreach plans, the DOE is conceding that stakeholder engagement requirements are deficient.'' ClearPath claims that the proposal represents duplicative requirements and paperwork for project proponents and establishes a hierarchy of treatment and consideration of project impacts across population segments that could have concerns regarding equal treatment and discrimination.

Regarding the requirement that the project proponent ''[s]ummarize known information about the presence of communities of interest that could be affected by the qualifying project,'' EDF noted that the phrase ''known information'' may present a loophole, and instead the project proponent should be required to investigate, observe, and understand the concerns of communities of interest. EDF also indicated that regulations should specify that there is a responsibility to avoid, minimize, or mitigate any health or environmental impacts identified.

DOE Response

DOE retains the Communities of Interest resource report with minor revisions in response to these comments. DOE does not agree that this resource report is duplicative with the public engagement plan and clarifies that this resource report is aimed at identifying negative impacts to communities of interest and mitigation measures while the public participation plan is aimed at ensuring sufficient engagement. ClearPath's concerns about the disparate treatment in the public engagement plan are discussed in further detail in section VI.E of this document.

DOE agrees with EDF that ''known'' is not consistent with the intent of the information request and revises this final rule to require ''best available information on'' rather than EDF's proposed cure because this is consistent with the standard of information gathering for environmental reviews.

x. Air Quality and Noise Effects Resource Report

DOE's Proposal

DOE proposed to require the submission of a resource report on air quality and noise effects. DOE proposed to require in this resource report the identification of the effects of the project on the existing air quality and noise environment and describe proposed measures to mitigate the effects.

Summary of Public Comments

DOE received three comments in response to the Air Quality and Noise Effects resource report proposal.

Policy Integrity stated that the NOPR is unclear regarding local air pollutants and non-power-sector emissions and advised DOE to require project proponents to comprehensively estimate the associated changes to GHG emissions and local air pollution from their transmission project and alternatives, such as indirect upstream GHG emissions from methane leakage. Additionally, the commenter suggested that the need to estimate and describe impacts from changes to criteria pollutants should not depend on whether they remain below the Clean Air Act's National Ambient Air Quality Standards (NAAQS), stating that the EPA has recognized that there is no safe level of exposure. In contrast, ClearPath strongly opposed Air Quality and Noise Effects resource report's proposed requirement that project proponents estimate direct, indirect, and ''reasonably foreseeable'' generation resource-related project emissions. ClearPath described the proposed requirements as vague and as lacking a robust process for proponents to follow, such that proponents are unlikely to understand and comply.

AZGFD recommended that DOE require the identification of air and noise related potential impacts on all wildlife resources, in addition to the Federally-listed species or sensitive wildlife habitats currently identified.

DOE Response and Summary of Other Changes

DOE retains the Air Quality and Noise Effects resource report in full in this final rule with no changes in response to these comments.

Regarding local air pollutants and emissions, DOE makes no changes in response to the comment. DOE believes the rule makes clear that it requires information regarding non-GHG emissions and non-power-sector emissions. In this resource report, project proponents must identify reasonably foreseeable emissions caused by the project, regardless of whether those emissions occur in NAAQS non-attainment areas. DOE believes that requirement provides adequate guidance to project proponents.

Regarding the impacts on wildlife resources, DOE believes the impacts to wildlife are sufficiently addressed in the Fish, Wildlife, and Vegetation resources report and makes no revisions to this report.

DOE is making several changes to the proposed rule text that are not in response to a specific comment. DOE significantly reorganizes portions of the resource report requirements for clarity but does not make any substantive changes through the reorganization.

In keeping with the discussion in section VI.K.ii of this document, DOE is replacing multiple areas of study included in the proposed rule with ''in the applicable analysis area'' to give DOE, the project proponent, and appropriate Federal and non-Federal entities flexibility to set these distances based on the physical characteristics and needs of the project. A project proponent is now required to describe existing air quality in ''the applicable analysis area'' rather than in the ''project area.'' Likewise, a project proponent is required to identify air quality impacts on communities and the environment in the ''applicable analysis area,'' rather than the ''project area.'' Finally, the proposed rule clarifies that a project proponent is required to describe existing noise levels at noise-sensitive areas in the ''applicable analysis area,'' instead of leaving the study area undefined.

xi. Alternatives Resource Report

DOE's Proposal

DOE proposed to require the submission of a resource report on alternatives. DOE proposed to require this resource report to include a description of alternatives identified by the project proponent during its initial analysis, which may inform the relevant Federal entities' subsequent analysis of alternatives, address alternative routes and alternative design methods, and compare the potential environmental impacts and potential impacts to cultural and historic resources of such alternatives to those of the proposed project. DOE also proposed that the project proponent include all of the alternatives identified by the project proponent, including those the proponent chose not to examine or not examine in greater detail, and an explanation for the project proponent's choices regarding the identification and examination of alternatives. The NOPR proposed to require that project proponents demonstrate whether and how environmental benefits and costs were weighed against economic benefits and costs to the public, and technological and procedural constraints in developing the alternatives, as well as explain the costs to construct, operate, and maintain each alternative, the potential for each alternative to meet project deadlines, and the potential environmental impacts of each alternative.

Summary of Public Comments

DOE received three comments addressing the Alternatives Resource Report that are not already addressed in other sections.

Niskanen Center noted that the alternatives report would benefit from clarifying language and revisions to avoid ambiguity regarding the definition of alternatives and the extent to which they should be included in the resource report and provided recommendations. Niskanen Center also requested clarifying language if the Alternatives resource report is the only report that is required to include an alternatives analysis, and that if not, DOE should clearly state its request for such analysis in each report.

ACP expressed concerns regarding the NOPR not reflecting the intersections between state, Tribal, and Federal siting authorities, specifically noting the overlapping timetables that can be difficult to predict. ACP provided as an example that if State siting precedes Federal siting, only a single route might be approved which would materially limit the required NEPA alternative and potentially increase overall legal risk if opponents claim that the failure to adequately consider proposed alternatives violates NEPA or the Administrative Procedure Act. ACP recommended that DOE explicitly address these limited alternatives that may be established through a State siting process, as well as ensure that Federal reviews account for the potential scope of State siting determinations and not require consideration of alternatives that are impossible or implausible.

The CARE Coalition urged DOE to specifically require the consideration of alternative transmission technologies (ATTs), such as dynamic line ratings, power flow controllers, advanced conductors, and battery storage, in the report. The commenter explained that failure to consider ATTs excludes a potentially low-cost alternative that may prevent or reduce environmental harm.

DOE Response

DOE maintains the Alternatives resource report but makes substantial revisions in response to these comments to reduce ambiguity on the scope and purpose.

In response to Niskanen Center's comment, DOE confirms that this resource report is the only resource report that requires an alternatives analysis. Other resource reports are intended to address the potential study corridors or routes along which the project proponent is considering siting the electric transmission facility. Those resource reports do not need to address alternative study corridors or alternative routes that the project proponent has eliminated from consideration.

The Alternatives resource report is intended to provide an overview of the study corridors and routes that were initially considered for the proposed project, but that ultimately were not chosen for further study by the project proponent. In keeping with this intent, in this final rule, DOE is requiring a project proponent to identify all study corridors that were considered as part of the proposed project, as well as all routes contained within those study corridors. Within that broad group of study corridors and routes, DOE requires the project proponent to identify those alternative study corridors and routes that the project proponent eliminated from further study under an initial screening, and the reasons why those corridors and routes were eliminated.

For the remaining alternative study corridors and routes, DOE requires analyses of certain impacts of siting the electric facility in the corridor or along the route. Likewise, DOE requires a discussion of the costs, timelines, and technological and procedural constraints of siting the electric facility in the corridor or along the route. Finally, DOE requires the project proponent to demonstrate whether and how environmental benefits and costs were weighed against economic benefits and costs to the public for the route or corridor.

In response to ACP's concern about overlapping timetables and limitations to alternatives, DOE makes no additional revisions because, as clarified above, the Alternatives resource report addresses the project proponent's

approach to Alternatives which may inform, but does not supplant, DOE's consideration of appropriate alternatives for its environmental review.

In response to CARE Coalition's request that DOE include ATTs, DOE declines to specify the consideration of specific evolving technologies in its regulatory test.

xii. Reliability, Resilience, and Safety Resource Report

DOE's Proposal

DOE proposed to require the submission of a resource report on potential hazards to the public from failures of the proposed electric transmission facility due to accidents, intentional destructive acts, and natural catastrophes. DOE also proposed requiring the report to describe how these events would affect reliability, benefits to reliability from the project, and what procedures and design features could be used to reduce risks to the facility and the public.

Summary of Changes

DOE did not receive any comments on the Reliability, Resilience, and Safety resource report that have not been addressed in another section of this final rule. However, in this final rule DOE significantly reorganizes portions of the proposed resource report requirements for clarity but does not make any substantive changes through the reorganization.

xiii. Tribal Interests Resource Report

DOE's Proposal

DOE proposed to require the submission of a resource report on Tribal interests. DOE proposed to require in this resource report the identification of the Indian Tribes, indigenous communities, and their respective interests that may be affected by the proposed transmission facilities, including those Indian Tribes and indigenous communities that may attach religious and cultural significance to historic properties within the right-of-way or in the project area as well as any underlying Federal land management agencies. DOE also proposed to require in this resource report a discussion of potential impacts on Indian Tribes and Tribal interests and of traditional cultural and religious resources that could be affected by the proposed project, to the extent Indian Tribes are willing to share this information. Additionally, DOE proposed that certain specific site or location information that may create a risk of harm, theft, or destruction, or otherwise violate Federal law should be submitted separately, and that the project proponent must request confidential treatment for all material filed with DOE containing location, character, and ownership information about Tribal resources.

Summary of Public Comments

DOE received four comments regarding the Tribal Interests Resource Report that are not already addressed in previous discussions. Most comments are addressed in section VI.J of this document in response to the approach to compliance with section 106 of the NHPA.

LTA expressed support for this resource report and urged DOE to collaborate with Indian Tribes to ensure that the language used in the report adequately protects their interests. The Santa Rosa Rancheria Tachi Yokut Tribe and NATHPO expressed concern with a comment by DOE staff, which the commenters believe indicated, contrary to the proposed rule text, that the Tribal Interests resource report would not contain cultural resources, examples of Tribal resources provided in the proposed rule (*e.g.,* water rights, access to property, wildlife and ecological resources) are Tribal cultural resources. The commenters stated that this comment reflects a fundamental lack of understanding about what is a Tribal cultural resource. Relatedly, the NM SHPO noted that resources identified in other resource reports, such as the Water Use and Quality resource report and the Fish, Wildlife, and Vegetation resource report, may also be of traditional and cultural significance and eligible for the NRHP.

DOE Response

In this final rule DOE retains the Tribal Interests resource report with minor revisions for clarity in response to comments. First, DOE did not intend to indicate that the Tribal Interests resource report would not contain cultural resources. Second, DOE sought comment from Indian Tribes and will coordinate with Indian Tribes in accordance with the Federal Government's nation-to-nation responsibilities, pursuant to DOE's authority under FPA 216(h).

In response to the concern raised by Santa Rosa Rancheria Tachi Yokut Tribe and NATHPO that the resource report requirements reflect a misunderstanding about tribal cultural resources, DOE revises the report for clarity. DOE acknowledges that the Tribal Interests and Cultural Resources resource reports may contain some resources that overlap in part but clarifies that they are intended to support different purposes and request different details. DOE expects that certain cultural resources may be described in both resource reports and revises the Cultural Resources resource report to clarify that cultural and historic resources include, among other things, properties of religious and cultural significance to Indian Tribes.

M. Administrative Docket

DOE's Proposal

To better coordinate Federal authorizations, DOE proposed to maintain a consolidated administrative docket containing meeting requests, meeting summaries, resource reports, other information assembled during the IIP Process, and all information assembled by relevant Federal entities for authorizations and reviews after completion of the IIP Process.

Summary of Public Comments

Commenters, such as EEI, PJM, and the CARE Coalition, expressed support for a consolidated administrative docket. PJM believes that a consolidated administrative docket will ensure all Federal entities are working from a single, complete record for reviews and decisions. One commenter, Niskanen Center, proposed that the administrative docket be public, while the CARE Coalition proposed the rule provide more details to clarify access to the administrative docket to ensure stakeholder participation. Another commenter, StopPATH WV, proposed DOE make the administrative docket information available to landowners that may be impacted by the proposed project.

DOE Response

DOE maintains the features and purpose of the administrative docket in this final rule with minor revisions. DOE agrees that the public should have access to the administrative docket for the proposed project and revises this final rule to provide that ''Upon request, any member of the public may be provided materials included in the docket, excluding any materials protected as CEII or as confidential under other processes (*e.g.,* confidential business information and information developed during consultation with Tribes).''

N. Interaction With FPA 216(a) and FPA 216(b)

Summary of Public Comments

Seven commenters provided comments on the interaction of the proposed rule with DOE's process for designating NIETCs, per FPA section

216(a), and FERC's pending regulations regarding its siting authority in NIETCs, per FPA section 216(b), referred to by some commenters as ''backstop siting.''

PIOs praised DOE's proposed rule for its alignment with FERC's proposed backstop permitting rule. PIOs anticipated that this coordination would support a consistent, predictable, and rigorous Federal review and permitting process and offer certainty to project proponents, as they seek necessary authorizations. Additionally, PIOs anticipated that alignment would ensure project proponents could easily engage in both processes if necessary, citing potential scenarios in which a project seeking a FERC permit needs multiple Federal authorizations and could benefit from the IIP Process or a project undergoing the IIP Process decides it needs a FERC permit. PIOs argued that in these cases, alignment across processes would allow project proponents to effectively engage in both processes, while reducing duplication. PIOs identified several similarities between proposed requirements under DOE's CITAP Program and FERC's proposed rule. PIOs stated that DOE's proposed IIP Process plays a similar role to FERC's pre-filing process. Additionally, PIOs noted that DOE's resource reports are similar to those required under FERC's rule and recommended that DOE align the numbering of resource reports with the numbering in FERC's proposed rule.

Several commenters supported alignment of the CITAP Program's requirements with FPA sections 216(a) and 216(b) regulations. ACEG, CEBA and the CARE Coalition urged DOE to align the CITAP Program with NIETC designation and FERC's backstop siting authority. CEBA suggested this would avoid duplication and ensure processes are clear and remain streamlined across relevant Federal agencies. ACEG stated it would ensure effective and efficient implementation; the CARE Coalition argued that this coordination would provide certainty and transparency for stakeholders, predictability for project proponents, and a reduction in associated project permitting costs. LADWP recommended that DOE align the information required by the resource reports during the IIP Process with the information required by the resource reports under FERC's proposed backstop permitting rule. LADWP suggested that alignment of this information would result in a more efficient permitting process. Similarly, ACORE recommended that DOE provide a mechanism for any information submitted under the NIETC program to be incorporated into the IIP Process.

ACP commented that since proposed electric transmission projects seeking Federal ''backstop'' siting authority under section 216(b) of the FPA would not be eligible for the CITAP Program, DOE should ensure, in conjunction with FERC, that any subsequent NEPA rulemakings will allow for each agency to use an EIS prepared by the other agency as this would help to minimize the potential for duplicative reviews. Similarly, EDF recommended that in the event a transmission facility requires a construction or modification permit from FERC pursuant to section 216(b) of the FPA, DOE should conduct a single coordinated environmental review with FERC. EDF explained that the benefits of such a coordinated review have already been recognized by DOE in its ''Building a Better Grid Initiative to Upgrade and Expand the Nation's Electric Transmission Grid To Support Resilience, Reliability, and Decarbonization'' NOI, wherein DOE states that ''DOE and FERC intend to work together, as appropriate, to establish coordinated procedures that facilitate efficient information gathering related to the scope of activities under review pursuant to these authorities.'' EDF believes that by coordinating, to the greatest extent practicable, pre-filing and application processes, DOE and FERC can work with project proponents to identify and resolve issues as quickly as possible, share information in a timely fashion, and expedite reviews conducted pursuant to these authorities, NEPA, and other requirements. ACEG added that to avoid fragmentation in the review process, and to comply with section 216(h) of the FPA, DOE must prepare a single document for the project's NEPA review, which will serve as the basis for decision-making under both NIETC and CITAP.

Two comments requested more information. ACEG and CEBA requested clarification on how a project proponent can initiate the CITAP Program while seeking project-specific NIETC designation and how a CITAP Program project can apply for backstop siting. ACEG explained that a project in a NIETC could need to transition to backstop siting years into the CITAP Program review process, and CEC/CPUC similarly requested clarification on what will happen to a CITAP Program application once a project becomes eligible for backstop siting. CEBA offered its interpretation of the NOPR, understanding that projects could participate in the section 216(h) process if the project has not triggered or received section 216(b) FERC backstop authority. ACEG explained that project proponents are likely to seek NIETC designation to unlock funding opportunities available to projects in designated corridors. ACEG encouraged DOE to streamline the processes by allowing project proponents to submit a single application to initiate both processes.

Conrad Ko suggested the routes of any applicant for a transmission line construction permit to be automatically designated as a NIETC and for the entire United States should be designated a NIETC.

DOE Response

DOE makes no revisions to the rule in response to these comments, except to renumber the resource reports to align with the numbering in FERC's proposed rule. DOE intends to coordinate interagency efforts to the greatest extent possible, pursuant to its authority under FPA section 216(h). The responsibility for coordinating Federal authorization under section 216(h) for projects seeking a permit under FPA section 216(b) has been delegated to FERC, pursuant to Delegation Order No. S1–DEL–FERC–2006. DOE's current approach to the environmental analysis for designation of NIETCs under section 216(a) may be found in the Guidance on Implementing Section 216(a) of the Federal Power Act to Designate National Interest Electric Transmission Corridors issued in December 2023.[13]

DOE does not find that any provisions in this rule would preclude the use of an EIS prepared by another agency, including FERC, should such a circumstance arise. DOE agrees with commenters that projects within a NIETC may qualify for the CITAP Program; however, if a project within a NIETC seeks a permit from FERC under FPA section 216(b), FPA section 216(h) coordination will proceed consistent with Delegation Order No. S1–DEL–FERC–2006. DOE has endeavored to align the environmental review procedures for NIETC designation and the CITAP Program to the greatest extent possible, and additionally align with FERC's proposed procedures for implementing section 216(b), as observed by PIOs, to minimize the chance that such transitions create duplicative work or unnecessary delay. Deviations among the regulations,

[13] ''U.S. Department of Energy Grid Deployment Office Guidance on Implementing Section 216(a) of the Federal Power Act to Designate National Interest Electric Transmission Corridors.'' *National Interest Electric Transmission Corridor Designation Process,* United States Department of Energy, 19 Dec. 2023, *www.energy.gov/sites/default/files/2023-12/2023-12-15GDONIETCFinalGuidance Document.pdf.*

particularly the specific contents of the thirteen resource reports, reflect the differences in authorizations and permits DOE expects to coordinate and provide for in its single environmental review under FPA section 216(h).

This final rule maintains the provision that the Director of the Grid Deployment Office may waive requirements of the CITAP Program, which provides flexibility for transitioning between processes without requiring duplicative work. Nothing in this final rule precludes the reuse or concurrent submission of resource reports or other project materials for a proposed project in a NIETC, whether under consideration for designation or already designated, seeking CITAP Program participation. DOE declines to further specify the coordination between NIETCs and the CITAP Program because it is outside the scope of the rulemaking. DOE has sufficiently established the requirements and restrictions on qualifying project designation and further details on interactions with other DOE programs are implementation issues that will be determined as needed. DOE may provide additional guidance outside of this rule regarding the interactions of various DOE and FERC authorities in section 216 of the FPA.

O. Miscellaneous

i. Presidential Appeal

Summary of Public Comments

DOE received comments regarding the presidential appeals process and review. PIOs commented that the language in the proposed rule was consistent with the FPA but requested clarification on the process to inform project proponents and members of the public. PIOs requested that DOE clarify how the appeal to the President might work, and whether and how a project proponent might appeal the President's decision. AEU explained that the FPA section 216(h) allows for an appeal to the President of the United States which appears to be an extreme step in a process that should be handled through a judicial or administrative hearing. The association emphasized that transmission developers should have the ability to appeal if the approval process is not proceeding according to the schedule set by DOE through no fault of their own and the proposed rule should either describe how an appeal to the President would proceed or lay out a specific appeal process for a project developer. AEU also expressed concerns regarding recourse if the timeframe from NOI through issuance of the EIS is not met. AEP similarly recommended enabling project proponents to petition the court if Federal agencies fail to comply with applicable deadlines.

DOE Response

Section 216(h) of the FPA authorizes the President to hear and consider appeals under that section. The 2023 MOU describes the procedures for Presidential appeals. The Presidential appeals provision of section 216 of the FPA and the procedures described in the MOU, including any process by which such a decision may be appealed, are outside the scope of DOE's authority and thus outside the scope of this rulemaking.

In response to AEP's request that DOE enable project proponents to petition a court if Federal agencies fail to comply with applicable deadlines, DOE notes that it does not, through this rule, have the authority to authorize, or prohibit, project proponents from filing court petitions regarding of Federal agency adherence to applicable deadlines.

ii. Rehearing and Judicial Review

Summary of Public Comments

PIOs urged DOE to explain the implications of section 313 of the FPA, including (1) the FPA's judicial review provision, in which challenges are first brought to the agency, and then litigated in a court of appeals under shorter timelines than most Federal agency decisions, which are subject to review in district courts within six years, and (2) the exhaustion requirements of the FPA, under which courts only recognize claims raised in a rehearing application. PIOs also asked DOE to explain whether the FPA's judicial review provisions require a potential challenger to intervene before DOE, to raise any substantive concerns during the DOE process even if DOE lacks substantive expertise with the challenger's concerns, to seek rehearing within thirty days, and to seek judicial review in a court of appeals within sixty days of a rehearing decision. PIOs also recommended that DOE (1) encourage parties, in both pre- and post-application outreach, to provide comment on transmission applications, (2) provide language for doing so, and (3) grant party status to any party that submits a timely comment.

DOE Response

Section 313 of the FPA contains rehearing and judicial review provisions applicable to orders issued by DOE under the FPA, including any order issued under section 216(h). 16 U.S.C. 825l.[14] Section 313(a) provides that any person aggrieved by an order must first apply for rehearing within 30 days of the issuance of such order. Upon receiving the application, section 313 authorizes DOE to grant or deny rehearing or to abrogate or modify its order without a further hearing. DOE has 30 days to act upon the application for rehearing or the application is deemed to have been denied. Under section 313(b), a party may then proceed to seek judicial review in the courts of appeals, by filing a petition for review in such a court within 60 days of the order on the application for rehearing.

Thus, any party that wishes to ensure the availability of judicial review of any relevant authorization or related environmental review document issued under section 216(h) should raise in rehearing before DOE all challenges to such authorization or document, including those actions undertaken by DOE in its role as the lead agency for purposes of environmental review. Subject to any further process, DOE intends to treat as a party any person or entity that comments on any relevant authorization or related environmental review document. Because these topics relate to procedures outside the scope of this rule and may depend on specific factual circumstances, DOE declines at this time to establish model language regarding rehearing and review. Nevertheless, DOE supports interested parties making comments on transmission applications in the CITAP Program, including pursuant to NEPA and other review processes that afford opportunities for comment and participation. Because of the various avenues for comment and participation and because the CITAP Program does not limit the public comments that can be made through the existing avenues for public input, DOE finds it is unnecessary to provide standardized language for providing comments as suggested by commenters.

iii. Role of States

Summary of Public Comments

DOE received two comments related to the roles of states in siting

[14] Section 313 refers to ''an order issued by the [Federal Power] Commission.'' 16 U.S.C. 825l(a)–(b). In 1977, Congress dissolved the Federal Power Commission and transferred its authorities to DOE and FERC. *See* Department of Energy Organization Act, Public Law 95–91, 91 Stat. 565 (Aug. 4, 1977). The rehearing and judicial review provisions of section 313 apply to DOE as a successor to the Federal Power Commission. *See Ctr. for Biological Diversity* v. *Dep't of Energy,* No. CV 08–168AHM(MANX), 2008 WL 4602721, at *5–6 (C.D. Cal. Oct. 16, 2008); *Pa. Pub. Util. Comm'n* v. *Bodman,* No. CIV. 1:CV–07–2002, 2008 WL 3925840, at *3–5 (M.D. Pa. Aug. 21, 2008).

transmission lines. AEP emphasized the importance of respecting the roles and responsibilities of states and localities in transmission project approval. CEC/CPUC encouraged the coordination of Federal and State permitting processes, explaining that most major transmission facilities in California will require both Federal and State environmental review and approval. To align these processes and inform coordination, CEC/CPUC recommended that DOE support project-specific MOUs between State and Federal permitting authorities.

DOE Response

DOE agrees with the commenters on the importance of states in the siting of transmission lines. Accordingly, and consistent with section 216(h), the IIP Process is designed to encourage and facilitate states' participation. Moreover, nothing in the IIP Process supersedes any State siting or permitting authority. DOE may develop project-specific MOUs as appropriate and necessary; such individual decisions are outside the scope of this rulemaking.

iv. Effective Date

Summary of Public Comments

Idaho Power requested clarification on when the CITAP Program outlined in the proposed rule would go into effect.

DOE Response

DOE intends for the CITAP Program to take effect on the day this final rule takes effect: 30 days after publication of the rule in the **Federal Register**.

v. Costs and Benefits of Conservation

Summary of Public Comment

AZGFD requested additional information about DOE's assessment of potential costs and benefits of the CITAP program. AZGFD stated that it was unclear whether DOE has assessed and evaluated the costs associated with implementation of conservation measures for offsetting potential impacts to resources. If DOE did not include this analysis, AZGFD recommends that DOE account for the cost of conservation measures.

DOE Response

DOE makes no changes in this final rule in response to this comment. DOE believes that the CITAP Program, as finalized in this rulemaking, is designed to enhance coordination of decision-making efforts for the purposes of improved speed and efficiency of Federal permitting and authorizations overall, but will not materially impact the outcomes of specific decisions, which would include any conservation measures required to be undertaken. DOE's assessment of the final rule's anticipated costs and benefits is presented in section VIII of this document.

vi. Burden Estimates Under the Paperwork Reduction Act of 1995

Summary of Public Comment

Gallatin Power expressed concern that the cost burden estimated in the NOPR seemed ''significantly lower than current market rates.'' Gallatin Power acknowledged that the median hourly rate was used to calculate the cost burden, but explained that, in its experience, ''these hourly wages are significantly more when contracting with a subject matter expert, at an industry-accepted firm.'' Gallatin Power also expressed concern that the cost and time estimates did not identify a size for the transmission project given that ''these costs and time estimates would vary greatly among project lengths and locations.''

DOE Response

DOE makes no changes in this final rule in response to this comment. Although Gallatin Power expressed concern about the burden analysis, it did not challenge DOE's approach as unreasonable nor did it provide an alternative approach for DOE to consider. As Gallatin Power acknowledges, costs and time estimates can vary widely among projects. Given that estimates can vary widely by project, DOE believes it was reasonable to use the most recently available median hourly wage for management analysts according to the Bureau of Labor Statistics, for the proposed rulemaking and in this final rule, consistent with DOE's previous burden analysis for this collection. Though this revised collection changes the volution and subject matter of the information collection, including requesting analysis from a range of experts, many of the median wages reported by BLS for environmental and scientific consultants are below the management analysis median wage proposed by DOE, further supporting DOE's use of this occupation as a basis for estimation. Regarding the size of transmission project, DOE estimated an average burden for a qualifying project under CITAP, which represents a wide range of length and size, based on the special expertise in environmental evaluation of transmission projects within DOE. DOE's assessment of the final rule's estimated burden is in section VIII of this document.

P. Out of Scope Comments

Summary of Public Comments

DOE received six additional comments not addressed above. NAM noted it supports a diverse approach to powering communities and operations, and urged DOE to follow its findings in the draft National Transmission Needs Study released in February 2023.

The State of Colorado Governor's Office stated that the proposed rule does not consider the need to minimize the potential of the challenges from private citizens and groups alleging deficiencies in project review under NEPA and other statutes nor DOE's ability to facilitate interstate transmission development in the face of opposition from certain states or organizations.

EEI suggested DOE consider how its implementation of section 216(h) can support electric companies working to meet State timelines for reducing emissions in the electric grid through its implementation of section 216(h) and for DOE and other agencies to consider IRA funds to increase the training of personnel or to provide grants to other agencies.

Kris Pastoriza requested clarification on a statement on FERC's website, a definition for or list of ''interstate transmission lines.''

Gallatin Power asked DOE to clarify whether designated DOE staff would be assigned to qualifying projects who could help move the permitting process along and would facilitate knowledge retention.

EDF recommended DOE consider co-location of transmission projects within abandoned rights-of-way. In addition, EDF recommended DOE develop a record of right-of-way locations and to consider publishing this information on an interactive map for ease of use by the public. EDF believes the CITAP Program presents the perfect opportunity to develop this information. EDF believes this proposal would be consistent with the objective to ensure NEPA reviews are not duplicative because the information about rights-of-way would be more readily available for transmission projects.

DOE Response

DOE finds these comments to be out of scope of the rulemaking, which addresses the implementation of DOE's authority to coordinate Federal environmental review and decision-making on transmission project authorizations and permits. The findings of the Needs Study are outside the scope of this rulemaking, as are the potential of challenges alleging deficiencies in NEPA review, as well as

any interpretations of FERC's authority. Regarding EEI's request that DOE consider State emissions reductions statutes in its implementation of section 216(h), DOE's authority is limited to coordination of environmental reviews and decision-making; project proponents remain responsible for meeting or complying with any State emissions reductions statutes. Additionally, regarding Gallatin Power's request that DOE clarify which DOE staff will be assigned to qualifying projects, whether there will be certain designated staff assigned to these projects will depend on the particular project and is best addressed on a project-by-project basis. Regarding EDF's recommendation for DOE to consider co-location within abandoned rights-of-way, project proponents remain responsible for proposed routes, and they may consider co-location as appropriate. Regarding EDF's recommendation for DOE to use the CITAP Program as an opportunity to develop a database of rights-of-way, DOE finds it unnecessary to adopt any regulatory text to address this recommendation but may, through implementation of the program, develop various tools to inform the public.

VII. Section-by-Section Analysis

§ 900.1 Purpose and Scope

Section 900.1 provides a process for the timely and coordinated submission of information necessary for decision-making for Federal authorizations for siting of proposed electric transmission facilities pursuant to section 216(h) of FPA. This final rule revises § 900.1 to update the purpose of part 900, reference the establishment of the CITAP Program, and improve readability. These changes reflect DOE's understanding that Congress intended DOE to make the process to obtain multiple Federal authorizations more efficient and reduce administrative delays, which requires clear authority, process, and timelines. The changes in this section reflect DOE's intent to carry out the full scope of the authority that Congress provided. Paragraph (a) is added to establish the overarching CITAP Program and provide a roadmap to authorities and processes throughout part 900. This paragraph states that DOE will act as a lead agency for preparing an environmental review document for any qualifying project. Paragraph (a), as well as revised paragraph (d), identify DOE's role in establishing and monitoring adherence to intermediate milestones and final deadlines, as required by section 216(h).

This final rule revises the current regulatory text of § 900.1 by dividing it into paragraphs (b) through (d). Portions of the text dealing with the IIP Process have been updated to clarify that the process will require submission of materials necessary for Federal authorizations and that the IIP Process should be initiated prior to the submission of any application for a Federal authorization. The changes also clarify that the IIP Process is integrated into the CITAP Program.

In this final rule, DOE is adding paragraph (e) to clarify the intended relationship between the early coordination envisioned by the IIP Process and the duties prescribed by section 106 of the NHPA and the implementing regulations at 36 CFR part 800. In particular, this section clarifies that nothing in the IIP Process is intended to abrogate the obligations of Federal agencies under 36 CFR part 800. Additionally, this section authorizes a project proponent as an applicant to the CITAP Program to initiate section 106 consultation during that proponent's involvement in the IIP Process.

DOE redesignates paragraphs (a) and (e) of current § 900.2 as new paragraphs (f) and (g) of this section because the paragraphs contain general propositions regarding part 900 and are better suited to the general ''Purpose and Scope'' section. This final rule adds a new paragraph (f) to establish that DOE and the relevant Federal entities shall issue a joint decision document except where inappropriate or inefficient. This revision is to be consistent with NEPA regulations, including the Fiscal Responsibility Act of 2023, which codified processes to streamline the environmental review process and facilitate one Federal decision, be consistent with the Congressional intent of FPA 216(h), and enhance DOE's coordinating function. This final rule revises new paragraph (g) to clarify that DOE will serve as lead agency for consultation under section 7 of the ESA and section 106 of the NHPA unless the relevant Federal entities designate otherwise. This revision aligns the lead agency designation with the authorizing statutes.

This final rule also adds paragraph (h) to afford the Director of DOE's Grid Deployment Office, or that person's delegate, flexibility necessary to ensure that part 900 does not result in unnecessary, duplicative, or impracticable requirements. DOE added this paragraph to authorize the Director to waive any such requirements. Further, this paragraph specifically contemplates a scenario in which a Federal entity is the principal project developer. Under such circumstances, DOE has added language to indicate that the Director will consider modifications to the requirements under this part as may be necessary under the circumstances.

§ 900.2 Definitions

DOE redesignated § 900.3 as § 900.2 for the purpose of providing the definitions of terms before those terms occur in the body of the regulation. Section 900.2 provides definitions for various terms used throughout part 900. This final rule amends or adds the following definitions:

- Revises the term ''affected landowner'' to ''potentially affected landowner'' and revises the substance of that definition to include any owner of a real property interest whose interest is potentially affected by a project right-of-way, potential route, or proposed ancillary or access site. Adds a definition of ''analysis area'' to serve as a reference in locating the points in the IIP Process that analysis areas are established and modified.
- Adds a definition for ''authorization'' to provide clarity in several places where that term occurs. Amends the definition for ''Federal authorization'' to account for the new definition of ''authorization.''
- Adds a definition for ''communities of interest'' to ensure broad coverage of potentially impacted populations during the public engagement process and establishment of the public engagement plan. Adds a definition for ''participating agencies'' to serve as shorthand for the group of agencies that will serve various roles under the amendments to the coordination of Federal authorizations.
- Adds a definition of ''NEPA joint lead agency'' to identify where information about the designation of a NEPA joint lead agency occurs in the rule.
- Removes the term ''OE–1,'' meaning the Assistant Secretary for DOE's Office of Electricity Delivery and Energy Reliability, and replaces it with the definition for ''Director,'' meaning the Director of DOE's Grid Deployment Office or that person's delegate. Under section 1.14(D) of Delegation Order No. S1–DEL–S3–2023 and section 1.9(D) of Redelegation Order No. S3–DEL–GD1–2023 the Secretary of Energy delegated authority to exercise authority under section 216(h) to the Grid Deployment Office. That authority had previously been delegated to DOE's Office of Electricity Delivery and Energy Reliability. The same substitution is made throughout part 900 to reflect that delegation change.

• Revises the reference to the definition of ''Indian Tribe'' in the United States Code to the correct reference following the 2016 editorial reclassification. This change does not amend the definition. Adds the definitions for ''relevant Federal entity'' and ''relevant non-Federal entity'' using the substance of the definitions from ''Federal entity'' and ''non-Federal entity,'' respectively. These changes are intended to show that the terms only mean Federal or non-Federal entities with some relation to a particular qualifying project. These changes are updated throughout part 900.

• Revises the definition for ''regional mitigation approach'' to a more general term of ''mitigation approach.'' DOE revised this term because regional-level approaches and strategies may be too limiting for the needs at hand; instead, DOE wants to create the opportunity for discussion of all types of proposed mitigation for a given proposed project. In addition, DOE has revised the substance of this definition to clarify the meaning and more closely align with existing NEPA regulations regarding mitigation. Because the revisions to mitigation approach rendered ''regional mitigation strategies or plans'' redundant, DOE has removed that definition.

• Revises the definition for ''MOU signatory agency'' to mean any Federal entity that has entered into the currently effective MOU under section 216(h)(7)(B)(i) of the FPA. This change decouples the term from any particular MOU and keeps the rule current without requiring changes to the regulatory text. The term references the 2023 MOU as an example.

• Revises the definition for ''qualifying project'' in a number of ways. First, the revised definition removes the qualifier ''non-marine'' before high voltage transmission line and electric transmission line to match potential scope of the Program with that agreed to in the MOU. Second, the revised definition includes several factors for determining if a transmission line is regionally or nationally significant. Third, the revised definition limits the term to projects that are expected to require preparation of an EIS because the Federal coordination will be most impactful for such projects due to their complexity. Fourth, in accordance with the 2023 MOU, this final rule revises the definition to state that the term does not include any transmission facility authorized under section 8(p) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(p)). The exception to that restriction included in the 2023 MOU is provided for in the changes to § 900.3 and discussed further in that section. Fifth, in accordance with the 2023 MOU, the term excludes a transmission facility that are seeking a construction or modification permit from FERC pursuant to section 216(b) of the FPA. Sixth, the revised definition excludes projects located wholly within the Electric Reliability Council of Texas interconnection, as required by section 216(k) (16 U.S.C. 824p(k)). This exclusion is also located in § 900.2(c) of the current rule, but it is not replicated it in this definition for clarity. Seventh, the revision provides a mechanism under § 900.3 by which a project that does not meet the definition of a qualifying project under the first paragraph of the term may still participate in the Program. This change is discussed in more detail in the following section.

• Revises the definition for ''project area'' to clarify the scope of this term.

• Removes the definitions of ''DOE'' and ''NEPA'' because those terms are acronyms best addressed in the regulatory text rather than as definitions.

• Removes the definition of ''FPA'' because that term no longer occurs in the regulatory text.

• Removes the definitions for ''early identification of project issues,'' ''IIP resources report,'' ''IIP process administrative file,'' ''lead 216(h) agency,'' ''MOU principals,'' and ''other projects'' because those terms no longer occur in part 900.

• Removes the definition for ''NEPA Lead Agency'' because that term is self-explanatory in the context in which it occurs.

• Revises the term ''stakeholder'' for clarity and readability and includes ''organization'' in the definition to clarify that stakeholders are not just individuals.

• Revises the term ''study corridor'' to clarify that the term does not coincide with ''permit area,'' ''area of potential effect,'' ''action area,'' or other terms specific to certain types of regulatory review.

§ 900.3 Applicability to Other Projects

Section 900.2 of the current rule, titled ''Applicability,'' provides an application process by which a project proponent may seek DOE assistance under part 900 for an ''other project.'' This final rule redesignates § 900.2 as § 900.3 and retains a mechanism by which projects that do not otherwise qualify as ''qualifying projects'' may be treated.

Section 900.2(b) is revised and redesignated as § 900.3(a)–(c) to more clearly communicate the process by which a project proponent may request that a facility be approved as a qualifying project. In particular, this final rule removes the definition of the term ''other project'' and instead includes the substance of that term in paragraph (a) of the revised section.

Paragraphs (a) and (e) of current § 900.2 are redesignated as paragraphs § 900.1(f) and (g), respectively, because those paragraphs contain general propositions regarding part 900 and are better suited to the general ''Purpose and Scope'' section. This final rule removes the first sentence of current § 900.2(e) as it is unnecessary because part 900 does not purport to affect other Federal law requirements except in specific, articulated instances.

Current paragraphs § 900.2 (g) and (h) are relocated to § 900.4 as paragraphs (e) and (f), respectively, because § 900.4 provides a general background to the IIP Process, and the substance of those paragraphs is more relevant to the IIP Process than the rest of part 900. Current § 900.2(d) is redesignated as paragraph (e) and a new paragraph (d) is added. New paragraph (d) provides factors that the Director of GDO may consider when determining if a proposed electric transmission facility should be considered a qualifying project and accepted into the CITAP Program.

Redesignated paragraph (e) is further amended. Whereas the current version of that paragraph provides that the section does not apply to a transmission facility that will require a construction or modification permit from FERC, this final rule amends the paragraph to allow such projects to take advantage of part 900, provided that the request to be included in the CITAP Program is submitted by a person with relevant authority under Delegation Order No. S1–DEL–FERC–2006 or any subsequent, similar delegation.

In addition, this final rule removes paragraph (f), which describes the IIP process as a complementary process that does not supplant existing pre-application processes, because this final rule establishes the IIP Process as the mandatory precondition for coordination under section 216(h).

This final rule adds new paragraphs (f) and (g)(1) that allow a project proposed to be authorized under Section 8(p) of the Outer Continental Shelf Lands Act to receive coordination assistance under part 900, provided that the project is not to be authorized in connection to a generation project and that all 2023 MOU signatories agree to the project's inclusion in the CITAP Program. These additions reflect the terms of the 2023 MOU.

Finally, current paragraph (c) is moved to paragraph (g)(2) to improve the readability of the section.

§ 900.4 Purpose and Scope of IIP Process

Section 900.4 of the current rule states the purpose and structure of the IIP Process. This final rule divides this section into §§ 900.4, 900.5, 900.8, and 900.9 to improve readability. Section 900.4(a) of the current rule remains in § 900.4 but is further divided into paragraphs (a), (b), and (c) to improve readability.

Sections 900.4(j)(3)(i) through (iv) are redesignated as § 900.4(a)(1) through (8) and amended to reflect a new purpose. Current § 900.4(j)(3) requires the Federal entities at the initial meeting to identify reasonable criteria for adding, deleting, or modifying preliminary routes within the study corridors and lists nine criteria that should be included in the criteria that Federal entities identify. In contrast, new § 900.4(a) provides that those criteria should instead be used by the project proponent when identifying potential study corridors and potential routes. The change encourages the project proponent to utilize the criteria in identifying routes and corridors throughout the IIP Process, rather than just after the initial meeting. This final rule retains the requirement for DOE and other agencies to identify other criteria for adding or modifying potential routes and includes that the agencies should also identify criteria for potential study corridors as well.

Additionally, § 900.4(b) establishes the IIP Process as a prerequisite for coordination, consistent with the statutory language and the revisions to the purpose of part 900 in § 900.1. This final rule adds a new paragraph (d) to clarify that the IIP Process does not preclude additional communications between the project proponent and relevant Federal entities outside of the meetings envisioned by the IIP Process. The paragraph further emphasizes that DOE intends for the IIP Process to be an iterative process and that each milestone in the process is designed to improve upon the materials that Federal entities have available for authorization and environmental review decisions.

This rule redesignates § 900.2(g) and (h) as § 900.4(e) and (f), respectively, because § 900.4 provides a general background to the IIP Process, and the substance of those paragraphs is more relevant to the IIP Process than the rest of part 900. Section § 900.4 gives new authority to the Director to request additional information from a project proponent during the IIP Process to ensure that DOE can collect the information needed to adequately complete the IIP Process.

Finally, this final rule adds new paragraphs (h) and (i), which provide processes by which a person may submit confidential information during the IIP Process or to request designation of information containing Critical Electric Infrastructure Information (CEII). These provisions establish the mechanisms through which the IIP Process complies with 10 CFR 1004.11 and 1004.13.

§ 900.5 Initiation of IIP Process

Section 900.5 is composed of current § 900.4(b), (c), (e), (g), (h), (i), and (j). This final rule revises these provisions to enumerate the documents and information required to initiate the IIP Process, expedite that process, ensure that community impacts from the project are identified early, and improve the overall readability and clarity of the provisions.

Currently, an initiation request to begin the IIP Process must include a summary of the qualifying project; a summary of affected environmental resources and impacts, including associated maps, geospatial information, and studies; and a summary of early identification of project issues. This final rule revises the contents of the request. First, this final rule updates the contents required in the summary of the qualifying project in paragraph (b) to include project proponent details; identification of any environmental and engineering firms and subcontractors under contract to develop the qualifying project; and a list of anticipated relevant Federal and non-Federal entities to ensure sufficient information is provided for DOE to review and to include all necessary agencies in the process. This final rule also adds new requirements for additional maps as part of the initiation request, as detailed in paragraph (c). DOE believes the additional information in paragraphs (b) and (c) is necessary to properly identify the relevant agencies for efficient coordination.

Additional requirements are added in this final rule to require submission of a project participation plan as part of the initiation request. This plan is in place of the summary of early identification of project issues currently required under the current regulation. The project participation plan, as detailed in paragraph (d), will include the project proponent's history of engagement and a public engagement plan for the project proponent's future engagement with communities of interest and with Indian Tribes that would be affected by a proposed qualifying project. The plan would include specific information on the proponent's engagement with communities of interest and with Indian Tribes that would be affected by a proposed qualifying project. An updated public engagement plan would be required at the end of the IIP Process to reflect any activities during that process. The addition of a public engagement plan that includes communities of interest and Indian Tribes that could be affected by a proposed qualifying project, would ensure that the project proponent follows best practices around outreach. Moreover, by including this plan in the IIP Process, the regulation will provide relevant Federal entities an opportunity to provide input into the project proponent's engagement efforts, and to ensure that the project proponent engages with all communities of interest and Indian Tribes that could be affected by the proposed qualifying project. The engagement complements Tribal consultation and public engagement undertaken by the relevant Federal entities and would not substitute for Federal agencies engaging in Nation-to-Nation consultation with Indian Tribes and public engagement with stakeholders and communities of interest.

This final rule adds a new paragraph (e), to require submission of a statement regarding the project's status under Title 41 of the Fixing America's Surface Transportation Act (FAST–41) (42 U.S.C. 4370m *et seq.*) as part of the initiation request. This statement is intended to facilitate coordination between the IIP Process and the FAST–41 Process. This final rule adds requirements for project proponents to indicate whether their proposed project currently is a FAST–41 ''covered project.''

This final rule adds paragraph (f), which gives DOE 20 days from the receipt of the initiation request to determine whether the initiation request is sufficient and whether the proposed electric transmission facility is a qualifying project. In that same timeframe, paragraph (f) requires DOE to provide relevant Federal entities and relevant non-Federal entities with a copy of the initiation request and notify the project proponent and all relevant Federal entities and relevant non-Federal entities whether the initiation request is sufficient and whether the proposed facility is a qualifying project.

This final rule adds a new paragraph (g), to provide clarity to the process that DOE and the project proponent must follow if DOE determines that the initiation request is insufficient or that the proposed facility is not a qualifying

project. Paragraph (g) dictates that DOE must give the project proponent the rationales for the determinations. It also provides that the project proponent may file a request for coordination with the Director of the GDO as provided in § 900.3, if DOE determines that the proposed facility is not a qualifying project.

This final rule removes the requirement to submit an affected environmental resources and impacts summary as part of the initiation request. As discussed in more detail in the next section, that summary is replaced by thirteen resource reports submitted after the IIP Process initial meeting.

Section 900.5(j) is redesignated as § 900.5(h), and the content of that section is amended to reflect a new timeline for convening the IIP Process initial meeting and updates to the discussions that must occur at the meeting. The timeline for convening the initial meeting has been reduced from within 45 days of providing notice to the project proponent and the relevant Federal and non-Federal entities that it has received an IIP Process initiation request to within 15 days of providing notice under paragraph (f) that the initiation request meets the requirements of the section.

Likewise, the contents of the initial meeting have been updated. Section 900.5(h)(1) is added to require DOE and the relevant Federal entities to discuss the IIP Process and requirements with the project proponent, the different Federal authorization processes, and arrangements for the project proponent to contribute funds to DOE to cover costs in the IIP Process (in accordance with 42 U.S.C. 7278), establishment of cost recovery agreements or procedures in accordance with regulations of relevant Federal entities, where applicable, or the use of third-party contractors under DOE's supervision, where applicable. DOE believes an early discussion of the process and requirements will ensure efficient participation of the parties and early identification of potential issues.

This final rule adds § 900.5(h)(2) to require DOE to identify certain applications that need to be submitted to relevant Federal entities during the IIP Process (for example, Standard Form 299, which a project proponent would file to seek authorization for transmission lines crossing Federal property). The timing of the expected Federal applications, including which applications may be required during the IIP Process and which should be submitted following the conclusion of the IIP Process, will be covered in the initial meeting.

This final rule adds § 900.5(h)(3) requiring DOE to establish all analysis areas necessary for the completion of resource reports required under § 900.6. By requiring DOE to establish the analysis areas at this early stage of the IIP Process, this final rule enables and encourages the project proponent to begin assembling the resource reports soon after the proposed project is accepted into the CITAP Program.

As discussed in the previous section, § 900.4(j)(3)(i) through (iv) are redesignated as § 900.4(a)(1) through (8) to encourages the project proponent to utilize the criteria in those paragraphs when in identifying potential routes and study corridors. Section 900.5(h)(5) retains the requirement in § 900.4(j)(3) for DOE and other agencies to identify other criteria for adding or modifying potential routes but adds that the agencies should also identify criteria for potential study corridors as well. Section 900.5(h)(5) is further amended to include a requirement that DOE and the relevant Federal entities discuss study corridors and potential routes identified by the project proponent and the criteria used to identify those corridors and routes.

This final rule revises the requirement that DOE produce a draft initial meeting summary within 15 calendar days after the meeting to 10 calendar days, and the revises the time that participating Federal entities and Non-Federal entities, and the project proponent will then have to provide corrections to the draft summary from 15 calendar days to 10 calendar days. Additionally, this final rule revises the requirement that DOE produce a final initial meeting summary within 30 days of receiving corrections to the draft summary to 10 days. All three changes are intended to expedite the IIP Process.

This final rule revises this section to add the requirement in § 900.6 that requires DOE to add the final initial meeting summary to the consolidated administrative docket. Finally, this final rule removes portions of paragraph (j)(3)(v) because the contents are addressed elsewhere.

§ 900.6 Project Proponent Resource Reports

This final rule adds a new § 900.6 to add requirements for project proponents to develop, in collaboration with relevant Federal entities, thirteen resource reports that will serve as inputs, as appropriate, into the relevant Federal entities' own environmental analysis and authorization processes. This pre-application material will provide for earlier collection of critical information to inform the future application process relating to the proposed transmission line and facilities, including preliminary information to support DOE's and the relevant Federal entities' compliance with section 106 of the NHPA, the ESA, and NEPA. The thirteen resource reports are: General project description; Water use and quality; Fish, wildlife, and vegetation; Cultural resources; Socioeconomics; Geological resources and hazards; Soil resources; Land use, recreation, and aesthetics; Communities of interest; Air quality and noise effects; Alternatives; Reliability, resilience, and safety; and Tribal interests. This final rule renumbers the resource reports in response to a comment, as discussed in section VI.L of this document.

This final rule adds requirements for project proponents to develop these resource reports as part of the pre-application process instead of the affected environmental resources and impacts summary document required from project proponents under the existing rule at section 900.4(d). The resource reports identify information needed to complete NEPA and other review and authorization requirements. However, the topics identified and the reports do not limit the information relevant Federal entities may need, require from project proponents, or develop independently, as necessary to satisfy each relevant Federal entity's applicable statutory and regulatory obligations. To address possible differences in information required for onshore and offshore project environments, the final rule allows the Director to modify the requirements of resource reports to ensure that the reports adequately cover their intended purpose. Each resource report will comprehensively discuss the baseline conditions and anticipated impacts to resources relevant to DOE's required environmental review, namely under NEPA, ESA, and section 106 of the NHPA. NEPA requires Federal agencies to analyze and assess potential environmental effects of the proposed Federal agency action, and these effects can vary in significance and complexity. DOE anticipates that these reports will inform its work to meet its requirements under the various environmental laws referenced above. In addition, proper assessment of the resources potentially affected by the proposed action can also help DOE identify resource conflicts, missing information, and needs from other agencies, and inform the project-specific schedule. These conflicts and needs can then be discussed and

addressed during the review meeting and throughout the IIP Process.

These resource reports will be developed by project proponents during the IIP Process with input and feedback from the Federal and non-Federal entities involved in authorization decisions. This procedure better matches the IIP Process with the project development and Federal review timelines. Under these changes, a project proponent may initiate the IIP Process without detailed environmental resources information, but the detailed information required by this section must be developed to complete the IIP Process. The more detailed pre-application information, presented in the resource reports, will allow project proponents and the relevant Federal entities to coordinate and identify issues prior to submission of applications for authorizations, inform project design, and expedite relevant Federal entities' environmental reviews by providing environmental information that relevant Federal entities can use after submission of applications to inform their own reviews and by ensuring those applications are complete.

§ 900.7 Standard and Project-Specific Schedules

This final rule adds a new § 900.7 to amend how DOE will carry out its obligation to ''establish prompt and binding intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to, the proposed facility'' pursuant to section 216(h). 16 U.S.C. 824p(h)(4)(A). Specifically, this final rule adds a description for the ''standard schedule,'' which DOE will publish as guidance and update from time to time. The standard schedule is not project specific. Rather, it will describe, as a general matter, the steps necessary to review applications for Federal authorizations, and the related environmental reviews necessary to site qualifying projects. This schedule will contemplate that authorizations and related environmental reviews be completed within two years.

Paragraph (b) describes the project-specific schedule. As discussed further below, DOE will develop this schedule with the NEPA joint lead agency and the relevant Federal entities on a per-project basis during the IIP Process. This schedule would provide the ''binding intermediate milestones and ultimate deadlines'' required by section 216(h). This provision is intended to specify the considerations that DOE will incorporate into its determination of the appropriate project-specific schedule including joint lead and other agency-specific regulations and schedules. Section 216(h)(4)(B) requires DOE to set a project-specific schedule under which all Federal authorizations may be completed within one year of the filing of a complete application unless other requirements of Federal law require a longer schedule. DOE intends to determine the project-specific schedule based on the considerations specified in paragraph (b).

§ 900.8 IIP Process Review Meeting

This final rule amends the IIP Process to ensure that DOE and the Federal and non-Federal entities involved have meaningful opportunities to identify issues of concern prior to the project proponent's submission of applications for authorizations. In addition to the initial and close-out meetings included in the current text of part 900, this final rule establishes an IIP Process review meeting, to be held at the request of the project proponent following initial submission of the requisite thirteen resource reports. In addition, this final rule adds a requirement for a project proponent requesting the review meeting to update DOE on the status of the project's public engagement and provide updated environmental information.

This final rule adds that the IIP Process review meeting will ensure that DOE and the relevant Federal and non-Federal entities involved have meaningful opportunities to identify issues of concern prior to the close of the IIP Process and submission of applications for Federal authorizations. To this end, this final rule adds a requirement in paragraph (f) that at the review meeting the relevant Federal entities should discuss any remaining issues of concern, information gaps, data needs, potential issues or conflicts, statutory and regulatory standards, and expectations for complete applications for Federal authorizations. Additionally, the meeting participants will provide updates on the siting process, including stakeholder outreach and input. To facilitate these discussions, paragraph (a) is added to state that a project proponent should submit a request for the review meeting containing helpful documents and information such as a summary table of changes made to the project since the initial meeting, maps of proposed routes within study corridors, a conceptual plan for implementation and monitoring of mitigation measures, an updated public engagement plan and timeline information including dates on which any applications were already filed, estimated dates for filing remaining applications with Federal and non-Federal entities, and a proposed duration for each Federal land use authorization expected to be required for the proposed project.

Additionally, the IIP Process review meeting will provide an opportunity for DOE and the relevant Federal and non-Federal entities to review the detailed resource reports prepared pursuant to § 900.6. Therefore, the review meeting will only be held after submission of the reports. Section 900.8(f)(8) is added to state that during the IIP Process review meeting, DOE and the relevant Federal and non-Federal entities will identify any updates to the information included in those reports that the project proponent must make before the conclusion of the IIP Process. Finally, this final rule adds in § 900.8(k) the requirement that the project proponent revise resource reports based on feedback received during the meeting. DOE believes that identifying and addressing issues in the reports during the IIP Process instead of at the end of that process would expedite DOE's preparation of a single environmental review document and increase the likelihood of readiness of the project proponent's application(s) for Federal authorization(s).

Furthermore, the IIP Process review meeting will integrate DOE's statutory schedule-setting function discussed in the previous section into the IIP Process. For this purpose, the review meeting request under paragraph (a) should include a schedule for completing upcoming field resource surveys, if known, and estimated dates that the project proponent will file requests for Federal and non-Federal authorizations and consultations. These resources will assist DOE in preparing the proposed project-specific schedule, which DOE would be required to present at the review meeting under § 900.8(f)(9). At the meeting, the relevant Federal entities would discuss the process for, and estimated time to complete, required Federal authorizations. These discussions, along with other matters discussed at the review meeting would, in turn, allow DOE to continue refining the project-specific schedule.

This final rule adds a requirement in paragraph (b) that within 10 days of receiving the review meeting request, DOE must provide relevant Federal entities and relevant non-Federal entities with materials included in the request and the initial resource reports submitted under § 900.6. In paragraph (c), DOE believes a 60-day period is necessary to review the request for sufficiency and provide notice to the proponent and relevant Federal and non-Federal agencies and provides in

paragraph (d) that it will provide reasons for any findings of insufficiency and how the project proponent may address them for reconsideration. Furthermore, this final rule adds a requirement in paragraph (e) that the review meeting will convene within 15 days of providing notice that the request has been accepted. These timelines will ensure that the IIP Process is pursued expeditiously while affording the relevant Federal entities sufficient time to review the relevant materials. The requirement to share the review meeting request and initial resources reports in paragraph (b) will ensure that all entities participating in the meeting have access to the materials being discussed at the meeting.

This final rule adds requirements in paragraphs (g), (h), and (i) that the IIP Process review meeting will conclude with a draft and, subsequently, a final review meeting summary, to be prepared by DOE. This summary will be included in the consolidated administrative docket described by § 900.10. It will serve as a docket of the issues identified by the parties to the review meeting, and to ensure that the project proponent, the relevant Federal and non-Federal entities, and DOE, have a shared understanding of the work remaining to be done during the IIP Process.

This final rule adds paragraph (j) to include a mechanism by which it may determine whether the project proponent has developed the scope of its proposed project and alternatives sufficiently for DOE to determine that there exists an undertaking with the potential to affect historic properties for purposes of section 106 of the NHPA. If DOE so determines, DOE will initiate its section 106 review of the undertaking and authorize project proponents as CITAP Program applicants to initiate consultation with SHPOs, THPOs, and others consistent with 36 CFR 800.2(c)(4). This provision is intended to allow initiation of section 106 consultation during the IIP Process, prior to submission of applications for authorizations, but with sufficient opportunity for the project proponent, the relevant Federal entities, and DOE, to determine the scope of the proposed project.

§ 900.9 IIP Process Close-Out Meeting

This final rule amends the close-out meeting provisions of the current rule at § 900.4(k) and (l). The IIP Process will conclude with the close-out meeting. This final rule adds the requirement of submission of a close-out meeting request to specify the modifications to the project since the review meeting. This final rule removes the requirement in this section that states that the request may be submitted no less than 45 days after the initial meeting. DOE removes that requirement because changes to the IIP Process in this final rule no longer allow for a request to be submitted within that timeframe.

This final rule removes paragraphs (k)(3), (5), (8), and (9). The information required under those paragraphs will be submitted with the review meeting request under § 900.8(a). Likewise, DOE removed paragraphs (k)(4), (6), and (7) because the information required under those paragraphs would be submitted in the resources reports under § 900.6. Finally, paragraph (k)(1) is removed because the submission of close-out meeting request materials is presumed to indicate that a close-out meeting is being requested.

Paragraphs (a)(2) and (3) require a description of all changes made to the proposed project since the review meeting and a final public engagement plan. In paragraph (a)(4) DOE added a requirement that the project proponent provide the requests for Federal authorizations for the proposed project. These will be included in the close-out meeting request to ensure that the project proponent is ready to begin the Federal authorization process.

This final rule revises the timelines for requesting and convening a close-out meeting. In current paragraphs (1), (2), and (3), DOE has 30 days to respond to a close-out meeting request and 60 days from the date of providing a response to convene the close-out meeting. DOE provides in paragraph (b) that within 10 days of receiving the request, DOE must provide relevant Federal entities and relevant non-Federal entities with materials included in the request and any updated resource reports submitted as required under § 900.8. Paragraph (c) provides that DOE has 60 days to review the request for sufficiency and notify the project proponent and all relevant Federal and non-Federal entities of DOE's decision. Under paragraph (d), if DOE determines that the meeting request or updated resource reports are insufficient then DOE will provide reasons and how deficiencies may be addressed. Under paragraph (e), DOE will convene the close-out meeting within 15 days of notifying the project proponent that the request and updated resource reports have been accepted. These new timelines will ensure that the IIP Process is pursued expeditiously. Furthermore, the requirement to share the close-out meeting request materials in paragraph (b) would ensure that all entities participating in the meeting have access to the materials being discussed at the meeting.

DOE removed the requirement that the substance of the close-out meeting include a description of remaining issues of concern, information gaps, data needs, and potential issues or conflicts that could impact the time it will take relevant Federal entities to process applications for Federal authorizations. This information is covered at the review meeting under § 900.8(d). Likewise, DOE eliminated paragraphs (l)(3)(ii), (iii), (iv), and (v) because that information is now required to be discussed at the review meeting. DOE added in paragraph (e) that DOE will present the final project-specific schedule at the meeting, in keeping with DOE's statutory schedule-setting function discussed previously. As previously explained, the project-specific schedule will include the intermediate milestones and final deadlines for review of the project proponent's application and related environmental reviews.

This final rule removes the portion of paragraph (l) of the current regulation which states that ''The IIP Process Close-Out Meeting will also result in the identification of a potential NEPA Lead Agency pursuant to § 900.6 described.'' This final rule adds a provision to select the NEPA joint lead agency earlier in the IIP Process to allow for sufficient coordination.

DOE removed paragraph (l)(3)(vi) because the information covered by the Final IIP Resources Report will be covered by the thirteen resources reports. Additionally, DOE removed paragraph (l)(3)(vii), which encourages agencies to use the Final IIP Resources Report to inform the NEPA Process. Instead, this final rule adds a new requirement at § 900.12(f) to require all relevant Federal entities to use the single environmental review document as the basis for Federal authorization decisions. That requirement is discussed in more detail as follows.

This final rule removes paragraph (l)(3)(viii), which requires relevant Federal entities to identify a preliminary schedule for authorizations for the proposed project, because now DOE will set a project-specific schedule for all relevant Federal entities in consultation with such entities.

Paragraphs (g), (h), and (i) provide that the IIP Process close-out meeting will conclude with a draft and, subsequently a final close-out meeting summary, to be prepared by DOE. This summary will be included in the administrative docket. It would serve as a summary of the issues identified by the parties to the close-out meeting, and

ensure that the project proponent, the relevant Federal and non-Federal entities, and DOE, have a shared understanding of the conclusion of the IIP Process.

In paragraph (i)(4), in accordance with the 2023 MOU, DOE will notify the FPISC Executive Director that the project should be included on the FPISC Dashboard as a transparency project if the project is not identified as a covered project pursuant to § 900.5(e).

In paragraph (j), DOE and the NEPA joint lead agency shall issue a notice of intent to publish an environmental review document within 90 days of the later of the IIP Process close-out meeting or the receipt of a complete application for a Federal authorization for which NEPA review will be required, as consistent with the final project-specific schedule to enable DOE to implement its coordinating authority under FPA section 216(h).

Finally, in paragraph (k), in accordance with section 313(h)(8)(A)(i) of the FPA, DOE shall issue, for each Federal land use authorization for a proposed electric transmission facility, a preliminary duration determination commensurate with the anticipated use of the proposed facility.

§ 900.10 Consolidated Administrative Docket

Current § 900.6 requires DOE to maintain an IIP Process Administrative File with all relevant documents and communications between the project proponent and the agencies and encourages agencies to work with DOE to create a single record. To better integrate and coordinate Federal authorizations, the new section dispenses with the IIP Process Administrative File and combines all documents that were previously included in that file along with all information assembled by relevant Federal entities for authorizations and reviews after completion of the IIP Process into a single, consolidated administrative docket.

To this end, this final rule amends and redesignates paragraph (b) as a new paragraph (a) to articulate more clearly the information that should be included in the docket, including requests made during the IIP Process, IIP Process meeting summaries, resources reports, and the final project-specific schedule. The sentence in current paragraph (b) regarding the Freedom of Information Act is removed because that law applies to requests for information from the public on its own terms.

Current paragraph (b) also requires DOE to share the IIP Process Administrative File with the joint lead NEPA agency. However, this final rule adds in paragraph (c) the requirement that DOE make the consolidated administrative docket available to both the NEPA joint lead agency and any Federal or non-Federal entity that will issue an authorization for the project. This change ensures that other entities are able to use the docket for their own authorizations. Consequently, this final rule removes paragraph (d), which says that Federal entities are strongly encouraged to maintain information developed during the IIP Process.

This final rule adds a new paragraph (d) providing notice that, as necessary and appropriate, DOE may require a project proponent to contract with a qualified docket-management consultant to assist DOE and the NEPA joint lead agency in compiling and maintaining the administrative docket. Such a contractor may assist DOE and the relevant Federal entities in maintaining a comprehensive and readily accessible docket. DOE is also proposing that any such contractor shall operate at the direction of DOE, and that DOE shall retain responsibility and authority over the content of the docket to ensure the integrity and completeness of the docket.

This final rule adds a new paragraph (e) providing that upon request, any member of the public may be provided materials included in the docket, excluding any materials protected as CEII or as confidential under other processes. This addition is to support stakeholder engagement in the IIP Process.

Finally, this final rule relocates paragraph (a) of the current rule to paragraph (b) for organizational purposes.

§ 900.11 NEPA Lead Agency and Selection of NEPA Joint Lead Agency

This section states that DOE serves in the NEPA lead agency role contemplated in section 216(h) except where a joint lead is designated, in which case DOE serves as a joint lead. DOE coordinates the selection of a NEPA lead agency in compliance with NEPA, CEQ implementing regulations at 40 CFR part 1500, and each agency's respective NEPA implementing regulations and procedures.

This final rule redesignates § 900.5 to a new § 900.11 and amends this section to reflect that DOE, in accordance with section 216(h)(5)(A) and the 2023 MOU, will serve as lead agency for purposes of NEPA along with any NEPA joint lead agency as designated pursuant to the MOU and § 900.11 consistent with its obligation as lead agency to coordinate with relevant Federal entities.

In the 2023 MOU, the MOU signatory agencies agreed to a process by which a NEPA joint lead agency could be designated. Under that process, DOE and the agency with the most significant interest in the management of Federal lands or waters that would be traversed or affected by the proposed project would serve as lead agencies jointly responsible for preparing an EIS under NEPA. Section 900.11(b) reflects that agreed-upon process.

These amendments also provide that, for projects that would traverse both USDA and DOI lands, DOE will request that USDA and DOI determine the appropriate NEPA joint lead agency.

§ 900.12 Environmental Review

Consistent with DOE's role as lead agency, a new § 900.12 is added to define DOE's responsibilities as lead agency for environmental reviews and the NEPA process, including by preparing a single environmental review document designed to serve the needs of all relevant Federal entities. In paragraph (a) of this section, this final rule clarifies that DOE will begin preparing an environmental review document following the conclusion of the IIP Process and after receipt of a relevant application. It also notes that DOE will do so in conjunction with any NEPA joint lead agency selected under § 900.11.

The other provisions of this section specify details of DOE's—and any NEPA joint lead agency's—role as lead NEPA agency, including to arrange for contractors, publish completed documents, and identify the full scope of alternatives for analysis. This final rule provides that except where inappropriate or inefficient to do so, the Federal agencies shall issue a joint record of decision, inclusive of all relevant Federal authorizations including the determination by the Secretary of Energy of a duration for each land use authorization issued under section 216(h)(8)(A)(i). This joint-decision provision is added to be consistent with NEPA regulations, including the Fiscal Responsibility Act of 2023, which codified processes to streamline the environmental review process and facilitate one Federal decision, be consistent with the Congressional intent of FPA 216(h), and enhance DOE's coordinating function.

Consistent with section 216(h)(5)(A), which requires that DOE's environmental review document serve as ''the basis for all decisions on the project under Federal law,'' paragraph (f) is added to establish that the relevant

Federal agencies will use the environmental review document as the basis for their respective decisions.

Finally, paragraph (g) is added to specify that DOE will serve as lead agency for purposes of consultation under the ESA and compliance with the NHPA unless the relevant Federal entities designate otherwise. This provision will allow DOE to meet its obligation under section 216(h)(2) to coordinate ''all . . . related environmental reviews of the facility.''

§ 900.13 Severability

Section § 900.13 provides that the provisions of this final rule are separate and severable from one another, and that if any provision is stayed or determined to be invalid by a court of competent jurisdiction, the remaining provisions would still function sensibly and shall continue in effect. This severability clause is intended to clearly express the Department's intent that should a provision be stayed or invalidated the remaining provisions shall continue in effect. The Department has carefully considered the requirements of this final rule, both individually and in their totality, including their potential costs and benefits to project proponents. In the event a court were to stay or invalidate one or more provisions of this rule as finalized, the Department would want the remaining portions of the rule as finalized to remain in full force and legal effect.

VIII. Regulatory Review

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

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011) and amended by E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (OIRA) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this regulatory action constitutes a ''significant regulatory action'' within the scope of E.O. 12866. Accordingly, this action is subject to review under E.O. 12866 by OIRA of the Office of Management and Budget (OMB).

Section 6(a) of E.O. 12866 requires an agency issuing a ''significant regulatory action'' to provide an assessment of the potential costs and benefits of the regulatory action. To that end, DOE has further assessed the qualitative and quantitative costs and benefits of this final rule.

The societal costs of the action are the direct costs incurred by project proponents during the IIP Process. DOE discussed in the previous sections that most of the information required to be submitted during the IIP Process would likely be required absent these regulations and therefore the investment of time and resources required by this process are unlikely to be an additional burden on respondents. However, the full costs are considered in this analysis for transparency. These costs of $439,000 per year are detailed in the Paperwork Reduction Act burden analysis. The table below captures the 10-year and 20-year net present value of those annual costs under two discount rates (3% and 7%).

CITAP Program NPV Cost Estimates *

Discount rate	3%	7%
10-year NPV	$3,745,000	$3,083,000
20-year NPV	6,531,000	4,651,000

* 10-year analysis is 2024–2033, 20-year analysis is 2024–2043. NPV estimates provided in 2024$.

The benefits of the CITAP Program, designed to reduce the Federal authorization timelines for interstate electric transmission facilities and enable more rapid deployment of transmission infrastructure, include direct benefits to the project proponents in decreased time and expenditure on authorizations and a series of indirect social benefits.

Increasing the current pace of transmission infrastructure deployment will generate benefits to the public in multiple ways that can be categorized into grid operations, system planning, and non-market benefits. Grid operation benefits include a reduction in the congestion costs for generating and delivering energy; mitigation of weather and variable generation uncertainty, enhanced diversity of supply, which increases market competition and reduces the need for regional backup power options; and increased market liquidity and competition.[15] From a system planning standpoint, accelerated transmission investments will allow the development of new, low cost power plants in areas of high congestion which might not otherwise see investment due to capacity constraints, and additional grid hardening or resilience. Finally, non-market benefits to the public include reduced costs for meeting

[15] Millstein, A. *et al.* (2022) *Empirical estimates of transmission value using locational marginal prices, Empirical Estimates of Transmission Value using Locational Marginal Prices | Electricity Markets and Policy Group,* 6. Available at: *https://emp.lbl.gov/publications/empirical-estimates-transmission.*

public policy goals related to emissions and equitable energy access, as well as emissions reductions system wide.[16]

The DOE Grid Deployment Office released the 2023 National Transmission Needs Study (Needs Study), which identified significant need for the expansion of electric transmission across the contiguous United States.[17] The Needs Study and 2022 interconnection queue analysis by Berkeley Lab support DOE's analysis that the CITAP Program will provide substantial benefits by reducing authorization timelines for transmission projects and increasing the speed of transmission development and clean energy integration.[18]

The quantitative benefits of the CITAP Program will ultimately depend on the projects that are designed and developed by project proponents. However, the quantifiable benefits of transmission development can be estimated generally. These quantifiable benefits are the result of reductions in transmission congestion costs and avoided emissions from the increased use of clean energy enabled by additional transmission.

A 2023 analysis of transmission congestion costs by a consulting group found that congestion costs have risen from an average of $7.1 billion between 2016 and 2021 to $20.8 billion in 2022.[19] A 2022 study by Lawrence Berkeley National Lab found that between 2012 and 2021, a 1000 MW interregional transmission line could have provided $20 to $670 million dollars per year in value by providing congestion relief, which would have lowered energy costs to consumers.[20] Forward-looking projections for transmission value along these parameters are not available, and DOE is reluctant to project the complex changes to technical operations and market dynamics given the wide range in projected value. However, DOE notes that it has estimated that the CITAP Program will serve three projects a year that are each roughly equivalent to a 1000 MW line, an increase in the average number of these transmission projects authorized by a Federal agency in the past 17 years. With decreased authorization times after the CITAP Program is initialized, the additional capacity enabled by this action would likely provide substantial congestion relief, consistent with the studies cited previously.

A key driver of transmission congestion costs is that the growth of low-cost renewable energy projects is outpacing the rate of transmission expansion. Inadequate transmission capacity can lead to curtailment of available renewable energy in favor of thermal generators, which increases costs to consumers due to fuel prices and increases emissions.[21] A recent projection found that transmission capacity must expand by 2.3% annually to realize the full benefits of the clean energy investments in the IRA. However, in the last decade, transmission capacity has only increased an average of 1% per year.[22] The modeling projects that increasing the rate of transmission capacity expansion by even just 50% (1% to 1.5% annually) would significantly reduce emissions by enabling more clean energy on the grid, estimating nearly 600 million tons of avoided emissions (CO_2 equivalent) in 2030 alone.[23] An annual 1.5% increase in transmission capacity is estimated to add 7,000 MW to the grid in 2030 and provide an estimated $53.4 billion in societal benefits from avoided emissions that year, using a $89/ton social cost of carbon.[24] DOE estimates that the CITAP Program will increase the number of high-capacity projects seeking Federal authorizations, providing a portion of projected avoided emissions benefits through increased transmission capacity. These benefits would continue to grow in the following years as transmission capacity is increased.

While these estimates of quantitative benefits are necessarily approximate, the non-monetized benefits of the CITAP Program to the public are expected to far offset the monetized costs to project proponents. By enabling rapid development of enhanced transmission capacity, the CITAP Program will help increase access to a diversity of generation sources, offset transmission congestion and carbon costs, and deliver reliable, affordable power that future consumers will need when and where they need it.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a general notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (*see* 68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's website (*www.energy.gov/gc/office-general-counsel*).

DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is set forth.

DOE expects that the amendments to part 900 will not affect the substantive interests of such project proponents, including any project proponents that are small entities. DOE expects actions taken under the provisions to coordinate information and agency communication before applications for Federal

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[16] *Id.*

[17] DOE, National Transmission Needs Study (Oct. 2023), available at *https://www.energy.gov/sites/default/files/2023-12/National%20Transmission%20Needs%20Study%20-%20Final_2023.12.1.pdf.*

[18] Berkeley Lab, *Queued up: Characteristics of power plants seeking transmission interconnection* (2023), *Electricity Markets and Policy Group.* Available at: *https://emp.lbl.gov/queues.*

[19] (2023) *Transmission congestion costs rise again in U.S. RTOS,* 1. Available at: *https://gridstrategiesllc.com/wp-content/uploads/2023/07/GS_Transmission-Congestion-Costs-in-the-U.S.-RTOs1.pdf.*

[20] Millstein, *et al.,* 2022, 15.

[21] Howland, E. (2023) *US grid congestion costs jumped 56% to $20.8B in 2022: Report, Utility Dive.* Available at: *https://www.utilitydive.com/news/grid-congestion-costs-transmission-gets-grid-strategies-report/687309/#:~:text=Costs%20to%20consumers%20from%20congestion%20on%20the%20U.S.,report%20released%20Thursday%20by%20consulting%20firm%20Grid%20Strategies.* and *Nationwide transmission congestion costs rise to $20.8 billion in 2022* (2023). *Advanced Power Alliance.* Available at: *https://poweralliance.org/2023/07/13/nationwide-transmission-congestion-costs-rise-to-20-8-billion-in-2022/#:~:text=By%20extrapolating%20data%20from%20Independent%20Market%20Monitor%20reports,congestion%20costs%20reached%20%2420.8%20billion%20nationwide%20last%20year.*

[22] Jenkins, J.D. *et al.* (2022) *Electricity transmission is key to unlock the full potential of the Inflation Reduction Act, Zenodo.* Available at: *https://zenodo.org/record/7106176#:~:text=Previously%2C%20REPEAT%20Project%20estimated%20that%20IRA%20could%20cut,from%20electric%20vehicles%2C%20heat%20pumps%2C%20and%20other%20electrification.*

[23] *Id.*

[24] *Technical support document: Social cost of carbon, methane,* (2021) *whitehouse.gov,* 5. Available at: *https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.*

authorizations are submitted to Federal agencies for review and consideration would help reduce application review and decision-making timelines. Ensuring that all project proponents avail themselves of the benefits of the IIP Process will result in a clear, non-duplicative, process. Participation in the CITAP Program is optional. Thus, proposing to make the IIP Process a condition of the Program does not prevent project proponents from submitting application outside of the Program. DOE, however, encourages project proponents to take advantage of the Program based on the urgency and a consensus among 2023 MOU signatories of the anticipated benefits the Program will provide.

Furthermore, these changes are procedural and apply only to project proponents that develop electric transmission infrastructure. Historically, entities that develop transmission infrastructure are larger entities. Therefore, these procedures are unlikely to directly affect small businesses or other small entities. For these reasons, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

This final rule contains information collection requirements subject to review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) and the procedures implementing that Act (5 CFR 1320.1 *et seq.*). The request to approve and revise this collection requirement has been submitted to OMB for approval. The amendments are intended to improve the pre-application procedures and result in more efficient processing of applications.

This final rule modifies certain reporting and recordkeeping requirements included in OMB Control No. 1910–5185 which is an ongoing collection. The revisions to DOE's regulations associated with the OMB Control No. 1910–5185 information collection are intended to ensure that DOE may carry out its statutory obligations under section 216(h) of the FPA. Information supplied will be used to support an initiation request necessary to begin DOE's IIP Process. The revisions include requiring that a project proponent provide: (1) additional maps and information for the summary of proposed project; (2) a project participation plan; and (3) a statement regarding whether the project is a FAST–41 covered project. Additional information collection required includes thirteen resource reports describing the project and its impacts to allow DOE to complete a single environmental review document as part of the IIP Process. Those reports are: General project description; Water use and quality; Fish, wildlife, and vegetation; Cultural resources; Socioeconomics; Geological resources and hazards; Soil resources; Land use, recreation, and aesthetics; Communities of interest; Air quality and noise effects; Alternatives; Reliability, resilience, and safety; and Tribal interests. Additionally, during the review and close-out meetings, project proponents will provide updates to project documents and the project schedule. The revisions represent an increase in information collection requirements and burden for OMB No. 1910–5185.

The estimated burden and cost for the requirements contained in this final rule follow. Each entry indicates the time estimated for a meeting or the time estimated for the respondent to prepare the report or request.

ESTIMATE OF ANNUAL RESPONDENT REPORTING AND RECORDKEEPING BURDEN AND COST

Form number/title (and/or other collection instrument name)	Estimated number of respondents	Estimated number of total responses *	Estimated number of burden hours per response	Estimated burden hours (total responses × number of hours per response)	Estimated reporting and recordkeeping cost burden **
Current Rule Estimate of Annual Respondent Reporting and Recordkeeping Burden and Cost					
Section 900.2	5	5	1	5	$283
Section 900.4	5	10	5	50	2,830
Total	.....	15	.....	55	3,113
Final Rule Estimate of Annual Respondent Reporting and Recordkeeping Burden and Cost					
Initiation Request	3	3	30	90	5,855
Initial Meeting	3	3	8	24	1,561
Resource Report 1: General project description	3	3	110	330	21,467
Resource Report 2: Water use and quality	3	3	125	375	24,394
Resource Report 3: Fish, wildlife, and vegetation	3	3	200	600	39,030
Resource Report 4: Cultural resources	3	3	200	600	39,030
Resource Report 5: Socioeconomics	3	3	160	480	31,224
Resource Report 6: Tribal interests	3	3	160	480	31,224
Resource Report 7: Communities of interest	3	3	96	288	18,734
Resource Report 8: Geological resources and hazards	3	3	160	480	31,224
Resource Report 9: Soil resources	3	3	200	600	39,030
Resource Report 10: Land use, recreation and aesthetics	3	3	224	676	43,714
Resource Report 11: Air quality and noise effects	3	3	220	660	42,933
Resource Report 12: Alternatives	3	3	160	480	31,224
Resource Report 13: Reliability, resilience, and safety	3	3	100	300	19,515
Review Meeting Request	3	3	1	3	195
Review Meeting	3	3	4	12	781
Close-Out Meeting Request	3	3	1	3	195

ESTIMATE OF ANNUAL RESPONDENT REPORTING AND RECORDKEEPING BURDEN AND COST—Continued

Form number/title (and/or other collection instrument name)	Estimated number of respondents	Estimated number of total responses *	Estimated number of burden hours per response	Estimated burden hours (total responses × number of hours per response)	Estimated reporting and recordkeeping cost burden **
Close-Out Meeting	3	3	2	6	390
Total	3	3	2,134	6,402	421,720

* One response per respondent.
** estimated cost based on median hourly wage for a project manager from *https://www.bls.gov/oes/current/oes131111.htm* ($45.81/hr) and fully burdened scaling factor from *https://www.bls.gov/regions/southwest/news-release/employercostsforemployeecompensation_regions.htm.*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

DOE has analyzed this final rule in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that this final rule is covered under the categorical exclusion located at 10 CFR part 1021, subpart D, appendix A, Categorical Exclusion A5 because this final rule revises existing regulations at 10 CFR part 900. The changes would affect the process for the consideration of future proposals for electricity transmission, and potential environmental impacts associated with any particular proposal would be analyzed pursuant to NEPA and other applicable requirements. DOE has considered whether this action would result in extraordinary circumstances that would warrant preparation of an Environmental Assessment or EIS and has determined that no such extraordinary circumstances exist. Therefore, DOE has determined that this rulemaking does not require an Environmental Assessment or an EIS.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of E.O. 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of E.O. 12988 specifically requires that agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; (6) specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met, or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of E.O. 12988.

F. Review Under Executive Order 13132

E.O. 13132, ''Federalism'', 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. E.O. 13132 also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (*see* 65 FR 13735). DOE has examined this notice and has determined that this final rule will not preempt State law and will not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. No further action is required by E.O. 13132.

G. Review Under Executive Order 13175

Under E.O. 13175, ''Consultation and Coordination with Indian Tribal Governments,'' 65 FR 67249 (Nov. 6, 2000), DOE may not issue a discretionary rule that has Tribal implications or that imposes substantial direct compliance costs on Indian Tribal governments unless DOE provides funds necessary to pay the costs of the Tribal governments or consults with Tribal officials before promulgating the rule. This final rule aims to improve the coordination of Federal authorizations for proposed interstate electric transmission facilities pursuant to the FPA. Specifically, the amendments are intended to refine the pre-application procedures and result in more efficient processing of applications. As a result, the amendments to part 900 do not have substantial direct effects on one or more Indian Tribes, will not impose substantial direct compliance costs on Indian Tribal governments, and will not preempt Tribal laws. Accordingly, the funding and consultation requirements of E.O. 13175 do not apply, and a Tribal summary impact statement is not required.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and Tribal governments, and the private sector.

(Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531)). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy (2 U.S.C. 1532(a), (b)). UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant Federal intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (see 62 FR 12820) (This policy is also available at: *www.energy.gov/gc/guidance-opinions*). DOE examined this final rule according to UMRA and its statement of policy and has determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

I. Review Under Executive Order 12630

DOE has determined, under E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this this final rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1)(i) is a significant regulatory action under E.O. 12866, or any successor order; and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (2) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This final rule is intended to improve the pre-application procedures for certain transmission projects, and therefore result in the more efficient processing of applications, and thus this final rule will not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

L. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002).

DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

IX. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that the Office of Information and Regulatory Affairs has determined that the rule does not meet the criteria set forth in 5 U.S.C. 804(2).

X. Rehearing

This rule is a final order subject to section 313 of the FPA (16 U.S.C. 825l). Accordingly, any party seeking judicial review of this rule must first seek rehearing before the Department. A request for rehearing must be submitted in accordance with the **FOR FURTHER INFORMATION CONTACT** portion of this rule, within 30 days of the issuance of this rule. A request must concisely state the alleged errors in the final rule and must list each issue in a separately enumerated paragraph; any issue not so listed will be deemed waived.

XI. Approval by the Office of the Secretary of Energy

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 900

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

Signing Authority

This document of the DOE was signed on April 11, 2024, 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 April 12, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

■ For the reasons stated in the preamble, the Department of Energy revises 10 CFR part 900 to read as follows:

PART 900—COORDINATION OF FEDERAL AUTHORIZATIONS FOR ELECTRIC TRANSMISSION FACILITIES

Sec.

Authority: 16 U.S.C. 824p(h).

§ 900.1 Purpose and scope.

(a) Pursuant to section 216(h) of the Federal Power Act (16 U.S.C. 824p(h)), the Department of Energy (DOE) establishes the Coordinated Interagency Transmission Authorizations and Permits Program (CITAP Program) under this part to coordinate the review and processes related to Federal authorizations necessary to site a proposed electric transmission facility. Pursuant to section 216(h)(4)(A), this part establishes the mechanism by which DOE will set prompt and binding intermediate milestones and ultimate deadlines for the processes related to deciding whether to issue such authorizations. In addition, as the lead agency and in collaboration with any National Environmental Policy Act (NEPA) joint lead agency and in consultation with the relevant Federal entities, as applicable, DOE will prepare a single environmental review document, which will be designed to serve the needs of all relevant Federal agencies and inform all Federal authorization decisions on the proposed electric transmission project.

(b) This part provides a process for the timely submission of information needed for Federal decisions related to authorizations for siting proposed electric transmission projects. This part seeks to ensure that these projects are developed consistent with the nation's environmental laws, including laws that address endangered and threatened species, critical habitats, and cultural and historic properties. This part provides a framework, called the Integrated Interagency Pre-Application (IIP) Process, by which DOE will coordinate submission of materials necessary for Federal authorizations and related environmental reviews required under Federal law to site proposed electric transmission facilities, and integrates the IIP Process into the CITAP Program.

(c) This part describes the timing and procedures for the IIP Process, which should be initiated prior to a project proponent's submission of any application for a required Federal authorization. The IIP Process provides for timely and focused pre-application meetings with relevant Federal and non-Federal entities. In addition, the IIP Process facilitates early identification of potential siting constraints and opportunities. The IIP Process promotes thorough and consistent stakeholder engagement by a project proponent. At the close-out of each IIP Process, DOE will establish the schedule for all Federal reviews and authorizations required to site a proposed electric transmission facility, in coordination with the relevant Federal entities.

(d) This part improves the Federal permitting process by facilitating the early submission, compilation, and documentation of information needed for coordinated review by relevant Federal entities under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). This part also facilitates expeditious action on necessary Federal authorizations by ensuring that relevant Federal entities coordinate their consideration of those applications and by providing non-Federal entities the opportunity to coordinate their non-Federal permitting and environmental reviews with the reviews of the relevant Federal entities.

(e) This part facilitates improved and earlier coordination of and consultation between relevant Federal entities, relevant non-Federal entities, and others pursuant to section 106 of the National Historic Preservation Act (54 U.S.C. 306108) (NHPA) and its implementing regulations found at 36 CFR part 800. Under this part, DOE may determine it has an undertaking with the potential to affect historic properties and may, at that time, authorize a project proponent, as a CITAP applicant, to initiate section 106 consultation for the undertaking consistent with 36 CFR 800.2(c)(4). Prior to that determination, this part requires project proponents to gather initial information and make recommendations relevant to the section 106 process to the extent possible. This part also establishes DOE as lead for the section 106 process, consistent with DOE's role as lead or joint lead agency for purposes of NEPA, in order to maximize opportunities for coordination between the NEPA and section 106 processes. Federal entities remain responsible for government-to-government consultation with Indian Tribes (and government-to-sovereign consultation in the context of Native Hawaiian relations) and for any findings and determinations required by and reserved to Federal agencies in 36 CFR part 800.

(f) This part applies only to qualifying projects as defined by § 900.2.

(g) Participation in the IIP Process does not alter any requirements to obtain necessary Federal authorizations for proposed electric transmission projects. Nor does this part alter any responsibilities of the relevant Federal entities for environmental review or consultation under applicable law.

(h) The Director may waive any requirement imposed on a project proponent under this part if, in the Director's discretion, the Director determines that the requirement is unnecessary, duplicative, or impracticable under the circumstances relevant to the proposed electric transmission project. Where the principal project developer is itself a Federal entity that would be otherwise expected to prepare an environmental review document for the project, the Director shall consider modifications to the requirements under this part as may be necessary under the circumstances.

§ 900.2 Definitions.

As used in this part:

Analysis area means a geographical area established for a resource report at the IIP Process initial meeting and modified at the IIP Process review meeting, if applicable.

Authorization means any license, permit, approval, finding, determination, or other administrative decision required under Federal, Tribal, State, or local law to site a proposed electric transmission facility, including special use authorization, certifications, opinions, or other approvals.

Communities of Interest means the following communities that could be affected by a proposed electric transmission project: disadvantaged communities; rural communities; Tribal communities; indigenous communities; geographically proximate communities; communities with environmental justice concerns; and energy communities.

Director means the Director of the DOE Grid Deployment Office, that person's delegate, or another DOE official designated to perform the functions of this part by the Secretary of Energy.

Federal authorization means any authorization required under Federal law.

Federal entity means any Federal agency or department.

Indian Tribe has the same meaning as provided by 25 U.S.C. 5304(e).

Mitigation approach means an approach that applies a conceptual plan to identify appropriate measures to avoid, minimize, or compensate for potential impacts to resources from a proposed electric transmission project, consistent with 40 CFR 1508.1(s) or any successor regulation. A mitigation approach identifies the needs and baseline conditions of targeted resources, potential impacts from the proposed project, cumulative impacts of past and reasonably foreseeable future

disturbances to those resources, and future disturbance trends, then uses this information to identify priorities for measures across the relevant area. Such an approach includes full consideration of the conditions of additionality (meaning that the benefits of a compensatory mitigation measure improve upon the baseline conditions in a manner that is demonstrably new and would not have occurred without the mitigation measure) and durability (meaning that the effectiveness of a mitigation measure is sustained for the duration of the associated direct and indirect impacts).

MOU signatory agency means a Federal entity that has entered into the currently effective memorandum of understanding (MOU) under section 216(h)(7)(B)(i) of the Federal Power Act, such as the interagency MOU executed in May 2023, titled ''Memorandum of Understanding among the U.S. Department of Agriculture, Department of Commerce, Department of Defense, Department of Energy, the Environmental Protection Agency, the Council on Environmental Quality, the Federal Permitting Improvement Steering Council, Department of the Interior, and the Office of Management and Budget Regarding Facilitating Federal Authorizations for Electric Transmission Facilities.''

NEPA joint lead agency means the Federal entity designated under § 900.11.

Non-Federal entity means an Indian Tribe, multi-State governmental entity, State agency, or local government agency.

Participating agencies means:

(1) The Department of Agriculture (USDA);

(2) The Department of Commerce;

(3) The Department of Defense (DOD);

(4) The Department of Energy;

(5) The Environmental Protection Agency (EPA);

(6) The Council on Environmental Quality;

(7) The Office of Management and Budget;

(8) The Department of the Interior (DOI);

(9) The Federal Permitting Improvement Steering Council (FPISC);

(10) Other agencies and offices as the Secretary of Energy may from time to time invite to participate; and

(11) The following independent agencies, to the extent consistent with their statutory authority and obligations, and determined by the chair or executive director of each agency, as appropriate:

(i) The Federal Energy Regulatory Commission (FERC); and

(ii) The Advisory Council on Historic Preservation.

Potentially affected landowner means an owner of a real property interest that is potentially affected directly (*e.g.,* crossed or used) or indirectly (*e.g.,* changed in use) by a project right-of-way, potential route, or proposed ancillary or access site, as identified in § 900.6.

Project area means the area located between the two end points of the proposed electric transmission facility containing the study corridors selected by the project proponent for in-depth consideration for the proposed project and the immediate surroundings of the end points of the proposed facility. The project area does not necessarily coincide with ''permit area,'' ''area of potential effect,'' ''action area,'' or other terms specific to a certain type of regulatory review.

Project proponent means a person or entity who initiates the IIP Process in anticipation of seeking a Federal authorization for a proposed electric transmission project.

Qualifying project means:

(1) A proposed electric transmission line and its attendant facilities:

(i) That will either be a high-voltage (230 kV or above) line or a regionally or nationally significant line, as determined by DOE based upon relevant factors, including but not limited to, reduction in congestion costs for generating and delivering energy, mitigation of weather and variable generation uncertainty, and enhanced diversity of supply;

(ii) Which is expected to be used, in whole or in part, for the transmission of electric energy in interstate or international commerce for sale at wholesale;

(iii) Which is expected to require preparation of an environmental impact statement (EIS) pursuant to NEPA to inform an agency decision on a Federal authorization;

(iv) Which is not proposed for authorization under section 8(p) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(p));

(v) Which is not seeking a construction or modification permit from FERC pursuant to section 216(b) of the Federal Power Act (16 U.S.C. 824p(b)); and

(vi) Which will not be wholly located within the Electric Reliability Council of Texas interconnection; or

(2) Any other proposed electric transmission facility that is approved by the Director under the process set out in § 900.3.

Relevant Federal entity means a Federal entity with jurisdictional interests that may have an effect on a proposed electric transmission project, that is responsible for issuing a Federal authorization for the proposed project, that has relevant expertise with respect to environmental and other issues pertinent to or potentially affected by the proposed project, or that provides funding for the proposed project. The term includes participating agencies. The term includes a Federal entity with either permitting or non-permitting authority; for example, those entities with which consultation or review must be completed before a project may commence, such as DOD for an examination of military test, training, or operational impacts.

Relevant non-Federal entity means a non-Federal entity with relevant expertise or jurisdiction within the project area, that is responsible for issuing an authorization for the proposed electric transmission project, that has relevant expertise with respect to environmental and other issues pertinent to or potentially affected by the proposed project, or that provides funding for the proposed project. The term includes an entity with either permitting or non-permitting authority, such as an Indian Tribe, Native Hawaiian Organization, or State or Tribal Historic Preservation Office with whom consultation must be completed in accordance with section 106 of the NHPA prior to approval of a permit, right-of-way, or other authorization required for a Federal authorization.

Route means an area along a linear path within which a proposed electric transmission facility could be sited that is:

(1) Wide enough to allow minor adjustments in the alignment of the proposed facility to avoid sensitive features or to accommodate potential engineering constraints; and

(2) Narrow enough to allow detailed study.

Stakeholder means any relevant non-Federal entity, interested non-governmental organization, potentially affected landowner, or other interested person or organization.

Study corridor means a contiguous area (not to exceed one mile in width) within the project area where potential routes or route segments may be considered for further study. A study corridor does not necessarily coincide with ''permit area,'' ''area of potential effect,'' ''action area,'' or other defined terms of art that are specific to types of regulatory review.

§ 900.3 Applicability to other projects.

(a) Following the procedures set out in this section, the Director may

determine that a proposed electric transmission facility that does not meet the description of a *qualifying project* under paragraph (1) of the definition in § 900.2 is a *qualifying project* under paragraph (2) of the definition.

(b) A requestor seeking DOE assistance under this part for a proposed electric transmission facility that does not meet the description of a *qualifying project* under paragraph (1) of the definition in § 900.2 must file a request for coordination with the Director. The request must contain:

(1) The legal name of the requester; its principal place of business; and the name, title, and mailing address of the person or persons to whom communications concerning the request for coordination are to be addressed;

(2) A concise description of the proposed facility sufficient to explain its scope and purpose;

(3) A list of anticipated relevant Federal entities involved in the proposed facility; and

(4) A list of anticipated relevant non-Federal entities involved in the proposed facility, including any agency serial or docket numbers for pending applications.

(c) Not later than 30 calendar days after the date that the Director receives a request under this section, the Director, in consultation with the relevant Federal entities, will determine if the proposed electric transmission facility is a qualifying project under this part and will notify the project proponent in writing of one of the following:

(1) If accepted, that the proposed facility is a qualifying project and the project proponent must submit an initiation request as set forth under § 900.5; or

(2) If not accepted, that the proposed facility is not a qualifying project, a justification of that determination, and an indication that the project proponent must follow the procedures of each relevant Federal entity that has jurisdiction over the proposed facility without DOE performing a coordinating function.

(d) In making the determination whether a proposed electric transmission facility is a qualifying project, the Director may consider:

(1) Whether the proposed facility would benefit from CITAP Program coordination;

(2) Whether the proposed facility would result in reduced congestion costs for generating and delivering energy;

(3) Whether the proposed facility would result in mitigation of weather and variable generation uncertainty;

(4) Whether the proposed facility would result in an enhanced diversity of supply; and

(5) Any other relevant factors, as determined by the Director.

(e) For a proposed facility that is seeking a construction or modification permit pursuant to section 216(b) of the Federal Power Act, DOE may only consider a request for assistance under this section if the request under paragraph (b) of this section is consistent with Delegation Order No. S1–DEL–FERC–2006 or any similar, subsequent delegation that the Secretary may order.

(f) At the discretion of the MOU signatory agencies, this section may be applied to a proposed electric transmission facility proposed for authorization under section 8(p) of the Outer Continental Shelf Lands Act, if the proposed authorization is independent of any generation project.

(g) This section does not apply to:

(1) A proposed electric transmission facility proposed to be authorized under section 8(p) of the Outer Continental Shelf Lands Act in conjunction with a generation project; or

(2) A proposed electric transmission facility wholly located within the Electric Reliability Council of Texas interconnection.

§ 900.4 Purpose and scope of IIP Process.

(a) The Integrated Interagency Pre-Application (IIP) Process is intended for a project proponent who has identified potential study corridors or potential routes and the proposed locations of any intermediate substations for a proposed electric transmission project. To the extent possible, the project proponent should use the following criteria to identify potential study corridors and potential routes:

(1) Potential environmental, visual, historic, cultural, economic, social, or health effects or harm based on the proposed project or proposed siting, and anticipated constraints (for instance, pole height and corridor width based on line capacity to improve safety and resiliency of the project);

(2) Potential cultural resources, sacred sites, and historic properties that may be eligible for or listed in the National Register of Historic Places;

(3) Areas under (or potentially under) special protection by State or Federal statute and areas subject to a Federal entity or non-Federal entity decision that could potentially increase the time needed for project evaluation and siting a transmission line route. Such areas may include, but are not limited to, properties or sites that may be of traditional religious or cultural importance to Indian Tribes, National Scenic and Historic Trails, National Landscape Conservation System units managed by the Bureau of Land Management (BLM), Land and Water Conservation Fund lands, National Wildlife Refuges, national monuments, National Historic Landmarks, units of the National Park System, national marine sanctuaries, and marine national monuments;

(4) Opportunities to site potential routes through designated corridors, previously disturbed lands, and lands with existing infrastructure as a means of potentially reducing impacts and known conflicts as well as the time needed for affected Federal land managers to evaluate an application for a Federal authorization if the route is sited through such areas (*e.g.,* colocation with existing infrastructure or location on previously disturbed lands, in energy corridors designated by the Department of the Interior or the Department of Agriculture under section 503 of the Federal Land Policy and Management Act (Pub. L. 94–579) or section 368 of the Energy Policy Act of 2005 (Pub. L. 109–58), existing rights-of-way, National Interest Electric Transmission Corridors designated under Federal Power Act section 216(a), or utility corridors identified in a land management plan);

(5) Potential constraints caused by impacts on military test, training, and operational missions, including impacts on installations, ranges, and airspace;

(6) Potential constraints caused by impacts on the United States' aviation system;

(7) Potential constraints caused by impacts to navigable waters of the United States; and

(8) Potential avoidance, minimization, offsetting, and compensatory (onsite and offsite) measures, developed through a mitigation approach to reduce or offset the potential impact of the proposed project to resources requiring mitigation.

(b) Participation in the IIP Process is a prerequisite for the coordination provided by DOE between relevant Federal entities, relevant non-Federal entities, and the project proponent.

(c) The IIP Process ensures early interaction between the project proponents, relevant Federal entities, and relevant non-Federal entities to enhance early understanding by those entities. Through the IIP Process, the project proponent will provide relevant Federal entities and relevant non-Federal entities with a clear description of the proposed electric transmission project, the project proponent's siting process, and the environmental and community setting being considered by

the project proponent for siting the proposed electric transmission facility; and will coordinate with relevant Federal entities to develop resource reports that will serve as inputs, as appropriate, into the relevant Federal analyses and facilitate early identification of project issues.

(d) The IIP Process is an iterative process anchored by three meetings: the initial meeting, review meeting, and close-out meeting. These meetings, defined in §§ 900.5, 900.8 and 900.9, are milestones in the process and do not preclude any additional meetings or communications between the project proponent and the relevant Federal entities. The iterative nature of the process is provided for in procedures for evaluating the completeness of submitted materials and the suitability of materials for the relevant Federal entities' decision-making before each milestone.

(e) DOE, in exercising its responsibilities under this part, will communicate regularly with FERC, electric reliability organizations and electric transmission organizations approved by FERC, relevant Federal entities, and project proponents. DOE will use information technologies to provide opportunities for relevant Federal entities to participate remotely.

(f) DOE, in exercising its responsibilities under this part, will to the maximum extent practicable and consistent with Federal law, coordinate the IIP Process with any relevant non-Federal entities. DOE will use information technologies to provide opportunities and reduce burdens for relevant non-Federal entities to participate remotely.

(g) The Director may at any time require the project proponent to provide additional information necessary to resolve issues raised by the IIP Process.

(h) Pursuant to 10 CFR 1004.11, any person submitting information during the IIP Process that the person believes to be confidential and exempt by law from public disclosure should submit two well-marked copies, one marked ''confidential'' that includes all the information believed to be confidential, and one marked ''non-confidential'' with the information believed to be confidential deleted or redacted. DOE will make its own determination about the confidential status of the information and treat it according to its determination, in accordance with applicable law. The project proponent must request confidential treatment for all material filed with DOE containing non-public location, character, and ownership information about cultural resources.

(i) Pursuant to 10 CFR 1004.13, any person submitting information during the IIP Process that the person believes might contain Critical Electric Infrastructure Information (CEII) should submit a request for CEII designation of information.

§ 900.5 Initiation of IIP Process.

(a) *Initiation request.* A project proponent shall submit an initiation request to DOE. The project proponent may decide when to submit the initiation request. The initiation request must include, based on best available information:

(1) A summary of the proposed electric transmission project, as described by paragraph (b) of this section;

(2) Associated maps, geospatial information, and studies (provided in electronic format), as described by paragraph (c) of this section;

(3) A project participation plan, as described by paragraph (d) of this section; and

(4) A statement regarding the proposed project's status pursuant to Title 41 of the Fixing America's Surface Transportation Act (FAST–41) (42 U.S.C. 4370m–2(b)(2)), as described by paragraph (e) of this section.

(b) *Summary of the proposed project.* The summary of the proposed electric transmission project may not exceed 10 single-spaced pages unless the project proponent requests a waiver of the page limit, including a rationale for the waiver, and DOE grants the waiver. The summary must include:

(1) The following information:

(i) The project proponent's legal name and principal place of business;

(ii) The project proponent's contact information and designated point(s) of contact;

(iii) Whether the project proponent is an individual, partnership, corporation, or other entity and, if applicable, the State laws under which the project proponent is organized or authorized; and

(iv) If the project proponent resides or has its principal office outside the United States, documentation related to designation by irrevocable power of attorney of an agent residing within the United States;

(2) A statement of the project proponent's interests and objectives;

(3) To the extent available, copies of or links to:

(i) Any regional electric transmission planning documents, regional reliability studies, regional congestion or other related studies that relate to the proposed project or the need for the proposed project; and

(ii) Any relevant interconnection requests;

(4) A description of potential study corridors and routes identified by the project proponent and a brief description of the evaluation criteria and methods used by the project proponent to identify and develop those corridors and routes;

(5) A brief description of the proposed project, including end points, voltage, ownership, intermediate substations if applicable, and, to the extent known, any information about constraints or flexibility with respect to the proposed project;

(6) Identification of any environmental and engineering firms and sub-contractors under contract to develop the proposed project;

(7) The project proponent's proposed schedule for filing necessary Federal and State applications, construction start date, and planned in-service date, assuming receipt of all necessary authorizations; and

(8) A list of anticipated relevant Federal entities and relevant non-Federal entities, including contact information for each Federal agency, State agency, Indian Tribe, or multi-State entity that is responsible for or has a role in issuing an authorization or environmental review for the proposed project.

(c) *Maps, geospatial information, and studies.* The initiation request must include maps, geospatial information, and studies in support of the information provided in the summary of the proposed project under paragraph (b) of this section. Maps must be of sufficient detail to identify the study corridors and potential routes. Project proponents must provide the maps, information, and studies as electronic data files that may be readily accessed by relevant Federal entities and relevant non-Federal entities. The maps, information, and studies described in this paragraph (c) must include:

(1) Location maps and plot plans to scale showing all major components, including a description of zoning and site availability for any permanent facilities; cultural resource location information in these materials should be submitted in accordance with § 900.4(h);

(2) A map of the project area showing potential study corridors and potential routes;

(3) Existing data or studies relevant to the summary of the proposed project; and

(4) Citations identifying sources, data, and analyses used to develop the summary of the proposed project.

(d) *Project participation plan.* The project participation plan, which may not exceed 10, single-spaced pages, summarizes the outreach that the project proponent conducted prior to submission of the initiation request, and describes the project proponent's planned outreach to communities of interest going forward. A supplemental appendix may be submitted to provide sufficient detail in addition to the narrative elements. The project participation plan must include:

(1) A summary of prior outreach to communities of interest and stakeholders including:

(i) A description of what work already has been done, including stakeholder and community outreach and public engagement, as well as any entities and organizations interested in the proposed electric transmission project;

(ii) A list of environmental, engineering, public affairs, other contractors or consultants employed by the proponent to facilitate public outreach;

(iii) A description of any materials provided to the public, such as environmental surveys or studies;

(iv) A description of the communities of interest identified and the process by which they were identified;

(v) A general description of the real property interests that would be impacted by the proposed project and the rights that the owners of those property interests would have under State law; and

(vi) A summary of comments received during these previous engagement activities, issues identified by stakeholders, communities of interest (including various resource issues, differing project alternative study corridors or routes, and revisions to routes), and responses provided to commenters, if applicable; and

(2) A public engagement plan, which must:

(i) Describe the project proponent's outreach plan and status of those activities, including planned future activities corresponding to each of the items or issues identified in paragraphs (d)(1)(i) through (vi) of this section, specifying the planned dates or frequency;

(ii) Describe the manner in which the project proponent will reach out to communities of interest about potential mitigation of concerns;

(iii) Describe planned outreach activities during the permitting process, including efforts to identify, and engage, individuals with limited English proficiency and linguistically isolated communities, and provide accommodations for individuals with accessibility needs; and

(iv) Discuss the specific tools and actions used by the project proponent to facilitate public communications and public information, including whether the project proponent will have a readily accessible, easily identifiable, single point of contact.

(e) *FAST–41 statement.* The FAST–41 statement required under paragraph (a) of this section must specify the status of the proposed electric transmission project pursuant to FAST–41 at the time of submission of the initiation request. The statement must either:

(1) State that the project proponent has sought FAST–41 coverage pursuant to 42 U.S.C. 4370m–2(a)(1); and state whether the Executive Director of the FPISC has created an entry on the Permitting Dashboard for the project as a covered project pursuant to 42 U.S.C. 4370m–2(b)(2)(A); or

(2) State that the project proponent elected not to apply to be a FAST–41 covered project at this time.

(f) *Initiation request determination.* Not later than 20 calendar days after the date that DOE receives an initiation request, DOE shall:

(1) Determine whether the initiation request meets the requirements of this section and, if not previously determined under § 900.3, whether the proposed electric transmission facility is a qualifying project;

(2) Identify the relevant Federal entities and relevant non-Federal entities and provide each with an electronic copy of the initiation request; and

(3) Give notice to the project proponent and relevant Federal and non-Federal entities of DOE's determinations under paragraph (f)(1) of this section.

(g) *Deficiencies.* If DOE determines under paragraph (f)(1) of this section that the initiation request does not meet the requirements of this section, DOE must provide the reasons for that finding and a description of how the project proponent may, if applicable, address any deficiencies in the initiation request so that DOE may reconsider its determination. If DOE determines under paragraph (f)(1) of this section that the proposed electric transmission facility is not a qualifying project, DOE must provide a justification for the determination and the project proponent may file a request for coordination with the Director as provided in § 900.3. A project to site a proposed electric transmission facility that is not a qualifying project is not eligible for participation in the IIP Process.

(h) *Initial meeting.* If a project proponent submits a valid initiation request, DOE, in consultation with the identified relevant Federal entities, shall convene the IIP Process initial meeting with the project proponent and all relevant Federal entities notified by DOE under paragraph (f) of this section as soon as practicable and no later than 15 calendar days after the date that DOE provides notice under paragraph (f) that the initiation request meets the requirements of this section. DOE shall also invite relevant non-Federal entities to participate in the initial meeting. During the initial meeting:

(1) DOE and the relevant Federal entities shall discuss with the project proponent the IIP Process, Federal authorization process, related environmental reviews, any arrangements for the project proponent to contribute funds to DOE to cover costs incurred by DOE and the relevant Federal entities in the IIP Process (in accordance with 42 U.S.C. 7278), any requirements for entering into cost recovery agreements, and paying for third-party contractors under DOE's supervision, where applicable;

(2) DOE will identify any Federal applications that must be submitted during the IIP Process, to enable relevant Federal entities to begin work on the review process, and those applications that will be submitted after the IIP Process. All application submittal timelines will be accounted for in the project-specific schedule described in § 900.7;

(3) DOE will establish all analysis areas necessary for the completion of resource reports required under § 900.6;

(4) The project proponent shall describe the proposed electric transmission project and the contents of the initiation request;

(5) DOE and the relevant Federal entities, along with any relevant non-Federal entities who choose to participate, will review the information provided by the project proponent and publicly available information, discuss the study corridors and potential routes identified by the project proponent, discuss the evaluation criteria and methods used to identify those corridors and routes and, to the extent possible and based on agency expertise and experience, identify any additional criteria for adding or modifying potential routes and study corridors;

(6) DOE and the relevant Federal entities will discuss, based on available information provided by the project proponent, any surveys and studies that may be required for potential routes and completion of the resource reports, including biological (including

threatened and endangered species or avian, aquatic, and terrestrial species and aquatic habitats of concern), visual, cultural, economic, social, health, and historic surveys and studies.

(i) *Feedback to project proponent.* Feedback provided to the project proponent under paragraph (h) of this section does not constitute a commitment by any relevant Federal entity to approve or deny a Federal authorization request, nor does the IIP Process limit agency discretion regarding NEPA review.

(j) *Draft initial meeting summary.* Not later than 10 calendar days after the initial meeting, DOE shall:

(1) Prepare a draft initial meeting summary that includes a summary of the meeting discussion, a description of key issues and information gaps identified during the meeting, and any requests for more information from relevant Federal entities and relevant non-Federal entities; and

(2) Convey the draft summary to the project proponent, relevant Federal entities, and any relevant non-Federal entities that participated in the meeting.

(k) *Corrections.* The project proponent and entities that received the draft initial meeting summary under paragraph (j) of this section will have 10 calendar days following receipt of the draft initial meeting summary to review the draft and provide corrections to DOE.

(l) *Final summary.* Not later than 10 calendar days following the close of the 10-day review period under paragraph (k) of this section, DOE shall:

(1) Prepare a final initial meeting summary by incorporating received corrections, as appropriate;

(2) Add the final summary to the consolidated administrative docket described by § 900.10; and

(3) Provide an electronic copy of the summary to all relevant Federal entities, relevant non-Federal entities, and the project proponent.

§ 900.6 Project proponent resource reports.

(a) *Preparation and submission.* The project proponent shall prepare and submit to DOE the 13 project proponent resource reports described in this section. The project proponent may submit the resource reports at any time before requesting a review meeting under § 900.8 and shall, at the direction of DOE, revise resource reports in response to comments received from relevant Federal entities and relevant non-Federal entities during the Integrated Interagency Pre-Application (IIP) Process.

(b) *Content.* Each resource report must include concise descriptions, based on the best available scientific and commercial information, of the known existing environment and major site conditions. The detail of each resource report must be commensurate with the complexity of the proposal and its potential for environmental impacts. Each topic in each resource report must be addressed or its omission justified. If any resource report topic is not addressed at the time the applicable resource report is filed or its omission is not addressed, the report must explain why the topic is missing. If material required for one resource report is provided in another resource report or in another exhibit, it may be incorporated by reference. If outside material is reasonably available for review and comment, a resource report may incorporate that material by reference by including a citation to the material and a brief summary of the material. Consistent with §§ 900.1(h) and 900.4(g), the Director may modify the requirements of this section to reflect differences in onshore and offshore environments and uses.

(c) *Requirements for IIP Process progression.* Failure of the project proponent to provide at least the required initial or revised content will prevent progress through the IIP Process to the IIP Process review or close-out meetings, unless the Director determines that the project proponent has provided an acceptable reason for the item's absence and an acceptable timeline for filing it. Failure to file within the accepted timeline will prevent further progress in the IIP Process.

(d) *General requirements.* As appropriate, each resource report shall:

(1) Address conditions or resources that might be directly or indirectly affected by the proposed electric transmission project;

(2) Identify environmental effects expected to occur as a result of the proposed project;

(3) Identify the potential effects of construction, operation (including maintenance and malfunctions), and termination of the proposed project, as well as potential cumulative effects resulting from existing or reasonably foreseeable projects;

(4) Identify measures proposed to enhance the environment or to avoid, minimize, or compensate for potential adverse effects of the proposed project; and

(5) Provide a list of publications, reports, and other literature or communications, including agency communications, that were cited or relied upon to prepare each report.

(e) *Federal responsibility.* The resource reports prepared by the project proponent under this section do not supplant the requirements under existing environmental laws related to the information required for Federal authorization or consultation processes. The relevant Federal entities shall independently evaluate the information submitted and shall be responsible for the accuracy, scope, and contents of all Federal authorization decision documents and related environmental reviews.

(f) *Resource Report 1—General project description.* This report should describe all expected facilities associated with the project, special construction and operation procedures, construction timetables, future plans for related construction, and permits, authorizations, and consultations that are expected to be required for proposed project. Resource Report 1 must:

(1) Describe and provide location maps of all facilities to be constructed, modified, abandoned, replaced, or removed, including facilities related to construction and operational support activities and areas such as maintenance bases, staging areas, communications towers, power lines, and new access roads (roads to be built or modified), as well as any existing infrastructure proposed to be used for the project (*e.g.,* connections to existing substations and transmission, and existing access roads);

(2) Describe specific generation resources that are known or reasonably foreseen to be developed or interconnected as a result of the proposed electric transmission project, if any;

(3) Identify facilities constructed by other entities that are related to the proposed project (*e.g.,* fiber optic cables) and where those facilities would be located;

(4) Provide the following information for each facility described under paragraphs (f)(1) through (3) of this section:

(i) A brief description of the facility, including, as appropriate, ownership, land requirements, megawatt size, construction status, and an update of the latest status of Federal, State, and local permits and approvals; and

(ii) Current topographic maps showing the location of the facility;

(5) Provide any communications with the appropriate State Historic Preservation Offices (SHPOs) and Tribal Historic Preservation Offices (THPOs) regarding cultural and historic resources in the project area;

(6) To the extent known, identify the permits, authorizations, and consultations that are expected to be required for proposed project, including consultation under section 106 of the NHPA, consultation under section 7 of the Endangered Species Act of 1973 (Pub. L. 93–205, as amended, 16 U.S.C. 1531 *et seq.*), consistency determinations under the Coastal Zone Management Act (CZMA), and permits under the Clean Water Act (33 U.S.C. 1251 *et seq.*) (CWA);

(7) Describe any developments in obtaining authorizations and permits or completing required consultations for the proposed project and identify environmental mitigation requirements specified in any permit or proposed in any permit application to the extent not specified elsewhere in this resource report or another resource report;

(8) If the project includes abandonment of certain facilities, rights-of-way, or easements, identify and describe the following:

(i) facilities, rights-of-way, or easements that the project proponent plans to abandon;

(ii) how the facilities, rights-of-way, or easements would be abandoned;

(iii) how the abandoned facilities, rights-of-way, and easements would be restored;

(iv) the owner of the facilities, rights-of-way, or easement after abandonment;

(v) the party responsible for the abandoned facilities, rights-of-way, or easement;

(vi) whether landowners were or are expected to be given the opportunity to request that the abandoned facilities on their property, including foundations and below ground components, be removed; and

(vii) landowners whose preferences regarding abandoned facility removal the project proponent does not intend to honor and reasons why the project proponent does not intend to honor those preferences;

(9) Provide construction timetables and describe, by milepost, proposed construction and restoration methods to be used in areas of rugged topography, residential areas, active croplands, sites where the proposed project would be located parallel to and under roads, and sites where explosives may be used;

(10) Describe estimated workforce requirements for the proposed project, including the number of construction spreads, average workforce requirements for each construction spread, estimated duration of construction from initial clearing to final restoration, and number of personnel to be hired to operate the proposed project;

(11) Describe reasonably foreseeable plans for future expansion of facilities related to the project, including additional land requirements and the compatibility of those plans with the current proposal;

(12) Provide the names and mailing addresses of all potentially affected landowners identified by the project proponent, identify which potentially affected landowners have been notified by the project proponent, and describe the methodology used to identify potentially affected landowners;

(13) Summarize the proposed mitigation approach anticipated by the project proponent to reduce the potential impacts of the proposed project to resources warranting or requiring mitigation; and

(14) Describe how the proposed project will reduce capacity constraints and congestion on the transmission system, meet unmet demand, or connect generation resources (including the expected type of generation, if known) to load, as appropriate.

(g) *Resource Report 2—Water use and quality.* This report should describe water resources that may be impacted by the proposed project, describe the potential impacts on these resources, and describe the measures taken to avoid and minimize adverse effects to such water resources, where appropriate. Resource Report 2 must:

(1) Identify surface water resources, including perennial waterbodies, intermittent streams, ephemeral waterbodies, municipal water supply or watershed areas, specially designated surface water protection areas and sensitive waterbodies, floodplains, and wetlands, that would be crossed by a potential route;

(2) For each surface water resource that would be crossed by a potential route, identify the approximate width of the crossing, State water quality classifications, any known potential pollutants present in the water or sediments, and any downstream potable water intake sources within the applicable analysis area;

(3) Describe typical staging area requirements at surface water resource crossings and identify and describe each potential surface water crossing where staging areas are likely to be more extensive and could require a mitigation approach to address potential impacts to the water resource;

(4) Provide two copies of floodplain and National Wetland Inventory (NWI) maps or, if not available, appropriate State wetland maps clearly showing the study corridors or potential routes and mileposts;

(5) For each wetland crossing, identify the milepost of the crossing, the wetland classification specified by the USFWS, and the length of the crossing, and describe, by milepost, wetland crossings as determined by field delineations using the current Federal methodology;

(6) For each floodplain crossing, identify the mileposts, acres of floodplains affected, flood elevation, and basis for determining that elevation;

(7) Describe and provide data supporting the expected impact of the proposed project on surface and groundwater resources;

(8) Describe and provide data supporting proposed avoidance and minimization measures as well as protection or enhancement measures that would reduce the potential for adverse impacts to surface and groundwater resources, and discuss any potential compensation expected to be provided for remaining unavoidable impacts to water resources due to the proposed project;

(9) Identify the location of known public and private groundwater supply wells or springs within the applicable analysis area;

(10) Identify locations of EPA or State-designated principal-source aquifers and wellhead protection areas crossed by a potential route;

(11) Discuss the results of any coordination with relevant Federal entities or non-Federal entities related to CWA permitting and include any written correspondence that resulted from the coordination; and

(12) Indicate whether the project proponent expects that a water quality certification (under section 401 of the CWA) will be required for any potential routes.

(h) *Resource Report 3—Fish, wildlife, and vegetation.* This report should identify and describe potential impacts to aquatic and terrestrial habitats, wildlife, and plants from the proposed project and discuss potential avoidance, minimization, or compensation measures, and enhancement or protection measures to reduce adverse impacts to these resources. Resource Report 3 must:

(1) Describe aquatic habitats that occur in the applicable analysis area, including commercial and recreational warmwater, coldwater, and saltwater fisheries and associated significant habitats such as spawning or rearing areas, estuaries, and other essential fish habitats;

(2) Describe terrestrial habitats that occur in the project area, including wetlands, typical wildlife habitats, and rare, unique, or otherwise significant habitats;

(3) Identify fish, wildlife, and plants that may be affected by the proposed project, including species that have commercial, recreational, or aesthetic value and that may be affected by the proposed project;

(4) Describe and provide the acreage of vegetation cover types that would be affected by the proposed project, including unique ecosystems or communities such as remnant prairie or old-growth forest, or significant individual plants, such as old-growth specimen trees;

(5) Describe the impact of the proposed project on aquatic and terrestrial habitats, including potential loss and fragmentation;

(6) Describe the potential impact of the proposed project on Federally listed, candidate, or proposed endangered or threatened species, State, Tribal, and local species of concern, and those species' habitats, including the possibility of a major alteration to ecosystems or biodiversity;

(7) Describe the potential impact of maintenance, clearing, and treatment of the applicable analysis area on fish, wildlife, and plant life;

(8) Identify all Federally listed, candidate, or proposed endangered or threatened species that may be affected by the proposed project and proposed or designated critical habitats that potentially occur in the applicable analysis area;

(9) Identify all State, Tribal, and local species of concern that may be affected by the proposed project;

(10) Identify all known and potential bald and golden eagle nesting and roosting sites, migratory bird flyways, and any sites important to migratory bird breeding, feeding, and sheltering within the applicable analysis areas. These identifications should coincide with the USFWS's most current range and location maps at the time this resource report is submitted;

(11) Discuss the results of any discussions conducted by the proponent to date with relevant Federal entities or relevant non-Federal entities related to fish, wildlife, and vegetation resources, and include any written correspondence that resulted from the discussions;

(12) Include the results of any appropriate surveys that have already been conducted, as well as plans and protocols for future surveys. If potentially suitable habitat is present, species-specific surveys may be required;

(13) If present, identify all Federally designated essential fish habitat (EFH) that occurs in the applicable analysis area and provide:

(i) Information on all EFH, as identified by the pertinent Federal fishery management plans, which may be adversely affected by potential routes;

(ii) The results of discussions with National Marine Fisheries Service; and

(iii) Any resulting EFH assessments that were evaluated, and EFH Conservation Recommendations that were provided by the National Marine Fisheries Service;

(14) Describe potential avoidance, minimization, or compensation measures, and enhancement or protection measures to address adverse effects described in paragraphs (h)(5), (6), and (7) of this section;

(15) Describe anticipated site-specific mitigation approaches for fisheries, wildlife (including migration corridors and seasonal areas of use), grazing, and plant life;

(16) Describe proposed measures to avoid and minimize incidental take of Federally listed and candidate species and species of concern, including eagles and migratory birds; and

(17) Include copies of any correspondence not otherwise provided pursuant to this paragraph (h) containing recommendations from appropriate Federal, State, and local fish and wildlife agencies to avoid or limit impact on wildlife, fish, fisheries, habitats, and plants, and the project proponent's response to those recommendations.

(i) *Resource Report 4—Cultural resources.* This report should describe the location of known cultural and historic resources, previous surveys and listings of cultural and historic resources, the potential effects that construction, operation, and maintenance of the proposed project will have on those resources, and initial recommendations for avoidance and minimization measures to address potential effects to those resources. The information provided in Resource Report 4 will contribute to the satisfaction of DOE's and relevant Federal entities' obligations under section 106 of the NHPA.

(1) Resource Report 4 must contain:

(i) A summary of known cultural and historic resources in the applicable analysis area including but not limited to those listed or eligible for listing on the National Register of Historic Places, such as properties of religious and cultural significance to Indian Tribes, and any material remains of past human life or activities that are of an archeological interest;

(ii) A description of potential effects that construction, operation, and maintenance of the proposed project will have on resources identified in paragraph (i)(1)(i) of this section;

(iii) Documentation of the project proponent's initial communications and engagement, including preliminary outreach and coordination, with Indian Tribes, indigenous peoples, THPOs, SHPOs, communities of interest, and other entities having knowledge of, interest regarding, or an understanding about the resources identified in paragraph (i)(1)(i) of this section and any written comments from SHPOs, THPOs, other Tribal historic preservation offices or governments, or others, as appropriate and available;

(iv) Recommended avoidance and minimization measures to address potential effects of the proposed project;

(v) Any relevant existing surveys or listings of cultural and historic resources in the affected environment; and

(vi) Recommendations for any additional surveys needed; and

(vii) A description, by milepost, of any area that has not been surveyed due to a denial of access by landowners.

(2) The project proponent must update this report with the results of any additional surveys that the project proponent chooses to undertake, as identified in in paragraph (i)(1)(vi) of this section, after the initial submission of this report.

(3) The project proponent must request confidential treatment for all material filed with DOE containing non-public location, character, and ownership information about cultural resources in accordance with § 900.4(h).

(j) *Resource Report 5—Socioeconomics.* This report should identify and quantify the impacts of constructing and operating the proposed project on the demographics and economics of communities in the applicable analysis area, including minority and underrepresented communities. Resource Report 5 must:

(1) Describe the socioeconomic resources that may be affected in the applicable analysis area;

(2) Describe the positive and adverse socioeconomic impacts of the proposed project;

(3) Evaluate the impact of any substantial migration of people into the applicable analysis area on governmental facilities and services and describe plans to reduce the impact on the local infrastructure;

(4) Describe on-site labor requirements during construction and operation, including projections of the number of construction personnel who currently reside within the applicable analysis area, who would commute daily to the site from outside the

analysis area, or who would relocate temporarily within the analysis area;

(5) Determine whether existing affordable housing within the applicable analysis area is sufficient to meet the needs of the additional population; and

(6) Describe the number and types of residences and businesses that would be displaced by the proposed project, procedures to be used to acquire these properties, and types and amounts of relocation assistance payments.

(k) *Resource Report 6—Tribal interests.* This report must identify the Indian Tribes and indigenous communities that may be affected by the construction, operation, and maintenance of the project facilities, including those Indian Tribes and indigenous communities that may attach religious and cultural significance to cultural resources within the project area. In developing this report, the project proponent should consider both Indian Tribes with contemporary presence in the project area and Indian Tribes with historic connections to the area. To the extent Indian Tribes and indigenous communities are willing to communicate and share resource information, this report must discuss the potential impacts of project construction, operation, and maintenance on Indian Tribes and Tribal interests. This discussion must include impacts to sacred sites and Treaty rights, impacts related to enumerated resources and areas identified in the resource reports listed in this section (for instance, water rights, access to property, wildlife and ecological resources, etc.), and set forth available information on any additional, relevant traditional cultural and religious resources that could be affected by the proposed electric transmission project that are not already addressed. This resource report should acknowledge existing relationships between adjacent and underlying Federal land management agencies and the Indian Tribes. In developing this report, the project proponent should engage the Federal land manager early to leverage existing relationships. Specific site or property locations, the disclosure of which may create a risk of harm, theft, or destruction of archaeological or Native American cultural resources and information which would violate any Federal law, including section 9 of the Archaeological Resources Protection Act of 1979 (Pub. L. 96–95, as amended) (16 U.S.C. 470hh) and section 304 of the NHPA (54 U.S.C. 307103), should be submitted consistent with § 900.4(h). The project proponent must request confidential treatment for all material filed with DOE containing non-public location, character, and ownership information about Tribal resources in accordance with § 900.4(h).

(l) *Resource Report 7—Communities of Interest.* This report must summarize best available information about the presence of communities of interest. The resource report must identify and describe the potential impacts of constructing, operating, and maintaining the proposed electric transmission project on communities of interest; and describe any proposed mitigation approaches for such impacts or community concerns. The report must include a discussion of any disproportionate and/or adverse human health or environmental impacts to communities of interest.

(m) *Resource Report 8—Geological resources and hazards.* This report should describe geological resources that might be directly or indirectly affected by the proposed electric transmission project and methods to reduce those effects. The report should also describe geological hazards that could place project facilities at risk and methods proposed to mitigate those risks. Resource Report 8 must:

(1) Describe geological resources in the applicable analysis area that are currently or potentially exploitable, if relevant;

(2) Identify, by milepost, existing and potential geological hazards and areas of nonroutine geotechnical concern in the applicable analysis area, such as high seismicity areas, active faults, and areas susceptible to soil liquefaction; planned, active, and abandoned mines; karst terrain (including significant caves protected under the Federal Cave Resources Protection Act (Pub. L. 100–691, as amended) (16 U.S.C. 4301 *et seq.*)); and areas of potential ground failure, such as subsidence, slumping, and land sliding;

(3) Discuss the risks posed to the proposed project from each hazard or area of nonroutine geotechnical concern identified in paragraph (m)(2) of this section;

(4) Describe how the proposed project would be located or designed to avoid or minimize adverse effects to geological resources and reduce risk to project facilities, including geotechnical investigations and monitoring that would be conducted before, during, and after construction;

(5) Discuss the potential for blasting to affect structures and the measures to be taken to remedy such effects; and

(6) Specify methods to be used to prevent project-induced contamination from mines or from mine tailings along the right-of-way and discuss whether the proposed project would hinder mine reclamation or expansion efforts.

(n) *Resource Report 9—Soil resources.* This report should describe the soils that could be crossed by the proposed electric transmission project, the potential effect on those soils, and the proposed mitigation approach for those effects. Resource Report 9 must:

(1) List, by milepost, the soil associations that would be crossed by each potential route and describe the erosion potential, fertility, and drainage characteristics of each association;

(2) For the applicable analysis area:

(i) List the soil series within the area and the percentage of the area comprised of each series;

(ii) List the percentage of each series which would be permanently disturbed;

(iii) Describe the characteristics of each soil series; and

(iv) Indicate which soil units are classified as prime or unique farmland by the USDA, Natural Resources Conservation Service;

(3) Identify potential impacts from: soil erosion due to water, wind, or loss of vegetation; soil compaction and damage to soil structure resulting from movement of construction vehicles; wet soils and soils with poor drainage that are especially prone to structural damage; damage to drainage tile systems due to movement of construction vehicles and trenching activities; and interference with the operation of agricultural equipment due to the probability of large stones or blasted rock occurring on or near the surface as a result of construction;

(4) Identify, by milepost, cropland and residential areas where loss of soil fertility due to trenching and backfilling could occur; and

(5) Describe the proposed mitigation approach to reduce the potential for adverse impact to soils or agricultural productivity.

(o) *Resource Report 10—Land use, recreation, and aesthetics.* This report should describe the existing uses of land that may be impacted by the proposed project, and changes to those land uses and impacts to inhabitants and users that would occur if the proposed electric transmission project is approved. Resource Report 10 must:

(1) Describe the width and acreage requirements of all construction and permanent rights-of-way required for project construction, operation, and maintenance;

(2) List existing rights-of-way that would be co-located with or adjacent to the proposed rights-of-way (including temporary construction lines), and any required utility coordination, permits,

and fees that would be associated as a result;

(3) Identify, preferably by diagrams, existing rights-of-way that are expected to be used for any portion of the construction or operational right-of-way, the overlap, and how much additional width is expected to be required;

(4) Identify the total amount of land to be purchased or leased for each project facility, the amount of land that would be disturbed for construction, operation, and maintenance of the facility, and the use of the remaining land not required for project operation and maintenance, if any;

(5) Identify the size of typical staging areas and expanded work areas, such as those at railroad, road, and waterbody crossings, and the size and location of all construction materials storage yards and access roads;

(6) Identify, by milepost, the existing use of:

(i) Lands crossed by or adjacent to each project facility; and

(ii) Lands on which a project facility is expected to be located;

(7) Describe:

(i) Planned development within the applicable analysis area that is either included in a master plan or on file with the local planning board or the county;

(ii) The time frame (if available) for such development; and

(iii) Proposed coordination to minimize impacts on land use due to such development;

(8) Identify areas within applicable analysis areas that:

(i) Are owned or controlled by Federal, State or local agencies, or private preservation groups;

(ii) Are directly affected by the proposed project or any project facilities or operational sites; and

(iii) Have special designations not otherwise mentioned in other resource reports.

(iv) Examples of such specially designated areas under this provision may include but are not limited to sugar maple stands, orchards and nurseries, landfills, hazardous waste sites, nature preserves, conservation or agricultural lands subject to conservation or agricultural easements or restrictions, game management areas, remnant prairie, old-growth forest, national or State forests, parks, designated natural, recreational or scenic areas, registered natural landmarks, and areas managed by Federal entities under existing land use plans as Visual Resource Management Class I or Class II areas;

(9) Identify Indian Tribes and indigenous communities that may be affected by the proposed project;

(10) Describe Tribal and indigenous community resources lands, interests, and established treaty rights that may be affected by the proposed project;

(11) Identify properties within the project area which may hold cultural or religious significance for Indian Tribes and indigenous communities, regardless of whether the property is on or off of any Federally recognized Indian reservation;

(12) Identify resources within the applicable analysis area that are included in, or are designated for study for inclusion in, if available: the National Wild and Scenic Rivers System (16 U.S.C. 1271), the National Wildlife Refuge System (16 U.S.C. 668dd), the National Wilderness Preservation System (16 U.S.C. 1131), the National Trails System (16 U.S.C. 1241–1251), the National Park System (54 U.S.C. 100101–120104), National Historic Landmarks (NHLs), National Natural Landmarks (NNLs), Land and Water Conservation Fund (LWCF) acquired Federal lands, LWCF State Assistance Program sites and the Federal Lands to Parks (FLP) program lands, or a wilderness area designated under the Wilderness Act (16 U.S.C. 1131–1136); or the National Marine Sanctuary System, including national marine sanctuaries (16 U.S.C. 1431–1445c–1.) and Marine National Monuments as designated under authority by the Antiquities Act (54 U.S.C. 320301–320303) or by Congress; National Forests and Grasslands (16 U.S.C. 1609 *et seq*); and lands in easement programs managed by the Natural Resource Conservation Service or the U.S. Forest Service (16 U.S.C. 3865, *et seq.*);

(13) Indicate whether the project proponent will need to submit a CZMA Federal consistency certification to State coastal management program(s) for the project, as required by NOAA's Federal consistency regulations at 15 CFR part 930, subpart D;

(14) Describe the impacts the proposed project will have on:

(i) Present uses of land in the applicable analysis area, including commercial uses, mineral resource uses, and recreational uses,

(ii) Public health and safety;

(iii) Federal, State, and Tribal scientific survey, research, and observation activities;

(iv) Sensitive resources and critical habitats;

(v) The aesthetic value of the land and its features; and

(vi) Federal, State or Tribal access limitations.

(15) Describe any temporary or permanent restrictions on land use that would result from the proposed project.

(16) Describe the proposed mitigation approach intended to address impacts described in paragraphs (o)(12) and (13) of this section, as well as protection and enhancement of existing land use;

(17) Provide a proposed operations and maintenance plan for vegetation management, including management of noxious and invasive species;

(18) Describe the visual characteristics of the lands and waters affected by the proposed project. Components of this description include a description of how permanent project facilities will impact the visual character of proposed project right-of-way and surrounding vicinity, and measures proposed to lessen these impacts. Project proponents are encouraged to supplement the text description with visual aids;

(19) Identify, by milepost, all residences and buildings near the proposed electric transmission facility construction right-of-way, and identify the distance of the residence or building from the edge of the right-of-way and provide survey drawings or alignment sheets to illustrate the location of the proposed facility in relation to the buildings;

(20) List all dwellings and related structures, commercial structures, industrial structures, places of worship, hospitals, nursing homes, schools, or other structures normally inhabited by humans or intended to be inhabited by humans on a regular basis within the applicable analysis area and provide a general description of each habitable structure and its distance from the centerline of the proposed project. In cities, towns, or rural subdivisions, houses can be identified in groups, and the report must provide the number of habitable structures in each group and list the distance from the centerline to the closest habitable structure in the group;

(21) List all known commercial AM radio transmitters located within the applicable analysis area and all known FM radio transmitters, microwave relay stations, or other similar electronic installations located within the analysis area; provide a general description of each installation and its distance from the centerline of the proposed project; and locate all installations on a routing map; and

(22) List all known private airstrips within the applicable analysis area and all airports registered with the Federal Aviation Administration (FAA) with at least one runway more than 3,200 feet in length that are located within the analysis area. Indicate whether any transmission structures will exceed a 100:1 horizontal slope (one foot in height for each 100 feet in distance) from the closest point of the closest runway. List all airports registered with

the FAA having no runway more than 3,200 feet in length that are located within the analysis area. Indicate whether any transmission structures will exceed a 50:1 horizontal slope from the closest point of the closest runway. List all heliports located within the analysis area. Indicate whether any transmission structures will exceed a 25:1 horizontal slope from the closest point of the closest landing and takeoff area of the heliport. Provide a general description of each private airstrip, registered airport, and registered heliport, and state the distance of each from the centerline of the proposed transmission line. Locate all airstrips, airports, and heliports on a routing map.

(23) Information made available under paragraphs (o)(9), (10), and (11) must be submitted consistent with § 900.4(h), including information regarding specific site or property locations, the disclosure of which will create a risk of harm, theft, or destruction of archaeological or Native American cultural resources and information which would violate any Federal law, including section 9 of the Archaeological Resources Protection Act of 1979 (Pub. L. 96–95, as amended) (16 U.S.C. 470hh) and section 304 of the NHPA (54 U.S.C. 307103).

(p) *Resource Report 11—Air quality and noise effects.* This report should identify the effects of the proposed electric transmission project on the existing air quality and noise environment and describe proposed measures to mitigate the effects. Resource Report 11 must:

(1) Describe the existing air quality in the applicable analysis area, indicate if any project facilities are located within a designated nonattainment or maintenance area under the Clean Air Act (42 U.S.C. 7401 *et seq.*), and provide the distance from the project facilities to any Class I area in the project area;

(2) Estimate emissions from the proposed project and the corresponding impacts on air quality and the environment;

(i) Estimate the reasonably foreseeable emissions, including greenhouse gas emissions, from construction, operation, and maintenance of the project facilities (such as emissions from tailpipes, equipment, fugitive dust, open burning, and substations) expressed in tons per year; include supporting calculations, emissions factors, fuel consumption rates, and annual hours of operation;

(ii) Estimate the reasonably foreseeable change in greenhouse gas emissions from the existing, proposed, and reasonably foreseeable generation resources identified in Resource Report 1 (see paragraph (f) of this section) that may connect to the proposed project or interconnect as a result of the proposed project, if any, as well as any other modeled air emissions impacts;

(iii) For each designated nonattainment or maintenance area, provide a comparison of the emissions from construction, operation, and maintenance of the proposed project with the applicable General Conformity thresholds (40 CFR part 93);

(iv) Identify the corresponding impacts on communities and the environment in the applicable analysis area from the estimated emissions;

(v) Describe any proposed mitigation measures to control emissions identified under this section; and

(vi) Estimate the reasonably foreseeable effect of the proposed project on indirect emissions;

(3) Describe existing noise levels at noise-sensitive areas in the applicable analysis area, such as schools, hospitals, residences, and any areas covered by relevant State or local noise ordinances;

(i) Report existing noise levels as the a-weighted decibel (dBA) Leq (day), Leq (night), and Ldn (day-night sound level) and include the basis for the data or estimates;

(ii) Include a plot plan that identifies the locations and duration of noise measurements, the time of day, weather conditions, wind speed and direction, engine load, and other noise sources present during each measurement; and

(iii) Identify any noise regulations that may be applicable to the proposed project;

(4) Estimate the impact of the proposed project on the noise environment;

(i) Provide a quantitative estimate of the impact of transmission line operation on noise levels at the edge of the proposed right-of-way, including corona, insulator, and Aeolian noise; and provide a quantitative estimate of the impact of operation of proposed substations and appurtenant project facilities on noise levels at nearby noise-sensitive areas, including discrete tones;

(A) Include step-by-step supporting calculations or identify the computer program used to model the noise levels, the input and raw output data and all assumptions made when running the model, far-field sound level data for maximum facility operation (either from the manufacturer or from far-field sound level data measured from similar project facilities in service elsewhere) and the source of the data;

(B) Include sound pressure levels for project facilities, dynamic insertion loss for structures, and sound attenuation from the project facilities to the edge of the right-of-way or to nearby noise-sensitive areas (as applicable);

(ii) Describe the impact of proposed construction activities, including any nighttime construction, on the noise environment; estimate the impact of any horizontal directional drilling, pile driving, or blasting on noise levels at nearby noise-sensitive areas and include supporting assumptions and calculations;

(5) Based on noise estimates, indicate whether the proposed project will comply with applicable noise regulations and whether noise attributable to any proposed substation or appurtenant facility will exceed permissible levels at any pre-existing noise-sensitive area;

(6) Based on noise estimates, determine whether any wildlife-specific noise thresholds may have an impact on the proposed project, such as those thresholds specific to avian species that may be relevant in significant wildlife areas, if appropriate; and

(7) Describe measures, and manufacturer's specifications for equipment, proposed to mitigate noise effects and impacts to air quality, including emission control systems, installation of filters, mufflers, or insulation of piping and buildings, and orientation of equipment away from noise-sensitive areas.

(q) *Resource Report 12—Alternatives.* This report should describe the range of study corridors that were considered as alternatives during the planning, identification, and design of the proposed electric transmission project and compare the environmental impacts of such corridors and the routes contained in those corridors. This analysis may inform the relevant Federal entities' subsequent analysis of their alternatives during the NEPA process. Resource Report 12 must:

(1) Identify all study corridors and routes contained within those corridors. The report must identify the location of the corridors on maps of sufficient scale to depict their location and relationship to the proposed project, and the relationship of the proposed electric transmission facility to existing rights-of-way;

(2) Discuss the ''no action'' alternative and the potential for accomplishing the proponent's proposed objectives using alternative means;

(3) Discuss design and construction methods considered by the project proponent;

(4) Identify all the alternative study corridors and routes the project proponent considered in the initial screening for the proposed project but did not recommend for further study and the reasons why the proponent chose not to examine such alternatives.

(5) For alternative study corridors and routes recommended for more in-depth consideration, the report must:

(i) Describe the potential impacts to cultural and historic resources for each alternative;

(ii) Describe the environmental characteristics of each alternative, provide comparative tables showing the differences in environmental characteristics for the alternatives, and include an analysis of the potential relative environmental impacts for each alternative;

(iii) Provide an explanation of the costs to construct, operate, and maintain each alternative, the potential for each alternative to meet project deadlines, and technological and procedural constraints in developing the alternatives; and

(iv) Demonstrate whether and how environmental benefits and costs were weighed against economic benefits and costs to the public.

(r) *Resource Report 13—Reliability, resilience, and safety.* This report should describe the impacts that would result from a failure of the proposed electric transmission facility, the measures, procedures, and features that would reduce the risk of failure, and measures in place to reduce impacts and protect the public if a failure did occur. Resource Report 13 must:

(1) Discuss events that could result in a failure of the proposed facility, including accidents, intentional destructive acts, and natural catastrophes (accounting for the likelihood of relevant natural catastrophes resulting from climate change);

(2) Describe the reasonably foreseeable impacts that would result from a failure of the proposed electric transmission facility, including hazards to the public, environmental impacts, and service interruptions;

(3) Describe the operational measures, procedures, and design features of the proposed project that would reduce the risk of facility failure;

(4) Describe measures proposed to protect the public from failure of the proposed facility (including coordination with local agencies);

(5) Discuss contingency plans for maintaining service or reducing downtime;

(6) Describe measures used to exclude the public from hazardous areas, measures used to minimize problems arising from malfunctions and accidents (with estimates of probability of occurrence), and identify standard procedures for protecting services and public safety during maintenance and breakdowns; and

(7) Describe improvements to reliability likely to result from the proposed project.

§ 900.7 Standard and project-specific schedules.

(a) DOE shall publish, and update from time to time, a standard schedule that identifies the steps generally needed to complete decisions on all Federal environmental reviews and authorizations for a proposed electric transmission project. The standard schedule will include recommended timing for each step so as to allow final decisions on all Federal authorizations within two years of the publication of a notice of intent to prepare an environmental review document under § 900.9 or as soon as practicable thereafter, considering the requirements of relevant Federal laws, and the need for robust analysis of proposed project impacts, early and meaningful consultation with potentially affected Indian Tribes and engagement with stakeholders and communities of interest.

(b) During the Integrated Interagency Pre-Application (IIP) Process, DOE, in coordination with any NEPA joint lead agency and relevant Federal entities, shall prepare a project-specific schedule that is informed by the standard schedule prepared under paragraph (a) of this section and that establishes prompt and binding intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to, a proposed electric transmission project, accounting for relevant statutory requirements, the potential route, reasonable alternative potential routes, if any, the need to assess and address any impacts to military testing, training, and operations, and other factors particular to the specific proposed project, including the need for early and meaningful consultation with potentially affected Indian Tribes and engagement with stakeholders and communities of interest. DOE may revise the project-specific schedule as needed to satisfy applicable statutory requirements, allow for engagement with stakeholders and communities of interest, and account for delays caused by the actions or inactions of the project proponent.

§ 900.8 IIP Process review meeting.

(a) An Integrated Interagency Pre-Application (IIP) Process review meeting is required for each proposed electric transmission project utilizing the IIP Process and may only be held after the project proponent submits a review meeting request to DOE. The project proponent may submit the request at any time following submission of the initial resource reports required under § 900.6. The review meeting request must include:

(1) A summary table of changes made to the proposed project since the IIP Process initial meeting, including potential environmental and community benefits from improved siting or design;

(2) Maps of potential routes and study corridors, including the proposed line, substations, and other infrastructure, as applicable, with at least as much detail as required for the initiation request described by § 900.5 and as modified in response to early stakeholder input and outreach and feedback from relevant Federal entities and relevant non-Federal entities;

(3) If known, a schedule for completing any upcoming field resource surveys, as appropriate;

(4) A conceptual plan for implementation and monitoring of proposed mitigation measures to avoid, minimize, or compensate for effects of the proposed project, consistent with 40 CFR 1508.1(s) or any successor regulation. This may include compensatory mitigation measures (offsite and onsite);

(5) An updated public engagement plan described in § 900.5(d)(2), reflecting actions undertaken since the project proponent submitted the initiation request and input received from relevant Federal entities and relevant non-Federal entities;

(6) A listing of:

(i) The dates on which the project proponent filed applications or requests for Federal authorizations and the dates on which the project proponent filed revisions to previously filed applications or requests; and

(ii) Estimated dates for filing remaining applications or requests for Federal authorization;

(7) Estimated dates that the project proponent will file requests for authorizations and consultations with relevant non-Federal entities; and

(8) A proposed duration for each Federal land use authorization expected to be required for the proposed project, commensurate with the anticipated use of the proposed electric transmission facility.

(b) Not later than 10 calendar days after the date that DOE receives the review meeting request, DOE shall provide relevant Federal entities and relevant non-Federal entities with materials included in the request and the initial resource reports submitted under § 900.6 via electronic means.

(c) Not later than 60 calendar days after the date that DOE receives the review meeting request, DOE shall:

(1) Determine whether the meeting request meets the requirements of paragraph (a) of this section and whether the initial resource reports are sufficiently detailed; and

(2) Give notice to the project proponent and relevant Federal and non-Federal entities of DOE's determinations under paragraph (c)(1) of this section.

(d) If DOE determines under paragraph (c)(1) of this section that the meeting request does not meet the requirements of paragraph (a) of this section or that the initial resource reports are not sufficiently detailed, DOE must provide the reasons for that finding and a description of how the project proponent may address any deficiencies in the meeting request or resource reports so that DOE may reconsider its determination.

(e) Not later than 15 calendar days after the date that DOE provides notice to the project proponent under paragraph (c) of this section that the review meeting request and initial resource reports have been accepted, DOE shall convene the review meeting with the project proponent and the relevant Federal entities. All relevant non-Federal entities participating in the IIP Process shall also be invited.

(f) During the IIP Process review meeting:

(1) The relevant Federal entities shall discuss, and modify if needed, the analysis areas used in the initial resource reports;

(2) Relevant Federal entities shall identify any remaining issues of concern, known information gaps or data needs, and potential issues or conflicts that could impact the time it will take the relevant Federal entities to process applications for Federal authorizations for the proposed electric transmission project;

(3) Relevant non-Federal entities may identify remaining issues of concern, information needs, and potential issues or conflicts for the project;

(4) The participants shall discuss the project proponent's updates to the siting process to date, including stakeholder outreach activities, resultant stakeholder input, and project proponent response to stakeholder input;

(5) Led by DOE, all relevant Federal entities shall discuss statutory and regulatory standards that must be met to make decisions for Federal authorizations required for the proposed project;

(6) Led by DOE, all relevant Federal entities shall describe the process for, and estimated time to complete, required Federal authorizations and, where possible, the anticipated cost (*e.g.,* processing and monitoring fees and land use fees);

(7) Led by DOE, all relevant Federal entities shall describe their expectations for complete applications for Federal authorizations for the proposed project;

(8) Led by DOE, all relevant Federal entities shall identify necessary updates to the initial resource reports that must be made before conclusion of the IIP Process, or, as necessary, following conclusion of the IIP Process; and

(9) DOE shall present the proposed project-specific schedule developed under § 900.7.

(g) Not later than 10 calendar days after the review meeting, DOE shall:

(1) Prepare a draft review meeting summary that includes a summary of the meeting discussion, a description of key issues and information gaps identified during the meeting, and any requests for more information from relevant Federal entities and relevant non-Federal entities; and

(2) Convey the draft summary to the project proponent, relevant Federal entities, and any non-Federal entities that participated in the meeting.

(h) The project proponent and entities that received the draft review meeting summary under paragraph (g) of this section will have 10 calendar days following receipt of the draft to review the draft and provide corrections to DOE.

(i) Not later than 10 calendar days following the close of the 10-day review period under paragraph (h) of this section, DOE shall:

(1) Prepare a final review meeting summary incorporating received corrections, as appropriate;

(2) Add the final summary to the consolidated administrative docket described by § 900.10; and

(3) Provide an electronic copy of the summary to the relevant Federal entities, relevant non-Federal entities, and the project proponent.

(j) Not later than 10 calendar days following the close of the 10-day review period under paragraph (h) of this section, DOE shall:

(1) determine whether the project proponent has developed the scope of its proposed project and alternatives sufficiently for DOE to determine that there exists an undertaking for purposes of section 106 of the NHPA; and

(2) if the scope is sufficiently developed, initiate consultation with SHPOs, THPOs, and others consistent with 36 CFR 800.2(c)(4), which may include authorizing a project proponent, as a CITAP applicant, to initiate section 106 consultation and providing appropriate notifications.

(k) After the review meeting and before the IIP Process close-out meeting described by § 900.9 the project proponent shall revise resource reports submitted under § 900.6 based on feedback from relevant Federal entities and relevant non-Federal entities received during the review meeting and based on any updated surveys conducted since the initial meeting.

§ 900.9 IIP Process close-out meeting.

(a) An Integrated Interagency Pre-Application (IIP) Process close-out meeting concludes the IIP Process for a proposed electric transmission project and may only be held after the project proponent submits a close-out meeting request to DOE. The project proponent may submit the request at any time following the submission of the updated resource reports as required under § 900.8. The close-out meeting request shall include:

(1) A summary table of changes made to the proposed project during the IIP Process, including potential environmental and community benefits from improved siting or design;

(2) A description of all changes made to the proposed project since the review meeting, including a summary of changes made to the updated resource reports in response to the concerns raised during the review meeting;

(3) A final public engagement plan, as described in § 900.5(d)(2);

(4) Requests for Federal authorizations for the proposed project; and

(5) An updated estimated timeline of filing requests for all other authorizations and consultations with non-Federal entities.

(b) Not later than 10 calendar days after the date that DOE receives the close-out meeting request, DOE shall provide relevant Federal entities and relevant non-Federal entities with materials included in the request and any updated resource reports submitted under § 900.6 via electronic means.

(c) Not later than 60 calendar days after the date that DOE receives the close-out meeting request, DOE shall:

(1) Determine whether the meeting request meets the requirements of paragraph (a) of this section and whether the updated resource reports are sufficiently detailed; and

(2) Give notice to the project proponent and relevant Federal and non-Federal entities of DOE's determinations under paragraph (c)(1) of this section.

(d) If DOE determines that the meeting request does not meet the

requirements of paragraph (a) of this section or that the updated resource reports are not sufficiently detailed, DOE must provide the reasons for that finding and a description of how the project proponent may address any deficiencies in the meeting request or resource reports so that DOE may reconsider its determination.

(e) Not later than 15 calendar days after the date that DOE provides notice to the project proponent under paragraph (c) of this section that the close-out meeting request and updated resource reports have been accepted, DOE shall convene the close-out meeting with the project proponent and all relevant Federal entities. All relevant non-Federal entities participating in the IIP Process shall also be invited.

(f) The IIP Process close-out meeting concludes the IIP Process. During the close-out meeting:

(1) The participants shall discuss the project proponent's updates to the siting process to date, including stakeholder outreach activities, resultant stakeholder input, and project proponent response to stakeholder input; and

(2) DOE shall present the final project-specific schedule.

(g) Not later than 10 calendar days after the close-out meeting, DOE shall:

(1) Prepare a draft close-out meeting summary; and

(2) Convey the draft summary to the project proponent, relevant Federal entities, and any non-Federal entities that participated in the meeting.

(h) The project proponent and entities that received the draft close-out meeting summary under paragraph (g) of this section will have 10 calendar days following receipt of the draft to review the draft and provide corrections to DOE.

(i) Not later than 10 calendar days following the close of the 10-day review period under paragraph (h) of this section, DOE shall:

(1) Prepare a final close-out meeting summary by incorporating received corrections, as appropriate;

(2) Add the final summary to the consolidated administrative docket described by § 900.10;

(3) Provide an electronic copy of the summary to all relevant Federal entities, relevant non-Federal entities, and the project proponent; and

(4) In the event that the proposed project is not identified as a covered project pursuant to § 900.5(e), notify the FPISC Executive Director that the proposed project ought to be included on the FPISC Dashboard as a transparency project.

(j) DOE and any NEPA joint lead agency shall issue a Notice of Intent to prepare an environmental review document for the proposed project within 90 days of the later of the IIP Process close-out meeting or the receipt of a complete application for a Federal authorization for which NEPA review will be required, as consistent with the final project-specific schedule.

(k) DOE shall issue, for each Federal land use authorization for a proposed electric transmission facility, a preliminary duration determination commensurate with the anticipated use of the proposed facility.

§ 900.10 Consolidated administrative docket.

(a) DOE shall maintain a consolidated docket of:

(1) All information that DOE distributes to or receives from the project proponent, relevant Federal entities, and relevant non-Federal entities related to the Integrated Interagency Pre-Application (IIP) Process, including:

(i) The IIP initiation request, review meeting request, and close-out meeting request required by §§ 900.5, 900.8, and 900.9;

(ii) The IIP Process final meeting summaries required by §§ 900.5, 900.8 and 900.9;

(iii) The IIP Process final resource reports developed under § 900.6;

(iv) The final project-specific schedule developed under §§ 900.7 and 900.8;

(v) Other documents submitted by the project proponent as part of the IIP Process or provided to the project proponent as part of the IIP Process, including but not limited to maps, publicly available data, and other supporting documentation; and

(vi) Communications between any relevant Federal or non-Federal entity and the project proponent regarding the IIP Process; and

(2) All information assembled and used by relevant Federal entities as the basis for Federal authorizations and related reviews following completion of the IIP Process.

(b) Federal entities should include DOE in all communications with the project proponent related to the IIP Process for the proposed electric transmission project.

(c) DOE shall make the consolidated docket available, as appropriate, to the NEPA joint lead agency selected under § 900.11; any relevant Federal or non-Federal entity responsible for issuing an authorization for the proposed project; and any consulting parties per section 106 of the NHPA, consistent with 36 CFR part 800. DOE shall exclude or redact privileged documents, as appropriate.

(d) Where necessary and appropriate, DOE may require a project proponent to contract with a qualified record-management consultant to compile a contemporaneous docket on behalf of all participating agencies. Any such contractor shall operate at the direction of DOE, and DOE shall retain responsibility and authority over the content of the docket.

(e) Upon request, any member of the public will be provided materials included in the docket, excluding any materials protected as CEII or otherwise required or allowed to be withheld under the Freedom of Information Act.

§ 900.11 NEPA lead agency and selection of NEPA joint lead agency.

(a) For a proposed electric transmission project that is accepted for the Integrated Interagency Pre-Application (IIP) Process under § 900.5, DOE shall serve as the NEPA lead agency to prepare an environmental review document to serve the needs of all relevant Federal entities. A NEPA joint lead agency to prepare the environmental review document may also be designated pursuant to this section, no later than by the IIP Process review meeting.

(b) The NEPA joint lead agency, if any, shall be the Federal entity with the most significant interest in the management of Federal lands or waters that would be traversed or affected by the proposed project. DOE shall make this determination in consultation with all Federal entities that manage Federal lands or waters traversed or affected by the proposed project. For a proposed project that would traverse lands managed by both the USDA and the DOI, DOE will request that USDA and DOI determine the appropriate NEPA joint lead agency, if any.

§ 900.12 Environmental review.

(a) After the Integrated Interagency Pre-Application (IIP) Process close-out meeting, and after receipt of a relevant application for a Federal authorization or permit in accordance with the final project-specific schedule, DOE and any NEPA joint lead agency selected under § 900.11 shall prepare an environmental review document for the proposed electric transmission project designed to serve the needs of all relevant Federal entities.

(b) When preparing the environmental review document, DOE and any NEPA joint lead agency shall:

(1) Consider the materials developed throughout the IIP Process; and

(2) Consult with relevant Federal entities and relevant non-Federal entities.

(c) DOE, in consultation with any NEPA joint lead agency, is expected to be responsible for:

(1) Identifying, contracting with, directing, supervising, and arranging for the payment of contractors, as appropriate, to draft the environmental review document; and

(2) Publishing the environmental review document and any related documents.

(d) Each Federal entity or non-Federal entity that is responsible for issuing a separate Federal authorization for the proposed project shall:

(1) Identify all information and analysis needed to make the authorization decision; and

(2) Identify all alternatives that need to be included, including a preferred alternative, with respect to the authorization.

(e) DOE and any NEPA joint lead agency, in consultation with relevant Federal entities, shall identify the full scope of alternatives for analysis, including the no action alternative.

(f) To the maximum extent permitted under law, relevant Federal entities shall use the environmental review document as the basis for all Federal authorization decisions on the proposed project. DOE and the relevant Federal entities shall issue, except where inappropriate or inefficient, a joint decision document, which will include the determination by the Secretary of a duration for each land use authorization issued on the proposed project.

(g) For all proposed projects, DOE shall serve as lead agency for consultation under the Endangered Species Act (50 CFR 402.07) and section 106 of the NHPA (36 CFR 800.2(a)(2)) unless the relevant Federal entities designate otherwise. DOE shall coordinate these consultation processes with the Federal agency with the most significant interest in the management of Federal lands or waters that would be traversed or affected by the proposed project or the designated lead agency.

§ 900.13 Severability.

The provisions of this part are separate and severable from one another. Should a court hold any provision(s) to be stayed or invalid, such action shall not affect any other provision of this part and the remaining provisions shall remain in effect.

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Part III

Department of Energy

10 CFR Parts 433 and 435
Clean Energy for New Federal Buildings and Major Renovations of Federal Buildings; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 433 and 435

[EERE–2010–BT–STD–0031]

RIN 1904–AB96

Clean Energy for New Federal Buildings and Major Renovations of Federal Buildings

AGENCY: Federal Energy Management Program, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (''DOE'') is publishing a rule that establishes energy performance standards for the new construction and major renovation of Federal buildings, including commercial buildings, multi-family high-rise residential buildings, and low-rise residential buildings per the Energy Conservation and Production Act (''ECPA''), as amended by the Energy Independence and Security Act of 2007 (''EISA''). Consistent with the requirements of ECPA and EISA, DOE is establishing Federal building energy performance standards that require Federal agencies to reduce their use of on-site use of fossil fuels (which include coal, petroleum, natural gas, oil shales, bitumens, tar sands, and heavy oils) consistent with the targets of ECPA and EISA. This final rule also provides processes by which Federal agencies may petition DOE for a modification to the final standards.

DATES: The effective date of this rule is July 15, 2024. Compliance with revised performance standards established in this rule is required for the construction of new and major renovation of Federal buildings, including commercial buildings, multi-family high-rise residential buildings, and low-rise residential buildings, for which design for construction begins on or after May 1, 2025.

ADDRESSES: The docket for this rulemaking, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index.

The docket web page can be found at *www.regulations.gov/docket/EERE-2010-BT-STD-0031.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Mr. Rick Mears, U.S. Department of Energy, Office of the Under Secretary for Infrastructure, Federal Energy Management Program, FEMP–1, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: *cer-information@hq.doe.gov.*

Ms. Laura Zuber, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 306–7651. Email: *laura.zuber@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The following section briefly discusses the statutory authority underlying this final rule, as well as some of the relevant historical background related to the establishment of a fossil fuel-generated energy consumption reduction rule for certain Federal buildings.

A. Authority

Section 305 of ECPA established energy conservation requirements for Federal buildings. 42 U.S.C. 6834. Section 433(a) of EISA amended section 305 of ECPA and directed DOE to establish regulations that require certain new Federal buildings and Federal buildings undergoing major renovations to reduce their fossil fuel-generated energy consumption. 42 U.S.C. 6834(a)(3)(D)(i). The fossil fuel-generated energy consumption reductions only apply to Federal buildings that: (1) are ''public buildings'' (as defined in 40 U.S.C. 3301) [1] with respect to which the

[1] Under 40 U.S.C. 3301(a)(5), ''public building'' is a building, whether for single or multitenant occupancy, and its grounds, approaches, and appurtenances, which is generally suitable for use as office or storage space or both by one or more Federal agencies or mixed-ownership Government corporations. ''Public building'' includes Federal office buildings, post offices, customhouses, courthouses, appraisers stores, border inspection facilities, warehouses, record centers, relocation facilities, telecommuting centers, similar Federal facilities, and any other buildings or construction projects the inclusion of which the President considers to be justified in the public interest. The definition does not include a building or construction project that is on the public domain (including that reserved for national forests and other purposes); that is on property of the Government in foreign countries; that is on Native American and Native Alaskan property held in trust by the Government; that is on land used in connection with federal programs for agricultural, recreational, and conservation purposes, including research in connection with the programs; that is on or used in connection with river, harbor, flood control, reclamation or power projects, for chemical manufacturing or development projects, or for nuclear production, research, or development projects; that is on or used in connection with housing and residential projects; that is on military installations (including any fort, camp, post, naval training station, airfield, proving ground, military

Administrator of General Services is required to transmit a prospectus to Congress under 40 U.S.C. 3307; [2] or (2) those that cost at least $2,500,000 in costs adjusted annually for inflation. 42 U.S.C. 6834(a)(3)(D)(i).

For these buildings, section 305 of ECPA, as amended by EISA, mandates that the buildings be designed so that a building's fossil fuel-generated energy consumption is reduced as compared with such energy consumption by a similar building in fiscal year (''FY'') 2003 (as measured by Commercial Buildings Energy Consumption Survey (''CBECS'') or Residential Energy Consumption Survey (''RECS'') data from the DOE's Energy Information Administration (''EIA'') by 55 percent beginning in FY 2010, 65 percent beginning in FY 2015, 80 percent beginning in FY 2020, 90 percent beginning in FY 2025, and 100 percent beginning in FY 2030, also shown in Table I.1. 42 U.S.C. 6834(a)(3)(D)(i)(I).

TABLE I–1—BUILDING PERCENTAGE REDUCTION REQUIREMENTS BY FISCAL YEAR

Fiscal year	Percentage reduction
2010	55
2015	65
2020	80
2025	90
2030	100

In addition, ECPA, as amended by EISA, permits DOE to adjust the applicable numeric reduction requirement downward with respect to a specific building, if the head of the Federal agency requesting the downward adjustment certifies in writing that meeting such requirement would be technically impracticable in light of the agency's specified functional needs for that building and DOE concurs with the agency's conclusion. 42 U.S.C. 6834(a)(3)(D)(i)(II). Such an adjustment does not apply to the General Services Administration (''GSA''). *Id.*

B. Background

In this final rule, DOE establishes regulations that require certain new Federal buildings and Federal buildings undergoing major renovations to be designed to reduce their fossil fuel-generated energy consumption and provides a process for Federal agencies to petition for a downward adjustment from these requirements if applicable. This rule amends the regulations governing energy efficiency in Federal buildings found in 10 CFR parts 433 and 435.

DOE previously published a notice of proposed rulemaking (''NOPR'') in the **Federal Register** on October 15, 2010, which proposed a rule to implement section 433 of EISA. 75 FR 63404. A public meeting on the NOPR was held on November 12, 2010, and public comments were accepted through December 14, 2010. DOE received several comments expressing concern and encouraging DOE to re-examine the proposed regulations.[3] In response to these comments, DOE identified additional areas for clarification and consideration that would benefit from further public comment. DOE issued a supplemental notice of proposed rulemaking (''2014 SNOPR'') on October 14, 2014. 79 FR 61694. Comments were accepted through December 15, 2014. *Id.* DOE received comments requesting reconsideration of key issues.

DOE revisited its proposed rule and issued a second SNOPR on December 21, 2022 (''2022 SNOPR''). 87 FR 78382. The rule proposed in the 2022 SNOPR differed from the rule proposed in the 2014 SNOPR. Specifically, the rule proposed in the 2022 SNOPR:

Limited its application to on-site fossil fuel usage or Scope 1 GHG emissions in CO_2e (''Carbon Dioxide Equivalent Gases'').

Introduced a shift multiplier for Federal commercial buildings that operate on extended schedules compared to the private sector buildings sampled in CBECS.

Revised the calculation of fossil fuel usage to be consistent with how DOE measures fossil fuel usage and greenhouse gas emissions in reporting related to Section 432 of EISA.

Clarified that the rule applies to EISA-subject major renovations for (1) all on-site fossil fuel-using systems, (2) on-site fossil fuel-using system level renovations, and (3) on-site fossil fuel-using component level renovations.

Clarified when the rule applies to leased Federal facilities.

Refined an approach to determine required fossil fuel-generated energy consumption levels for EISA-subject major renovations that are limited to system or component level retrofits.

Provided an alternative compliance method for buildings with process loads that are not included in CBECS and RECS.

Clarified that process loads of building types not included in CBECS are not subject to the fossil fuel reduction requirements.

Stated that certain renewable fuels are exempt from the calculation of fossil fuel usage.

Identified information Federal agencies must provide when petitioning for a downward adjustment.

A public meeting on the 2022 SNOPR was held on January 5, 2023, and public comments were accepted through March 23, 2023. 87 FR 78382; 88 FR 12267. The comment period was extended to accommodate requests from stakeholders to provide additional time to analyze the information presented in the 2022 SNOPR and accompanying technical support document.

C. Final Rule Overview

The final rule adopts energy performance standards for new construction and major renovation of Federal buildings. The final rule adds standards for the maximum emissions resulting from on-site fossil fuel usage, language related to the purpose of these new standards, definitions associated with these standards, and a detailed process for Federal agencies petitioning for a downward adjustment from these standards to 10 CFR parts 433 (Federal commercial and multi-family high-rise residential buildings) and 435 (Federal low-rise residential buildings). The final rule adds the following provisions to 10 CFR parts 433 and 435:

Adds a paragraph to the purpose and scope provisions which states that the regulation also establishes the maximum allowable fossil fuel-generated energy consumption standard for EISA-subject Federal buildings.

Adds and revises definitions applicable to 10 CFR parts 433 and 435.

Adds subpart B that outlines the fossil fuel-generated energy consumption requirement, the process for determining a Federal building's fossil fuel-generated energy consumption, and the process for petitioning for a downward adjustment.

Adds Appendix A to Subpart B that identifies the targets for specific building types and climate zones for FY 2020–2024 and FY 2025–2029.

After considering the comments submitted in response to the 2022 SNOPR, DOE makes the following substantive revisions to the rule proposed in the 2022 SNOPR:

Revises the definitions of ''construction cost'' and ''major

supply depot, military school, or any similar facility of the Department of Defense); that is on installations of the Department of Veterans Affairs used for hospital or domiciliary purposes; or the exclusion of which the President considers to be justified in the public interest.

[2] 40 U.S.C. 3307 describes the minimum construction, alteration, and lease costs that would trigger a prospectus to Congress.

[3] Complete contents of the docket folder may be found at *www.regulations.gov/#!docketDetail;D=EERE-2010-BT-STD-0031.*

renovation cost'' so that the definitions list similar costs associated with the construction or major renovation of EISA-subject buildings.

Shortens the review period for the FEMP Director to review petitions for downward adjustment related to construction of new Federal buildings or major renovations from 45 days to 30 days.

Adds regulatory language that clarifies when Federal agencies may bundle petitions for downward adjustments.

Additionally, DOE updated the datasets used for the underlying modeling impact analysis. The final rule is discussed in greater detail in section VII of this document.

II. Public Comments on the 2022 SNOPR

DOE received comments in response to the 2022 SNOPR from the individuals and interested parties listed in Table II–1.[4] These comments are available in the public docket for this rulemaking. The specific issues relating to the final rule raised by the commenters are addressed in section III of this document. Additional concerns raised by the commenters relating to DOE's authority to promulgate these standards or potential procedural issues are addressed in Section IV of this document. A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[5] DOE also held a public meeting webinar on January 5, 2023, where it sought input from stakeholders regarding its proposed rule. DOE focuses on written comments in this final rule, as only one stakeholder (Sierra Club) opted to speak during the public meeting webinar, and its verbal comments were consistent with its written comments later submitted.

TABLE II–1—DECEMBER 2022 SNOPR WRITTEN COMMENTS

Commenter(s)	Abbreviation	Document No.
A J		118
Abbi J		119
Aeroseal		97
Alliance to Save Energy	ASE	76
American Chemistry Council	ACC	88
American Council for an Energy-Efficient Economy, Earthjustice, Rewiring America, Rocky Mountain Institute, & Sierra Club.	ACEEE et al.	126
American Gas Association	AGA	100
American Institute of Architects	AIA	114
American Public Gas Association	APGA	102
The American Society of Heating, Refrigerating and Air-Conditioning Engineers	ASHRAE	96
Anonymous		82
Bloom Energy		85
Build SMART		111
Business Council for Sustainable Energy	BCSE	115
Celsius Energy		117
Coalition of 66		95
Combined Heat and Power Alliance	CHPA	104
Federal Bureau of Investigation	FBI	84
Fuel Cell & Hydrogen Energy Association	FCHEA	106
Geothermal Exchange		103
Green Buildings Institute	GBI	120
Institute for Policy Integrity at New York University School of Law		93
International Association of Sheet Metal, Air, Rail and Transportation Workers	SMART	91
International Code Council	ICC	98
Jenna B		80
Lauren Schwarze		79
Local Officials		125
Michael Ladach		122
Microgrid Resources Coalition	MRC	105
Middle Tennessee Natural Gas Utility District		112
National Electrical Contractors Association	NECA	123
National Propane Gas Association	NPGA	90
Philadelphia Gas Works	PGW	116
Polyisocyanurate Insulation Manufacturers Association	PIMA	83
Rinnai America Corporation		121
S. McKnight		127
Samuel Smith		110
Sarah Lance		81
Sierra Club members		124
Think Microgrid		92
U.S. Green Building Council		107
View Inc		86
Washington Gas Light Company	WGL	101
Gas Associations		99

[4] DOE received comments from an individual on April 11, 2023, after the re-opened comment period closed. Doc. No. 127. Despite the fact that these comments were filed late, DOE considered the issues raised in these comments when reviewing the rule.

[5] The parenthetical reference provides a reference for information located in the docket for this rulemaking. (Docket No. EERE–2010–BT–STD–0031, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

III. Discussion of the Final Rule

The following section discusses the final rule. The final rule introduces energy performance standards for new construction and major renovation of Federal buildings. The final rule adds standards for the maximum emissions resulting from on-site fossil fuel usage, language related to the purpose of these new standards, definitions associated with these standards, and a detailed process for Federal agencies petitioning for a downward adjustment from these standards to 10 CFR parts 433 (Federal commercial and multi-family high-rise residential buildings) and 435 (Federal low-rise residential buildings). The revisions to 10 CFR parts 433 and 435, as summarized in this section, are presented at the end of this document.

A. Scope

1. Federal Buildings

This final rule applies to a defined subset of new Federal buildings and major renovations to Federal buildings, as specified in section 433 of EISA. *See* 42 U.S.C. 6834(a)(3)(D)(i). The term ''Federal building'' means ''any building to be constructed by, or for the use of, any Federal agency [including] buildings built for the purpose of being leased by a federal agency, and privatized military housing.'' 42 U.S.C. 6832(6). However, the rule would not apply in cases of Federal agencies leasing space in buildings where the Federal Government does not lease the entire building. Accordingly, if the building at issue is not entirely leased to the Federal Government at the time of renovation, the final energy performance standards do not apply.

The subset of Federal buildings to which this rule applies fall under two categories and will be referred collectively to as ''EISA-subject buildings.'' The first qualifying category of EISA-subject buildings includes any new Federal buildings or major renovations to Federal buildings that are public buildings, as defined in 40 U.S.C. 3301, for which transmittal of a prospectus to Congress is required under 40 U.S.C. 3307. Under 40 U.S.C. 3307(a)(1), a transmittal of a prospectus to Congress is required if a total expenditure in excess of $1,500,000 is required to construct, alter, or acquire the public building.[6] Under 40 U.S.C. 3307(h), the GSA Administrator may adjust this value annually to account for construction cost increases. GSA's annual prospectus threshold for FY 2024 is $3,613,000.[7] GSA also provides a separate dollar threshold for alterations in leased public buildings for which a prospectus is required; in FY 2024, this threshold is $1,806,500.

The second qualifying category of EISA-subject buildings includes any new Federal buildings or major renovations to Federal buildings that are not public buildings and for which the construction cost or major renovation cost is at least $2,500,000 (in 2007 dollars, adjusted for inflation).[8] For the purposes of calculating this threshold, agencies should use the inflated value of the $2,500,000 as of October of the FY during which the design for construction of the project begins. DOE is adopting a methodology that allows for a constant inflator to be applied during the entirety of the year. By this methodology, an agency should set the Bureau of Labor and Statistics CPI Inflation calculator to $2,500,000 in October 2006 for the value of the original cost threshold. As of the most recent update, October 2023, $2.5 million in 2007 dollars, when adjusted for inflation, is $3,811,583. DOE revises regulatory text in §§ 433.200(a) and 435.200(a) to clarify how the cost thresholds for new public and non-public buildings should be adjusted for inflation.

As noted previously, GSA also provides a separate dollar threshold for alterations in leased public buildings ($1,806,500 in FY 2024). DOE will use both thresholds (*i.e.,* the $2,500,000 in 2007 dollars threshold (adjusted for inflation) for Federal buildings that are not public buildings, and the $1,806,500 in FY 2024 dollars threshold for leased public buildings) for this second category of EISA-subject buildings (*i.e.,* buildings for which a prospectus is not required). Using the lower GSA prospectus threshold for leased public buildings is consistent with: (1) current agency practice for such buildings, and (2) the scheme Congress established in EISA section 433 where the prospectus dollar thresholds (*e.g.,* $2,500,000 in 2007 dollars) are also applied to buildings and renovations for which a prospectus is not required.

TABLE III–1—COST THRESHOLDS FOR FY2024 (MILLION DOLLARS)

	Public buildings	Non-Public buildings
Construction or Major Renovation to Federally Owned Buildings	* $3.613	** $3.812
Major Renovation of Federally Leased Buildings	† 1.806	†† 1.806

* Cost threshold for buildings that are owned public buildings, as defined in 40 U.S.C. 3301, is determined by the GSA annual prospectus thresholds published for each FY at *www.gsa.gov/real-estate/design-and-construction/annual-prospectus-thresholds.*

** Cost threshold for any new construction or major renovation that is in an owned, non-public building is determined by adjusting the $2,500,000 in 2007$ for inflation to the current FY. DOE sets the inflated value for the entire FY based on the value reported in October of that FY in the Bureau of Labor and Statistics CPI Inflation calculator *www.bls.gov/data/inflation_calculator.htm.*

† Cost threshold for major renovations within leased buildings is determined by the GSA annual prospectus thresholds published for each FY at *www.gsa.gov/real-estate/design-and-construction/annual-prospectus-thresholds.*

†† Cost threshold for major renovations within leased buildings is determined by the GSA annual prospectus thresholds published for each FY at *www.gsa.gov/real-estate/design-and-construction/annual-prospectus-thresholds.*

For example, a building in the first category would include a federal office building for which design for construction began in FY 2024 and with construction or renovation costs that are more than $3,613,000. A building in the second category would include a residential building (which is excluded from the definition of ''public building'' under 40 U.S.C. 3301) with construction or renovation costs of at least $3,811,583 in FY 2024 ($2,500,000 in 2007 dollars, adjusted for inflation). DOE expects that most low-rise residential buildings that meet the cost threshold will be low-rise

[6] 40 U.S.C. 3307(a) also contains a second prospectus threshold in 40 U.S.C. 3307(a)(3), which applies to alterations of buildings that are leased by the Federal Government for use for a public purpose if the cost of the alteration will exceed $750,000. This threshold is one-half of the threshold for all other new construction or alterations of existing buildings.

[7] *See* GSA Annual Prospectus Thresholds, available at *www.gsa.gov/real-estate/design-and-construction/annual-prospectus-thresholds.*

[8] To find the adjusted cost threshold, go to *data.bls.gov/cgi-bin/cpicalc.pl.*

multi-family buildings or low-rise dormitories as Federal low-rise single-family homes are not likely to meet the cost threshold.

The International Code Council (ICC) stated that this final rule should apply to all new Federal buildings and major renovation projects. ICC, Doc. No. 98, pg. 2. ICC asserted that doing so would maximize the long term ecological and economic benefits of the rule. *Id.* However, DOE notes that section 433 of EISA clearly identifies the buildings to which the energy performance standards are to apply. Thus, although DOE encourages Federal agencies consider these energy performance standards holistically in developing their construction and renovation plans, the final rule only applies to EISA-subject buildings.

2. Calculating Costs

The final rule also outlines which costs Federal agencies must include when calculating construction or major renovation costs to an EISA-subject building.

a. Construction and Major Renovations Costs

In the final rule, DOE revises the definitions of ''construction cost'' and ''major renovation cost'' proposed in the 2022 SNOPR. The 2022 SNOPR proposed to define ''construction cost'' as ''all costs associated with design and construction of a federal building. It includes the cost of design, permitting, construction (materials and labor), and building commissioning.'' 87 FR 78382, 78420. However, the 2022 SNOPR explicitly stated that ''construction cost'' does not include legal or administrative fees, or the cost of acquiring the land. *Id.*

The 2022 SNOPR proposed to define ''major renovation cost'' as costs associated with the ''[r]epairing, remodeling, improving, or extending, or other changes in, a public building as per 40 U.S.C. 3301(a)(1).'' These costs included costs associated with the ''[p]reliminary planning, engineering, architectural, legal, fiscal[] and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other similar actions necessary for the alteration of a public building[.]'' *Id.*

One individual commented on the definition of ''construction cost'' proposed on the 2022 SNOPR. Doc. No. 127, pg. 2. They stated that ''construction cost'' should include administrative and legal fees because it would increase the number of buildings to which these energy performance standards apply as more construction projects would meet the threshold. *Id.* In addition, they claimed that including administrative and legal fees when calculating construction costs would promote fiscal responsibility with public funds. *Id.* This commenter also argued that land acquisition costs should be included in the definition of ''construction cost'' because doing so would ''incentivize project managers to prioritize the use of existing Federal lands and renovations of existing buildings, rather than buying new spaces'' *Id.*

After reviewing the definitions proposed in the 2022 SNOPR and stakeholder comments, DOE amends the definitions of ''construction cost'' to include a similar list of costs that DOE included in the definition of ''major renovation cost.'' This includes, but is not limited to, the costs of preliminary planning, engineering, architectural, permitting, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other similar actions necessary for the construction of a new Federal building. Additionally, DOE amends the definition of ''construction cost'' to remove the language specifically excluding legal or administrative fees from the calculation of ''construction cost.'' If legal or administrative fees are associated with the construction of a new Federal building, such as permitting fees, then these costs must be included in the calculation of construction costs. However, DOE notes that most administrative or legal costs are generally part of overhead costs and are not associated with the construction of a new Federal building.

DOE declines to adopt the commenter's suggestion that the cost of acquiring the land should be included in the definition of ''construction cost.'' DOE previously stated that many new Federal buildings are built on land already owned by the Federal Government. 79 FR 61694, 61698. Thus, including the land costs in the definition of ''construction cost'' is unnecessary and would have little practical effect. Moreover, not including land costs for new Federal buildings in the threshold calculation would be consistent with the threshold calculation for major renovations, for which land costs are not included.

In addition, DOE also amends the definition of ''major renovation cost'' so that it aligns with the revised definition of ''construction cost.'' First, the revised definition of ''major renovation cost'' provides a general description of major renovation costs—*i.e.,* cost associated with the repairing, remodeling, improving, extending, or other changes in a federal building. Second, the revised definition then lists specific associated costs included in the definition of ''major renovation costs.'' Third, the revised definition replaces references to ''public buildings,'' as defined in 40 U.S.C. 3301(a)(1), to ''Federal buildings,'' as defined in the final rule so that the definition applies to both categories of EISA-subject buildings.

b. Individual Buildings

The final rule applies the cost thresholds to individual buildings rather than multiple buildings in a single project. A commenter urged DOE to reconsider the proposed definition of ''buildings'' to apply to multiple buildings that are located within the grounds of another public building, meaning that the standard would apply to multiple buildings and ''projects'' would be the unit of analysis. Doc. No. 127, pg. 1. However, the statute authorizes DOE to establish Federal building energy efficiency performance standards that reduce fossil fuel-generated energy consumption for ''new Federal buildings and Federal buildings undergoing major renovations'' not ''projects'' that could include multiple buildings or major renovations. 42 U.S.C. 6834(a)(3)(D)(i). The cost threshold and public building determination stipulated in the statutory language is also specific to individual buildings. Furthermore, the date that design for construction begins (to determine the appropriate reduction target) is also building specific. Thus, when calculating the costs to determine whether the final rule applies, Federal agencies should calculate the costs for individual buildings.

c. Major Renovations

In establishing these standards, DOE is sensitive to the notion that Federal agencies might break up their major renovations into smaller pieces to prevent associated costs from exceeding the applicable threshold. DOE discourages the practice of ''breaking up renovation projects to get around the cost threshold'' and intends to further address this topic as part of the Department's implementation guidance. Even in cases of replacing individual systems or equipment, for which this rule applies, DOE believes agencies should prioritize pairing energy efficiency measures with reducing fossil fuel use. DOE notes that Section 433 of EISA states that ''[i]n establishing criteria for identifying major renovations that are subject to the requirements of this subparagraph,

[DOE] shall take into account the scope, degree, and types of renovations that are likely to provide significant opportunities for substantial improvements in energy efficiency.'' 42 U.S.C. 6834(a)(3)(D)(ii). Multiple sequential renovations to the same building are likely to provide significant opportunities for substantial improvements and their cumulative effect over time should be evaluated and utilized to determine the cost of the project for the application of this rule. In this final rule, DOE broadly applies the term ''major renovations'' to include projects for which Federal agencies can practicably implement the energy efficiency and fossil fuel reduction goals of ECPA and EISA.

DOE is clarifying that the energy performance standards being adopted in this final rule apply both to whole building retrofits as well as multiple minor renovations that occur in phases on the same Federal building as long as the building meets the cost thresholds as explained above. More specifically, this final rule applies to renovations that are so extensive that they replace all on-site fossil fuel-using systems in the building, such as comprehensive replacement or restoration of most or all major systems, interior work (*e.g.,* ceilings, partitions, doors, floor finishes, etc.), or building elements and features. DOE refers to such major renovations as ''whole building'' renovations throughout this preamble. However, the final rule also requires Federal agencies to consider major renovations that are less than whole building renovations (*i.e.,* component and system level renovations, including multiple sequential renovations) that provide significant opportunities for substantial improvements in energy efficiency and reduce on-site fossil fuel usage across the Federal building portfolio.

d. Energy Conservation Measures

When designing new or renovated buildings, DOE encourages agencies to consider any energy conservation measures (''ECMs'') that have been identified in that building and reported to DOE, as per 42 U.S.C. 8253(f)(3)(A). If identified ECMs include projects that impact on-site fossil fuel usage, DOE urges the agency to evaluate and consider the total of those project costs bundled together when implementing those ECMs to determine whether the total cost meets the thresholds in section 433 of EISA. ECMs that impact on-site fossil fuel usage include, but are not limited to, adding new fossil fuel-using heating, hot water, or cooking systems to an existing building; direct replacement of existing fossil fuel-using heating, hot water, or cooking systems in an existing building; and modification or replacement of any building systems (including systems such as lighting or building envelope systems that do not use fossil fuel directly) that lead to an increase or decrease in the use of fossil fuel. Considering ECM projects in a more comprehensive approach, rather than a piecemeal approach, better aligns with the goals of section 433 of EISA.

3. Fossil Fuel-Generated Energy Consumption

a. Limitation to On-Site Use of Fossil Fuels

Section 433 of EISA directs DOE to establish regulations that require certain new Federal buildings and Federal buildings undergoing major renovations be designed to reduce their fossil fuel-generated energy consumption. 42 U.S.C. 6834(a)(3)(D)(i). The scope of the building energy covered by the final rule is limited by the term ''fossil fuel-generated energy consumption.'' In the 2022 SNOPR, DOE noted that this term is not defined in section 433 of EISA and proposed to define ''fossil fuel-generated energy consumption'' as on-site stationary combustion of fossil fuels that contribute to Scope 1 emissions for generation of electricity, heat, cooling, or steam as defined by ''Federal Greenhouse Gas Accounting and Reporting Guidance'' (Council on Environmental Quality, January 17, 2016). This includes, but not limited to, combustion of fuels in stationary sources (*e.g.,* boilers, furnaces, turbines, and emergency generators). This term does not include mobile sources, fugitive emissions, or process emissions as defined by ''Federal Greenhouse Gas Accounting and Reporting Guidance'' (Council on Environmental Quality, January 17, 2016).

87 FR 78382, 78421. Pursuant to this proposed definition, the standard would apply to energy consumption from fossil fuels used by equipment and systems designed to support building operations; that is, fossil fuels consumed on site. The proposed definition would not apply to the consumption of fossil fuels used to produce electricity off-site.

DOE received several public comments in response to 2022 SNOPR's proposed definition of ''fossil fuel-generated energy consumption.'' Several commenters supported the proposed definition. For example, the Green Building Initiative (GBI) expressed support for focusing on on-site generated energy because ''it presents the best opportunity to clearly track improvements and more clearly measure improvements of Federal buildings.'' GBI, Doc. No. 120, pg. 3. GBI also acknowledged that many factors within off-site generated energy are outside the control of the Federal government and that focusing on on-site generated energy will assist the Federal government in improving the factors that it can control. *Id.* Furthermore, one commenter urged DOE to retain its focus on on-site fossil fuel reduction as it focused the standard on outcomes. Doc. No. 79, pg. 4–5.

DOE also received comments that opposed the definition for ''fossil fuel-generated energy consumption'' proposed in the 2022 SNOPR. For example, several commenters questioned DOE's authority to define ''fossil fuel-generated energy consumption.'' *See e.g.,* APGA, Doc. No. 102, pg. 3; NPGA, Doc. No. 90, pg. 3; AGA, Doc. No.100, pg. 11. NPGA and AGA both alleged that DOE does not have authority to define ''fossil fuel-generated energy consumption'' because the meaning of the term is clear. NPGA, Doc. No. 90, pg. 3; AGA, Doc. No.100, pg. 11. They argued that the plain text of the statute unambiguously refers to the total energy consumption of the buildings, rather than only the on-site energy consumption. AGA, Doc. No.100, pg. 11.

Section 433 of EISA does not define the term ''fossil fuel-generated energy consumption of the buildings.'' But when the text of section 433 is considered as a whole, it is best read to apply standards only to the on-site consumption of fossil fuels on the site of the Federal building.

In section 433 of EISA, Congress sought to address how certain Federal buildings are designed when they are constructed or undergo major renovations. The operative sentence directing the imposition of standards states that certain new Federal buildings or Federal buildings undergoing major renovations ''shall *be designed* so that the fossil fuel-generated energy consumption of the buildings is reduced[.]'' 42 U.S.C. 6834(a)(3)(D)(i)(I) (emphasis added). Section 433 then prescribes standards that progressively reduce and then entirely eliminate ''fossil fuel-generated energy consumption of the buildings'' by FY 2030. 42 U.S.C. 6834(a)(3)(D)(i)(II).

With this text, Congress clearly indicated that section 433 covers fossil fuel-generated energy consumption that can be reduced, and ultimately eliminated, through building design measures. On-site consumption of fossil fuel-generated energy can be reduced, and entirely eliminated, through the use of building design measures. Such

measures may include the installation of electric equipment for space and water heating, along with any insulation, ductwork, and electrical work necessary to ensure the building's needs are met.

By contrast, off-site consumption of fossil fuels, such as the combustion of natural gas and coal by distant power plants, cannot practically be eliminated through building design measures. Building design measures can reduce the amount of fossil-fuel derived electricity that a federal building draws from the grid through various efficiency measures and on-site generation. But such building design measures could not eliminate entirely the consumption of fossil-fuel derived electricity, as section 433 requires beginning in FY 2030, unless section 433 were read to require every Federal building to use on-site non-fossil generation to generate *all* of the electricity that would be used by the building. While self-generation could be achievable for some Federal facilities, for others it is not. Particularly for buildings with high energy demands and limited generation and storage space, such as high energy demand buildings with small site footprints and/or located in areas with poor solar resources, full on-site generation at all times of day could impose extreme additional expense or even be technically impracticable. DOE therefore finds it highly implausible that Congress intended that outcome in adopting the requirement to reduce and eliminate fossil fuel-generated energy consumption through the design of Federal buildings. No commenter has offered any basis to conclude that it would be reasonable to read section 433 as requiring that every new Federal building or major renovation subject to EISA be designed to generate all of its own electricity by FY 2030.

Consumers of electricity, including the Federal government, sometimes seek to reduce the use of fossil fuels in electricity generation through procurement practices, which can include directly contracting for non-fossil generation or the purchase of energy attribute certificates (EACs). These sorts of electricity procurement practices could eliminate the off-site fossil fuel consumption attributed to a building's consumption of electricity. Even so, the availability of these procurement options does not persuade DOE to conclude that section 433 should be read to cover off-site consumption of fossil fuels for two reasons. First, again, section 433 states clearly that the standards it prescribes are to be achieved through design measures in new or renovated buildings. 42 U.S.C. 6834(a)(3)(D)(i)(I) (''buildings shall *be designed* so that the fossil fuel-generated energy consumption of the buildings is reduced[.]'') (emphasis added). A requirement to procure electricity from particular sources or to purchase EACs is not a building design requirement. Indeed, whether a federal building manager elects to purchase electricity from one source or another has nothing to do with how the building is designed.[9]

Second, a reading that section 433 of EISA, a provision aimed at Federal building design, was also intended to encompass the procurement of electricity is hard to square with Congress' direct treatment of that subject in section 203 of the Energy Policy Act of 2005. That provision, enacted just two years earlier, required the Federal government to procure renewable energy at levels no less than three percent in fiscal years 2007 through 2009, 5 percent in fiscal years 2010 through 2012, and 7.5 percent in fiscal years 2013 and each fiscal year thereafter. 42 U.S.C. 15852. That Congress had addressed renewable energy procurement by the Federal Government in explicit terms so recently, and had set standards that differ so markedly from those in section 433, is yet another reason to disfavor a reading of section 433 that would necessitate the purchase of non-fossil fuel derived electricity as a necessary means of compliance.

Several commenters noted that the definition for ''fossil fuel-generated energy consumption'' proposed in the 2022 SNOPR, and the scope of the rule, differed from what was proposed in the 2010 NOPR and 2014 SNOPR. In the 2022 SNOPR, in proposing to limit the scope of the rule to only on-site energy consumption from on-site fossil fuel used by equipment and systems designed to support the building, DOE acknowledged that the proposed definition was a shift from the proposed scope of the 2014 SNOPR. 87 FR 78382, 78385. In discussing this shift, DOE observed that it received a comment in response to the 2014 SNOPR that argued that the term should only apply to the on-site energy consumption. 87 FR 78382, 78390, (*see* American Public Power Association (APPA), Doc. No. 71, pg. 2). After considering the comment and reviewing the relevant statutory language, DOE agreed with APPA's analysis and proposed limiting the scope of the rule accordingly.[10] Upon further review, and as proposed in the 2022 SNOPR, this final rule adopts the definition of ''fossil fuel-generated energy consumption'' that limits the scope of the rule to on-site energy consumption.

Commenters also stated that the 2022 SNOPR proposed definition of ''fossil fuel-generated energy consumption'' would have less impact and potential savings (particularly in terms of emissions) than the potential savings under the definition proposed in the 2010 NOPR and 2014 SNOPR. ASHRAE Doc. No. 96, pg. 3; BCSE Doc. No. 115, pg. 2; Gas Associations, Doc. No. 99, pg. 2; Doc. No 122, pg. 1; Doc. No 80, pg. 3. These commenters suggested that DOE include all or some off-site generated energy (particularly purchased electricity generated by fossil fuels) in the definition of ''fossil fuel-generated energy consumption.''

Regarding comments on the effects of focusing the rule on on-site energy use, DOE has further analyzed the impacts of the rule. DOE projects site energy and full fuel cycle emissions savings even when the rule is limited to on-site fossil fuel-generated energy consumption. The expected savings are shown in section V.A–C and the accompanying technical support document (''TSD''). DOE notes that the estimated benefits of the rule are derived from purchasing and installing less expensive electric equipment, along with the health and climate benefits from the associated emissions reductions, while the estimated costs come from the operation of such equipment. DOE also expects the net benefits of this rulemaking to increase over time as electricity rates decrease relative to those of natural gas and as the grid continues to shift to a cleaner mix of generation.

DOE also notes that there are other tools available to Federal agencies to reduce the use of off-site fossil fuel-generated energy, such as on-site solar and procurement of renewable EACs. Although Federal building managers can procure fossil fuel-free electricity, primarily through EACs, such procurement measures are not building design measures that reduce on-site fossil fuel-generated energy consumption.[11] Accordingly, requiring

[9] Further, depending on the geographic location, building managers have limited discretion to elect the source from which they procure electricity. Federal agencies (with limited exceptions) must procure utility services from their serving utility, which may not sell non-fossil fuel derived electricity. *See* 40 U.S.C. 501 & 591; FAR Part 41.

[10] A key attribute to the notice and comment rulemaking process is that agencies invite the public to comment on their proposed rules and agencies can benefit from this feedback. Accordingly, agencies may revise their proposed rules based the feedback they received.

[11] Additionally, at the design stage, the agency controlling the design process would not necessarily be able to guarantee that the building occupant would, in fact, procure the EACs that

such actions are outside the scope of DOE's authority under section 433 of EISA. Further, Congress did not give clear authority for fossil fuel-free electricity procurement under section 433 of EISA, as it did under the Energy Policy Act of 2005, which set forth the total electricity from renewable sources that must be procured by the Federal government (*see* 42 U.S.C. 15852). Therefore, although there are means to reduce emissions from the electricity use in buildings, which DOE encourages agencies to pursue, this final rule only requires building design measures to reduce the use of on-site fossil fuel-generated energy.

Commenters also argued that the rule's proposed focus on the use of on-site fossil fuel-generated energy is a departure from DOE's general position of fuel neutrality. AGA, Doc. No. 100, pg. 9; Gas Associations, Doc. No. 99, pg. 2 n.8. These commenters cite rulemakings related to the energy conservation program for certain consumer and commercial appliances under the Energy Policy and Conservation Act (EPCA). Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the ''maximum improvement in energy efficiency'' that DOE determines is technologically feasible and economically justified. 42 U.S.C. 6295(o)(2)(A). In applying that standard, DOE considers the improvement in energy efficiency feasible and justified for electric products separately from gas- or oil-fueled products, consistent with 42 U.S.C. 6295(q)(1)(A), which required establishment of a separate standard for any covered products that ''consume a different kind of energy from that consumed by other covered products within'' the regulated type of products.

In contrast, the language of section 433 is clearly not ''fuel neutral,'' as the text singles out and disfavors fossil fuels relative to other sources of energy. Further, as discussed above, the language and structure of the statutory text strongly support limiting the scope of the requirement to just the use of on-site fossil fuel-generated energy. Accordingly, the specific applicable statutory text here requires a departure from the fuel neutral approach that DOE uses when setting energy conservation standards for certain consumer and commercial appliances under EPCA.

After further considering the proposed approach in light of the comments received, DOE determines that focusing on direct emissions best aligns with section 433's directive to reduce and ultimately eliminate fossil fuel-generated energy consumption through building design measures of Federal buildings.

The final rule adopts the definition of ''fossil fuel-generated energy consumption'' as proposed in the 2022 SNOPR, with three revisions. First, the final rule revises the term to be defined from ''Scope 1 fossil fuel-generated energy consumption'' to ''fossil fuel-generated energy consumption.'' This clarifies that the scope of this rule aligns with the directive in section 433 of EISA. Second, the final rule revises the definition so that it applies to ''on-site stationary consumption'' of fossil fuels. This revision uses language that is consistent with section 433 and clarifies that the definition includes the on-site consumption of natural gas. Third, the final rule deletes, ''for the purposes of this final rule'' from the definition because this language is not necessary.

b. Exemptions and Exceptions

As proposed in the 2022 SNOPR, not all Scope 1 emissions are included under this final rule. DOE identifies several on-site uses are that exempted or excepted from this final rule. First, the standards only apply to on-site fossil fuel use or Scope 1 emissions from stationary combustion sources. Again, section 433 of EISA requires that certain new Federal buildings and Federal buildings undergoing major renovations be designed to reduce fossil fuel-generated energy consumption. As such, this rule does not apply to emissions associated with natural gas for alternatively fueled vehicles (''AFVs'') (or any other ''alternative fuel,'' defined at 42 U.S.C. 13211) because building design measures do not include use of AFVs. In addition, DOE notes that because the CBECS and RECS data that provide the energy use targets for this rule do not contain manufacturing or industrial process loads, DOE excludes these loads from the scope of the energy performance standards at this time. For buildings with such process loads, the process loads will need to be accounted for in the analysis of the building's fossil fuel consumption and GHG emissions, but such loads would not be subject to the percentage reductions in fossil fuel-generated energy consumption (Scope 1 GHG emissions) required for the building related loads as related to this rule.

Second, this final rule does not apply to the on-site consumption of fossil fuel (or the subsequent emissions) from energy generation associated with the supply of emergency backup electricity. Again, section 433 of EISA requires building design measures for certain Federal buildings to reduce fossil fuel-generated energy consumption. Thus, this rule is focused on the use of on-site energy as *designed* for standard building operations. Emergency backup generation is generally used infrequently and for short periods, for emergency services only when Federal buildings are not operating as designed. In addition, given their limited use, the impact from emergency backup generators, in terms of both direct fossil fuel consumption and emissions, is usually quite small relative to the impact from ongoing building operations. However, *non-emergency* generation from backup generators (such as those for peak shaving or peak shifting) is within in the scope of this rule. DOE also notes that if Federal agencies use their backup generators for both purposes, they will be required to calculate the fraction of their backup generator emissions that is associated with emergency use and the fraction associated with non-emergency use.

Third, the final rule does not apply to on-site energy generation or Scope 1 emissions associated with biomass fuels because biomass fuels are not fossil fuels. Because EISA directed DOE to establish regulations that require fossil fuel-generated energy consumption reductions, and biomass is not a fossil fuel, DOE has intentionally left biomass fuels out of the CBECS and RECS targets developed for this rule. DOE acknowledges that guidance from the Council on Environmental Quality [12] takes a somewhat different approach on biomass fuels, but DOE believes CEQ's guidance is complementary to this final rulemaking. CEQ's guidance states that the CO_2 emissions from biomass and biofuel combustion are considered biogenic and are reported separately from fossil fuel-generated GHGs and biomass and biofuel-generated CH_4 and N_2O. This CEQ guidance ensures that any GHG emissions associated with biomass or biofuel use at a covered Federal building are still taken into account in reporting emissions (though reported separately). This rule does not cover such fuels, however, as they are not fossil fuel derived and therefore fall outside the statutory authority.

DOE received numerous comments on the exemptions and exceptions included in the final rule. These comments ranged from supporting limiting the application of the standards to stationary combustion sources and the exemptions for emergency backup

would be necessary to meet the applicable fossil fuel energy standards.

[12] Federal Greenhouse Gas Accounting and Reporting Guidance,'' Council on Environmental Quality (CEQ), January 17, 2016 (CEQs guidance).

generators [13] and the exception of biomass fuels, to urging DOE to adopt additional exemptions or opposing some of the exemptions.

Two commenters opposed exempting backup generators from the final rule. CHP Alliance and MRC both noted that emergency backup generators run on fossil fuel. CHP Alliance, Doc. No. 104, pg. 4; MRC, Doc. No. 105, pg. 8. MRC also stated that that emergency backup generators must run on a regular basis to keep them in good operating condition.[14] CHP Alliance argued that reducing GHG emissions from this type of fossil fuel-generated energy consumption is the purpose of section 433 of EISA. CHP Alliance, Doc. No. 104, pg. 4. Thus, these commenters argued, exempting backup generators is counter to the entire purpose of the final rule.

DOE notes that although this rule exempts emergency backup systems, this exemption is limited to when these generators are used solely for emergencies. Therefore, any use of these backup generators for peak shaving, peak shifting, or other demand management activities must be included in the building energy consumption.

An individual commenter urged DOE to reconsider the exception for emissions resulting from biomass fuel. Doc. No. 79, pg. 3. Although this commenter acknowledged that biomass fuel is not fossil fuel-based, the commenter argued that the rule should apply to biomass fuels because they still emit GHG. *Id.* However, as previously noted, biomass fuels are not fossil fuels. Because EISA directed DOE to establish regulations that require Federal agencies to reduce their fossil fuel-generated energy consumption, and biomass fuels are not fossil fuel-based, Congress intentionally excluded biomass fuels from the targets developed for this rule.

DOE received several comments urging DOE to exclude renewable fuels such as biomethane (renewable natural gas), biopropane (renewable propane), and clean hydrogen from the final rule. AGA and NPGA stated that it is appropriate for DOE to exclude biomass fuels from this rule, but argued that DOE should also consider excluding other renewable fuels. AGA; Doc. No. 100, pg. 32–34; NPGA, Doc. No. 90, pg. 8; *see* WGL, Doc. No. 101; pg. 6. Specifically, AGA and NPGA noted that there have been developments in the production of synthetic hydrocarbon. AGA; Doc. No. 100, pg. 32–34; NPGA, Doc. No. 90, pg. 8. Similarly, CHP Alliance observed that combined heat and power (CHP) systems are extremely efficient and some approach 90-percent efficiency. CHP Alliance, Doc. 104, pg. 5.

DOE acknowledges that purely renewable fuels would not fall within the scope of this rulemaking as long as they are not fossil fuel-based or made from blends that contain fossil fuels. A Federal building may use renewable fuels if the Federal agency is able to verify the use of such fuels on-site do not also include fossil fuels in their mixture. Additional specification about fuel content of biofuels will be provided in a companion implementation guidance.

DOE also received several comments on the NOPR and the 2014 SNOPR about differentiating between fossil fuels used to generate purchased electricity (*i.e.,* natural gas versus crude oil). DOE notes that because the rule is now focused on on-site fossil fuel use only, these comments no longer apply. DOE acknowledges that the source emission factors related to electricity are used in DOE's analysis of the impacts of the rule and notes that DOE will use the latest available source emission factors from DOE and EPA.

DOE also received several comments on the treatment of distributed energy resources (DERs) in the 2022 SNOPR suggesting that DOE treat DERs as a ''Scope 2'' impact and, thus, exempt DERs from these standards. These commenters argued that because emissions from DERs are considered Scope 2 emission for reporting purposes, these emissions should also be considered as Scope 2 emissions for the purposes of this rule.

DOE does not agree with this interpretation because the energy generated by DERs is generated on-site and is consumed directly by one building. Accordingly, the energy consumed by building processes supplied by DERs and generated from fossil fuels falls within the definition of ''fossil fuel-generated energy consumption.'' When an EISA subject building is connected to an existing DER resource that is located off the building site and is servicing more than one building it may then be treated as energy generated off-site and the energy stream would not be subject to this rule. New DER resources, when qualified as an EISA-subject building, would be subject to this final rule. Additionally, DOE notes that the terms ''Scope 1'' and ''Scope 2'' are more commonly utilized when performing GHG emissions calculations and reporting. Here, DOE uses these terms to help describe the scope of building energy use covered by this rule (as discussed in Section III.A). The statutory authority for this rulemaking is based upon the fossil fuel consumption of the energy source and systems that service an applicable building, and the building must be subject to the reduction targets, regardless of how subsequent emissions may be accounted.

B. Performance Standards for Fossil Fuel-Generated Energy Consumption

To provide flexibility, the final rule establishes standards for a fossil fuel-generated energy consumption metric expressed in thousand British thermal units (''kBtu'') per square foot (''ft^2'') of building gross area and provides an equivalent conversion of the energy metric measured in greenhouse gas (''GHG'') metrics. DOE opted to include the GHG metric, which will measure Scope 1 emissions, because agencies are already required to track and report their GHG emissions annually utilizing CEQ's guidance. The final rule aligns the quantifications and terminologies with those established in the Federal Greenhouse Gas Accounting and Reporting Guidance. Although CEQ's guidance categorizes Scope 1 emissions as ''Generation of electricity, heat, cooling, or steam'', ''Mobile sources'', ''Fugitive emissions'', or ''Process emissions,'' this final rule focuses only on the on-site fossil fuel use associated with the ''Generation of electricity, heat, cooling, or steam''.

This final rule provides agencies with two separate but equivalent sets of fossil fuel generated energy consumption targets—(1) fossil fuel-generated energy consumption based on a summation of on-site fossil fuel usage expressed in kBtu per ft^2 of building gross area, and (2) a new carbon dioxide equivalent (''CO_2e'') per ft^2 metric based on the emissions associated with the on-site fossil fuel-generated energy consumption. Agencies may use either metric for their design targets. The CO_2e metric is based upon the stationary combustion of natural gas and is most appropriate when that is the only fossil fuel being utilized. When a building is burning fuels other than standard natural gas, it would be most appropriate to use the on-site fossil fuel energy metric in units of kBtu per ft^2 of building gross area.

To develop these fossil fuel generated energy consumption targets, DOE utilized CBECS and RECS data to determine the on-site fossil fuel usage by fossil fuel type for each building type in CBECS or RECS. The CBECS and RECS data was parsed into the format commonly utilized by DOE to evaluate building energy codes and standards,

[13] WGL, Doc. No. 101, pg. 5.

[14] MRC, Doc. No. 105, pg. 8. MRC asserted that this results in approximately 0.79 metric tons of GHG per MWh of backup supply.

such as organizing by climate zone, which aligns with the technical analysis methodology used to evaluate the Federal baseline standards for commercial and multi-family high-rise residential buildings, which rely on Standard 90.1–2019, as well as the Federal baseline standards for low-rise residential buildings, which rely on the 2021 IECC.

DOE determined the kBtu per square foot targets by dividing fossil fuel consumption data by the building area, applying the weighting factors associated with the building, and assigning each building to one of the building type/climate zone categories. DOE determined the CO_2e (in metric tons of CO_2e) per square foot targets by multiplying the fossil fuel usage for each fuel type by the applicable GHG coefficient (from the CEQ guidance for each fuel type), dividing by the building area, applying the weighting factors associated with the building, and assigning each building to one of the building type/climate zone categories. The resulting targets are shown in Table A–1a and Table A–1b of appendix A to subpart B of parts 433 and 435.

For the purposes of establishing the targets, the final rule identifies and defines 16 categories of commercial buildings and five categories of residential dwelling units that cover all relevant buildings in the Federal building portfolio, including low-rise (single-family and multi-family), mid-rise apartment buildings, and high-rise apartment buildings, to be utilized when referencing the target defining tables in the regulatory text.

The 16 categories of commercial buildings defined are education, food sales, food service, health care (inpatient), health care (outpatient), laboratory, lodging, mercantile (enclosed and strip shopping malls), office, public assembly, public order and safety, religious worship (not applicable), retail (other than mall), service, and warehouse and storage. Many of these commercial building categories are further divided into building types, providing a total of 48 commercial building types. These building categories and building types represent the high-level Principle Building Activity (''PBA'') and low-level Principle Building Activity Plus categories in the 2003 CBECS.

The five categories of residential buildings are: mobile home, multi-family in 2–4-unit buildings, multi-family in 5 or more-unit buildings, single-family attached, and single-family detached. These building types represent the housing unit types in the 2005 RECS (DOE chose to use 2005 RECS data because the RECS was conducted in 2001 and 2005 but not 2003). Residential buildings that fall under 10 CFR part 435 and multi-family mid-rise and high-rise buildings that fall under 10 CFR part 433 will use these same categories. In analyzing the rule, DOE assumes that most multi-family high-rise residential buildings will fall into the ''multi-family in 5 or more-unit buildings'' category based on the most typical buildings representative of the Federal buildings.

Federal agencies must select from these 53 building categories (including commercial building subcategories) to identify the fossil fuel-generated energy consumption target (expressed in both kBtu per ft^2 and Scope 1 GHG emissions in CO_2e per ft^2) for a specific building. DOE notes that the building types available from CBECS and RECS do not correspond directly to the building types used in the Federal Real Property Profile (''FRPP'') and that agencies should exercise their best judgement to select the building category that best matches the building's intended use. Additionally, some buildings may be mixed use, so agencies may need to area-weight the floor space of these CBECS and RECS targets for Federal buildings that do not correspond directly to the CBECS or RECS building types. For example, a Department of Defense (''DOD'') Post Exchange building might have aspects of Food Sales, Food Service, and Mercantile, necessitating the development of an area-weighted target. Similarly, a DOD barracks building might include aspects of Lodging or Residential, Education, and Warehouse, again necessitating the use of an area-weighted mapping.

1. New Construction and Major Renovations of a Whole Building

DOE developed quantitative requirements to determine compliance with the fossil fuel reduction targets within the revised energy performance standards for new construction and major renovations (*i.e.,* major renovation of on-site fossil fuel-using systems or components in a building) of EISA-subject buildings. The adopted quantitative requirements require agencies to calculate the on-site fossil fuel-generated energy consumption in kBtu of fossil fuels or the Scope 1 GHG emissions in CO_2e of their proposed building design and compare that estimate to the allowable fiscal year percentage reduction target found in the target tables in appendix A of subpart B to 10 CFR parts 433 and 435. This is done by identifying the allowable target (in either kBtu of on-site fossil fuels or Scope 1 GHG emissions attributed to the generation of electricity, heat, cooling, or steam) for stationary combustion sources as per the ''Federal Greenhouse Gas Accounting and Reporting Guidance.'' The agencies then divide the kBtu values or the metric tons of CO_2e Scope 1 emissions by the floor area of the building to calculate the per square foot (metric tons of CO_2e per square foot) value to compare with the target values in appendix A. For buildings that combine two or more building types, area-weighted averaging by square footage for each building type will be used to calculate the maximum allowable fossil fuel-generated energy consumption of the combined building.

2. Major Renovations Within a Building

DOE developed streamlined prescriptive requirements to determine compliance with the energy performance standards for major renovations of systems or components within EISA-subject buildings. Such prescriptive requirements include requiring the systems within the building undergoing major renovation to be brought up to the performance requirements of the individual sections of Standard 90.1–2019 (chapters 5–10). Under the rule, agencies will begin implementing the energy performance standards upon the effective date of the rule. For major renovations in EISA-subject buildings that meet the project cost threshold and coverage requirements and are less than whole building renovations (*i.e.,* projects within the existing building comprising retrofits to a single system or component, such as a HVAC system or a chiller), agencies are required to adhere to the following requirements.

For component level renovations, meaning an individual product or piece of equipment, the final rule requires agencies to utilize electric or non-fossil fuel-using Federal Energy Management Program (''FEMP'') designated or ENERGY STAR equipment, which follow existing Federal requirements for equipment efficiency (found in 10 CFR part 436, subpart C, ''Agency Procurement of Energy Efficient Products'').

For system level renovations, meaning a group of equipment pieces that function together to satisfy a building load, agencies must utilize electric or non-fossil fuel-using FEMP designated or ENERGY STAR equipment, in alignment with 10 CFR part 436, subpart C and must also meet the system level requirements for the systems being renovated, as specified in the model energy codes used to establish baseline energy efficiency standards for Federal buildings (*i.e.,* the current Standard 90.1

for Federal commercial and high-rise multi-family buildings covered under 10 CFR part 433 or the current IECC for Federal low-rise buildings covered under 10 CFR part 435).

DOE received three comments in response to the 2022 SNOPR from BCSE, Polyisocyanurate Insulation Manufacturers Association (PIMA), and Aeoroseal stating that DOE should require agencies to implement energy efficiency upgrades before undertaking larger scale electrification renovations. BCSE, Doc. No. 115, pg. 2; PIMA, No. 83, pg. 2; Aeroseal, No. 97, pg. 3. DOE agrees with the commenters that energy efficiency is a key component of decarbonization. Not only does energy efficiency provide more traditional payback periods from operational cost savings, but it can often result in additional capital savings, such as when equipment can be downsized due to the associated energy load reductions. Additional details on the order of application will be provided in separate implementation guidance, but DOE encourages agencies and individual project teams to meet the energy efficiency requirements of 10 CFR parts 433 and 435 prior to applying additional design changes to meet the emissions reduction targets defined in this final rule.

Although this final rule only covers systems and components that utilize on-site fossil fuels, agencies should ensure that projects that could have secondary impacts on fossil fuel-using equipment, such as lighting, appliance or window replacement projects, are considered. DOE encourages agencies to consider whole building optimization for any type of major renovation project to ensure no adverse impacts to on-site fossil fuel use. DOE also encourages on-site renewables such as solar and energy storage systems as good practice. DOE is not including on-site solar as a means to offset on-site fossil fuel consumption because it will not reduce the overall on-site contribution of fossil fuels directly consumed, even though on-site solar is a means to reduce emissions from the electricity use in buildings.

In response to the 2022 SNOPR, DOE received multiple comments discussing the base reference code for Federal building efficiency, noting that newer and different codes or above-code programs (*e.g.,* Standard 90.1–2022 or Passive House) may be able to demonstrate additional energy savings. NECA, Doc. No. 123, pg. 2; Build SMART, Doc. No. 111, pg. 1. In response, DOE acknowledges that ECPA establishes energy performance requirements for Federally owned residential and commercial buildings, based on the IECC and Standard 90.1, respectively. The statutory authority for this rule is an amendment to the existing requirements for Federal buildings, as established by Section 305 of the ECPA, and it does not change the reference code in question. In fact, under ECPA, minimum standards, including the reference code (IECC or Standard 90.1), must be satisfied, and then *in addition* the fossil fuel reduction targets must be applied and adhered to by the building design. DOE does, however, generally encourage the use of updated and advanced building energy codes, innovative codes, and standards, which achieve increased levels of energy efficiency, thereby decreasing fossil fuel use in accordance with the objectives of EISA and this rule.

3. Shift Adjustment Multiplier

In the 2022 SNOPR, because many types of Federal buildings are operated for longer hours than typical for private sector buildings covered in CBECS and RECS, DOE introduced a shift adjustment multiplier. 87 FR 78382, 78391. In addition, DOE notes that hours of operation are already considered in tools such as ENERGY STAR Portfolio Manager, which agencies must use as part of their building benchmarking activities. 42 U.S.C. 8253(f)(8). A building's hours of operation are also implicit in any whole building simulation done on a building design, with longer hours of operation typically leading to higher energy usage.

The shift multiplier [15] in this final rule is based on analysis by Oak Ridge National Laboratory and was originally developed for ASHRAE Standard 100–2018. It is expressed in ''number of operating shifts,'' as opposed to actual hours of operation. Shift multipliers vary by building type. For example, for government offices, operating the building for two shifts does not increase the energy usage, but operating the building for three shifts increases the energy use by a multiplier of 1.4. Because residential buildings by their very nature are already considered to be 24-hour operation, the final rule only applies the shift multiplier to Federal commercial buildings regulated under 10 CFR part 433.

4. Compliance Date

The final rule provides individual fossil fuel generated energy consumption phase down targets (mandated by EISA) that apply to EISA-subject buildings depending on whether the design for construction or major renovations began in FY 2024, FY 2025 to FY 2029, or during or after FY 2030. The date after which all EISA-subject buildings that have not yet begun design for construction must comply with this final rule is one year after is published in the **Federal Register**.

For buildings for which design for construction or whole building renovation began in FY 2024 or during the FY 2025 to FY 2029 range, phase down target tables of the maximum allowable on-site fossil fuel-generated energy consumption (expressed in both kBtu per ft^2 and Scope 1 GHG emissions in CO_2e per ft^2) by building type and climate zone are provided in Appendix A of 10 CFR parts 433 and 435, subpart B. The values in the tables come from DOE's EIA CBECS (for commercial buildings) and RECS (for multi-family high-rise and low-rise residential buildings), both of which are converted from site energy consumption to kBtu and Scope 1 GHG emissions in CO_2e. For EISA-subject buildings for which design for construction or whole building renovation begins in FY 2030 or later, the fossil fuel-generated energy consumption of the building must be zero for all building types and climate zones, based on the calculation established in the regulations.

DOE received comments regarding the compliance dates proposed in the 2022 SNOPR. Washington Gas Light Company (WGL) noted that the rule is overdue and that the directive in Section 433 of EISA assumed that DOE would promulgate energy efficiency performance standards to meet the emission reduction targets in December 2008. WGL, Doc. No. 101, pg. 6. WGL expressed concern that the standards proposed in the 2022 SNOPR ''sets up an unrealistic expectation that [F]ederal agencies can achieve a sharp reduction in onsite fossil fuel energy consumption in less than 7 years.'' *Id.*

In response WGL's comment, DOE is issuing this final rule to meet its statutory obligations under EISA and cannot change the clearly delineated dates for fossil fuel consumption reductions. The performance standards in this final rule will enable Federal agencies to meet the reduction targets established in EISA. Furthermore, DOE notes that the final rule does not require all Federal buildings to meet the performance standards. These requirements only apply to certain new Federal buildings or Federal buildings undergoing major renovations. Thus, if an existing Federal building is not being renovated, then the performance standards do not apply. Also, as discussed below, DOE is confident that

[15] Sharp, Terry, ORNL/TM–2014/215, Derivation of Building Energy Use Intensity Targets for ASHRAE Standard 100, August 31, 2011; *https://info.ornl.gov/sites/publications/files/Pub49965.pdf.*

as a practical matter, agencies can meet the requirements of the final rule.

In addition, if Federal agencies (other than GSA) are unable to meet the energy performance standards adopted by this final rule, they may petition DOE to adjust the applicable standard. 42 U.S.C. 6834(a)(3)(D)(i)(II). DOE may adjust the applicable standard if it believes that it is technically impracticable for the agency to meet the energy performance standards.

The Alliance to Save Energy (ASE) stated that DOE should finalize this rule only when DOE feels that agencies can meet the requirements in the rule, especially for the requirements in year 2030 and beyond. ASE, Doc. No. 76, pg. 1. Others, such as ACEEE *et al.* stated that the final rule is overdue, and that DOE should require compliance as soon as possible.

In response to these comments, DOE believes that agencies can meet the requirements of this revised final rule, especially considering the focus on on-site fossil fuel usage, and the widespread availability of electrified appliances (such as heat pumps and electrified cooking equipment) that can completely substitute for fossil fuel-generated energy consumption on-site. The ENERGY STAR program provides extensive details and lists of commercially available electric appliances and equipment, including air source heat pumps that can be found at *https://www.energystar.gov/products/air_source_heat_pumps,* commercial heat pump and VRF equipment that can be found at *https://www.energystar.gov/products/heating_cooling/light_commercial_heating_cooling/light_commercial_hvac_key_product_criteria,* and electric cooking products that can be found at *https://www.energystar.gov/products/electric_cooking_products.* These technologies have now become far more well known and commercially available than they were at the time Congress adopted the requirements in EISA. It is also worth noting that the rule's requirements apply at the design for construction stage, when an agency has the maximum flexibility to develop a design for a new building that will meet the standards, or has the flexibility to select an approach to a major renovation that will meet the more limited requirements that apply to major renovations. Not only are the standards in the final rule required by the statute, they are also reasonable and achievable, given the point in the design and construction process when the standards become applicable and the real world options now available for agency compliance.

C. Petitions for Downward Adjustment

Under section 433 of EISA, agencies other than GSA may petition DOE for an adjustment to the fossil fuel-generated energy performance standard with respect to a specific building if meeting the requirement is technically impracticable in light of the agency's functional needs for the building. 42 U.S.C. 6834(a)(3)(D)(i)(II). As proposed in the 2022 SNOPR, the final rule allows GSA tenant agencies that have significant control over building design to petition DOE. This rule specifies the information petitioning agencies must provide when requesting a downward adjustment. Specifically, as proposed in the 2022 SNOPR, the final rule requires petitioning agencies to describe the building and associated components and equipment; explain why compliance with the requirements is technically impracticable considering the functional needs of the building; demonstrate that all cost-effective energy efficiency and on-site renewable energy measures were included in the building design; provide the largest feasible reduction in fossil fuel-generated energy consumption that can reasonably be achieved; and discuss measures that were evaluated but rejected.

When filing petitions for downward adjustment related to new construction, Federal agencies must include the maximum applicable allowable fossil fuel-generated energy consumption for the proposed building, the requested alternative allowable fossil fuel-generated energy consumption for the building, the estimated fossil fuel-generated energy consumption of the proposed building, the total estimated project cost, and a description of the building and the building energy systems. A description of the building includes, but is not limited to, location, use type, floor area, stories, expected number of occupants and occupant schedule, functional needs of the building, and any other information the agency deems pertinent. Federal agencies must describe the HVAC systems and service water heating system, as well as the loads in the building, including any specialized process, specialized research loads, electric vehicle charging stations, alternatively fueled vehicle fueling stations, emergency backup generators and other energy consuming systems or components. This information will provide DOE the necessary information to review petitions, and help agencies address key questions and options during the design process.

This final rule adopts the standard and requires information for downward adjustment related to major renovations. For major renovations that are whole building renovations, a downward adjustment would be provided at a level equal to the energy efficiency level that would be achieved were the proposed building designed to meet the baseline energy efficiency standard applicable to new construction in 10 CFR parts 433 or 435. For whole building renovations, Federal agencies must provide the same information that is required for new construction. DOE believes the cost of processing the petitions will be de minimis, as DOE already works extensively with Federal agencies on energy-efficiency and decarbonization efforts.

For major renovations that are limited to system or component level retrofits, DOE will provide downward adjustments at a level equal to the energy efficiency level that would be achieved through the use of commercially available systems and/or components by using ENERGY STAR or FEMP designated products. Unlike the required standard, however, the ENERGY STAR or FEMP designated products are not required to be electric or non-fossil fuel based. A major renovation that is limited to a single system or multiple systems could receive a downward adjustment equal to the energy efficiency level that would be achieved through the use of the same ENERGY STAR or FEMP designated products as required for component renovations and through use of the system level requirements for renovations found in the baseline energy efficiency standards in 10 CFR part 433 (Standard 90.1–2019) or 10 CFR part 435 (2021 IECC).

DOE received a comment that supported the changes made to the petition requirements proposed in the 2022 SNOPR from the American Council for an Energy-Efficient Economy (ACEEE), Earthjustice, Rewiring America, RMI, and Sierra Club. They stated that requiring Federal agencies to submit the information proposed in the 2022 SNOPR ''will help ensure the petition process meets EISA requirements.'' ACEEE *et al.,* Doc. No. 126, pg. 3.

However, other commenters expressed concern with the required information Federal agencies must file with their petitions. CHP Alliance stated that the rule proposed in the 2022 SNOPR is flawed because the new building baseline energy efficiency standard for major renovation is based on replacing all equipment included in the renovation with ENERGY STAR or

FEMP designated products. CHP Alliance, Doc. No. 104, pg. 6. CHP Alliance noted that this requirement excludes CHP systems from being both an onsite power and heating/cooling source option for major renovations because neither ENERGY STAR nor FEMP have products designated for CHP systems. *Id.* CHP Alliance urged DOE to eliminate this requirement or immediately designate CHP systems that use renewable fuels or non-fossil fuels as products which Federal agencies can use. *Id.*

DOE requires the use of FEMP and ENERGY STAR designated products when such designations are available as specified in 10 CFR part 436 subpart C because when setting efficiency requirements, both FEMP and ENERGY STAR have integrated life-cycle cost effectiveness into their guiding principles that demonstrate compliance with 10 CFR part 436 subpart A. As such, Federal buyers can have confidence that required products have both good energy performance and a total cost of ownership that is equal to or less than products below set efficiencies.

Although there are no such FEMP or ENERGY STAR designated products for CHP systems, this does not preclude an agency from utilizing such systems. If an agency determines that it would like to utilize a CHP system in an EISA-subject building, it may do so but must ensure that the fossil fuel utilization of the system complies with the energy performance standard. This can be done by utilizing renewable, non-fossil fuel based fuels and is discussed in more detail in section III.A.3.b. Defining Technical Impracticability.

In the 2022 SNOPR, DOE proposed that a ''technical impracticability'' exists when achieving the fossil fuel-generated energy consumption targets would:

(1) not be feasible from an engineering design or execution standpoint due to existing physical or site constraints that prohibit modification or addition of elements or spaces; (2) significantly obstruct building operations and the functional needs of a building, specifically for industrial process loads, critical national security functions, mission critical information systems as defined in NIST SP 800–60 Vol. 2 Rev. 1, and research operations; or (3) significantly degrade energy resiliency and energy security of building operations as defined in 10 U.S.C. 101(e)(6) and 10 U.S.C. 101(e)(7) respectively.

87 FR 78382, 78421 and 78430. Upon determination that complying with these standards is technically impracticable, the building is still required to reduce fossil fuel consumption to the maximum extent practicable. Technical impracticability may include technology availability and cost considerations but may not be based solely on cost considerations.

In response to the 2022 SNOPR, DOE received one comment on this topic that claimed that the definition of ''technical impracticability'' is too ambiguous and could lead to agencies taking advantage of loopholes. Doc. No. 79, pg. 4. DOE notes that Congress directed DOE to base its petition adjudication decisions on agency determinations of technical impracticability. Due to the range of issues and challenges related to technical impracticability that could be faced by agencies, DOE will review each petition on a case-by-case basis and make the ultimate determination as to whether meeting the applicable standard is technically impracticable for that building and project. DOE may also provide further guidance on this topic via an implementation guidance.

1. DOE Review of Petitions

In the 2022 SNOPR, DOE proposed that the Director of FEMP will review the petitions for downward adjustment and make a best effort to return the complete petition within 45 calendar days of submittal. 87 FR 78382, 78397. DOE stated that it would review petitions in a timely manner and if the petitioning agency has demonstrated the need for a downward adjustment per the previous discussion, DOE will concur with the agency's conclusion and notify the agency in writing. *Id.* If DOE does not concur, it would forward its reasons to the petitioning agency.

In this final rule, DOE is modifying the proposed timing. DOE will make a best effort to notify an agency within 30 calendar days of submittal whether a petition is approved or rejected. However, the timeframe does not apply to incomplete petitions, which may result in delays. Complete petitions are described in the regulatory text at the end of this final rulemaking notice, specifically sections § 433.202 and § 435.202. DOE recognizes that agencies want assurance that DOE will respond to petitions in a timely manner in order to avoid project delays. If DOE rejects the petition, it will include its reasons for doing so in its response to the agency.

Additionally, in the 2022 SNOPR, for new construction or major renovations of the whole building, DOE proposed that DOE could establish an adjusted value of on-site fossil fuel-generated energy consumption standard, other than the adjusted value requested in a petition. 87 FR 78382, 78424. DOE is finalizing this provision. If DOE finds that the petition does not support the requested adjusted value but that the statutorily required level was nonetheless technically impracticable, DOE can establish a new adjusted value. 87 FR 78382, 78424. DOE intends this provision to provide flexibility in the petition process and reduce the need for agencies to resubmit petitions in the instance of a rejection. In addition, this provision will likely reduce the likelihood of an agency disagreeing with the result of its petition request, as it will be an active participant in an exchange of information with DOE.

2. Making Petitions for Downward Adjustment Public

Throughout this rulemaking proceeding, DOE received comments urging DOE to make petitions for downward adjustment publicly available. In the 2022 SNOPR, DOE stated that it will publish any petitions that are filed, deemed complete, and screened for national security reasons for downward adjustment that are received (subject to potential filtering for national security reasons) to the DOE website. 87 FR 78382, 78396. ACEEE *et al.* supports making petitions for downward adjustments and DOE responses subject to public scrutiny. ACEEE *et al.,* Doc. No. 126, pg. 3–4. However, ACEEE noted that the 2022 SNOPR did not propose regulatory text requiring such public scrutiny and urged DOE to include such language in the final rule.

DOE opts not to include regulatory language requiring it to make petitions public. DOE notes there is nothing in the statutory text that requires the information be made publicly available. In addition, there are instances where information included with the petitions for downward adjustment cannot be made public (*e.g.,* information with national security implications). However, DOE acknowledges the importance of transparency and will make its best effort to publish any petitions for downward adjustment that are filed, deemed complete, and screened for national security concerns.

3. Bundling Petitions

DOE will allow agencies to bundle petitions for new buildings or whole renovations to buildings that are the same design, have the same set of reduction targets, and would require similar measures to reduce fossil fuel-generated energy consumption. The bundled petitions must clearly state any differences between the buildings and explain why the differences do not warrant the submission of separate

evaluations. For component-level major renovations, DOE will allow bundling petitions that are of the same component and building type. DOE will provide more specific details on the bundling process and criteria in the accompanying implementation guidance.

4. GSA Tenant Agencies

ECPA, as amended, precludes GSA from petitioning DOE for a downward adjustment of the applicable percentage reduction requirement. 42 U.S.C. 6834(a)(3)(D)(i)(II). In the 2022 SNOPR, DOE noted although ECPA prohibits GSA from petitioning DOE for a downward adjustment, it makes no reference to GSA tenant agencies. 87 FR 78382, 78396. DOE stated that allowing GSA tenant agencies to submit a petition for downward adjustment will provide an option for some buildings for which the required fossil fuel-generated energy consumptions reductions may be technically impracticable in light of the building's functional needs, but for which GSA may not submit a petition. *Id.* In the 2022 SNOPR, DOE proposed that for construction of a new Federal building or major renovations of a federal building, if a GSA tenant agency is providing substantive and significant design criteria in the design process, the tenant agency may petition DOE for a downward adjustment of the applicable percentage reduction requirements. *Id.*

DOE received one comment on this topic in response to the 2022 SNOPR. ACEEE *et al.* commented that DOE may not allow GSA tenant agencies to petition for downward adjustments because ECPA specifically excludes GSA from the downward adjustment petition process. ACEEE *et al.,* Doc. No. 126, pg. 4. They stated that allowing GSA tenant agencies to petition DOE for downward adjustment would expand the number of buildings eligible for such adjustments in a manner that directly contravenes the ECPA. *Id.*

DOE reiterates that although the statute prohibits GSA from petitioning DOE for a downward adjustment, it makes no reference to GSA tenant agencies. The statute allows for an ''agency'' to petition for a downward adjustment. The term ''Federal agency'' means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, including the United States Postal Service, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation. 42 U.S.C. 6832(5). As the ACEEE notes, the statute only prohibits GSA from submitting a petition. Thus, in cases in which the GSA tenant agency exercises significant control of design choices in the building, and GSA does not, it makes little sense to prohibit the GSA tenant agency from petitioning for a downward adjustment if such a prohibition is not required by statute. Moreover, these petitions are still subject to the same criteria and review process as other petitions, including that meeting the requirement would be technically impracticable, which is defined as achieving the fossil fuel-based energy consumption targets would (1) not be feasible from an engineering design or execution standpoint due to existing physical or site constraints that prohibit modification or addition of elements or spaces; (2) significantly obstruct building operations and the functional needs of a building, specifically for industrial process loads, critical national security functions, mission critical information systems as defined in NIST SP 800–60 Vol. 2 Rev. 1, and research operations; or (3) significantly degrade energy resiliency and energy security of building operations as defined in 10 U.S.C. 101(e)(6) and 10 U.S.C. 101(e)(7) respectively. DOE does not expect that GSA tenant agencies would commonly be able to make such showings for the more generic types of buildings typical of GSA's holdings. Rather, DOE expects this petition process to be applied in the rare situations where building design needs specific to a GSA tenant agency's unique situation make application of the percentage reduction requirements technically impracticable.

5. Petitions Submitted by the Department of Defense

DOE also considered whether it should have a separate petition process for Department of Defense or other agency projects that serve critical national security functions whereby classified or sensitive information can be withheld, and such petitions will not be subject to public disclosure.

Two commenters stated that DOE should not have a separate petition process for buildings serving national security functions. An individual commenter argued that instead of exempting buildings with national security risks, the Federal government must navigate and balance these national security challenges with policies to reduce fossil fuel-generated energy consumption. Doc. No. 81, pg. 2. Similarly, ACEEE *et al.* commented that buildings serving national security functions must be subject to the same petition review process and policies as other Federal buildings. ACEEE *et al.,* Doc. No. 126, pg. 5.

DOE agrees that there will be no blanket exemptions for national security sites. Section 433(a) of EISA does not provide an exemption from the standard for national security. For some buildings, it may be technically impracticable to achieve the consumption targets so the petition process may be appropriate.[16] Each agency must provide a petition if they believe their facility cannot meet the statutory requirements due to technical impracticability. DOE intends to review all petitions using the same process. DOE believes the petition process will sufficiently vet buildings and agencies' proposed reasoning as to why achieving the reductions will be technically impracticable.

In addition, DOE is sensitive to classification issues and will work with agencies to ensure that sensitive information is treated appropriately. DOE also recognizes that agencies may need flexibility in defining what buildings or projects serve critical national security functions, and that a pending petition may delay projects that serve critical national security functions. DOE intends to work closely with agencies pertaining to petitions for projects with critical national security functions as part of its implementation guidance following publication of the rule.

D. Definitions

The final rule adds definitions for ''construction cost,'' ''design for renovation,'' ''EISA-subject building or project,'' ''Federal building,'' ''Fiscal year (FY),'' ''Fossil fuel-generated energy consumption,'' ''Major renovation,'' ''Major renovation cost,'' ''Major renovation of all Scope 1 fossil fuel-using systems,'' ''Major renovation of a Scope 1 fossil fuel-using building system or component,'' ''Multi-family high-rise residential building,'' ''Shift adjustment multiplier,'' and ''Technical impracticability,'' and it revises the definition for ''proposed building'' to 10 CFR 433.2 and 10 CFR 435.2. Any comments relating to specific definitions have been previously discussed in Section III. In addition to

[16] The definition of ''technical impracticability'' in this rule is defined as achieving the fossil fuel-based energy consumption targets would (1) not be feasible from an engineering design or execution standpoint due to existing physical or site constraints that prohibit modification or addition of elements or spaces; (2) significantly obstruct building operations and the functional needs of a building, specifically for industrial process loads, critical national security functions, mission critical information systems as defined in NIST SP 800–60 Vol. 2 Rev. 1, and research operations; or (3) significantly degrade energy resiliency and energy security of building operations.

the substantive edits to the definitions of ''construction cost,'' ''fossil fuel-generated energy consumption,'' and ''major renovation cost,'' discussed previously, DOE also makes minor revisions to the definitions of ''EISA-subject building or project,'' ''Federal building,'' ''fiscal year (FY),'' ''major renovation,'' and ''technical impracticability'' to remove unnecessary language or to provide clarification. These minor revisions do not change the nature of the definitions proposed in the 2022 SNOPR.

IV. Additional Issues Raised by Commenters

A. Authority

AGA argued in its comments that DOE's authority to promulgate performance standards to reduce emissions from fossil fuel-generated energy consumption expired in December 2008.[17] AGA noted that section 433 of EISA directs DOE to establish by rule revised Federal building energy efficiency performance standards for both new Federal buildings and for Federal buildings undergoing major renovations, ''[n]ot later than 1 year after December 19, 2008.'' AGA, Doc. No. 100, pg. 4. Because ''agencies may act only when and how Congress lets them [,]'' AGA asserted that DOE's authority to establish these standards has lapsed. *Id.,* pg. 5 (*citing Cent. United Life Ins. Co.* v. *Burwell,* 827 F.3d 70, 73 (D.C. Cir. 2016)). However, the Supreme Court of the United States has routinely held that unless a statute specifies a consequence for noncompliance with a statutory deadline, an agency's obligation does not disappear when a statutory deadline passes. *United States* v. *James Daniel Good Real Prop.,* 510 U.S. 43, 63 (1993); *see Barnhart* v. *Peabody Coal Co.,* 537 U.S. 149, 159 (2003)*; Regions Hosp.* v. *Shalala,* 522 U.S. 448, 459 n.3 (1998). The EISA does not specify any consequence for noncompliance with its deadlines.

B. APA Concerns

Two commenters raised procedural concerns related to the 2022 SNOPR. First, APGA expressed concern that stakeholders were deprived from meaningfully commenting on the 2022 SNOPR. APGA, Doc. No. 102, pg. 9. APGA argued that interested parties needed additional time to review the 2022 SNOPR because the rule proposed marked a significant departure from the previous proposed rules. *Id.* In addition, APGA stated that DOE failed to provide a timely copy of the transcript of the January 5, 2023, public meeting, and, as a result, stakeholders that were not able to attend the meeting were unable to review the relevant docket materials. *Id.*

DOE notes that it granted the requests from stakeholders for a 30-day extension of the public comment period. 88 FR 12267. As a result, interested parties had 90 days to review the 2022 SNOPR. Multiple parties used this period as an opportunity to file revised comments. *See e.g.,* ASHRAE, Doc. Nos. 96 and 113, Business Council for Sustainable Energy, Doc. Nos. 87 and 115, and joint comments from local officials, Doc. Nos. 94 and 125.

In addition, a copy of the transcript of the January 5, 2023, public meeting is on the docket web page for this rulemaking. Although the transcript was posted after the initial 60-day comment period closed, it was available when DOE re-opened the comment period for an additional 30 days, providing sufficient time for parties to review and comment on that material in the docket.

V. Methodology, Analytical Results, and Conclusion

This final rule implements fossil fuel reduction targets established under EISA, which will begin to reduce GHG emissions in the near term and prepare Federal buildings for a clean energy future. By ensuring that Federal buildings are designed—either from the ground up, or when being renovated—to reduce fossil fuel use, the rule ensures that long-term, as the electric grid integrates more carbon free energies, emissions will be reduced. DOE recognizes that exchanging on-site fossil fuel generated energy for increased reliance on the electric grid, which may still be generating energy with fossil fuels, will not in every application lead to an immediate reduction in emissions of GHGs and SO_2 and in some cases could result in some increase in energy costs. This is explored in more detail in Chapter 1, Section 1.8 of the technical support document by examining the overall sensitivity of the rule to future grid cleaning scenarios. However, agencies must make decisions for the long-term, making capital investments today which will have lasting impacts well into the future, resulting in net benefits over the time and the life of the asset. Net benefits will increase significantly as the grid incorporates cleaner sources of electricity, as illustrated by the supporting technical analysis. In addition, DOE expects emerging and improving technological advancements in electric equipment, such as heat pumps, will lead to additional and dramatic site energy savings, further improving the emissions and cost savings cases for this rule.

A. Cost-Effectiveness

DOE conducted an Environmental Assessment (EA) for this final rulemaking.[18] In addition, DOE referenced a previous technical analysis conducted by the DOE Building Energy Codes Program that evaluated the energy and cost savings impacts, as well as cost effectiveness, of Standard 90.1–2019.[19] As described in the EA, DOE identified a rate of new Federal commercial construction of 13.3 million square feet per year, with a distribution of building types as shown in Table V–1. Starting in 2030, section 205(c)(ii) of Executive Order 14057, ''Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability'' (December 8, 2021), requires agencies to ''design new construction and modernization projects greater than 25,000 gross square feet to be net-zero emissions by 2030.'' This effectively reduces the impact of this rule to apply to new construction and major renovation projects that fall above the cost threshold but are also below 25,000 gross square feet. For the year 2030 and beyond, DOE estimated new Federal commercial and multi-family high-rise residential building construction volume will be 2.2 million square feet per year, with a distribution of building types as shown in Table V–2. The distribution of building types is based on an extraction of the latest 10 years of new construction data entered into the Federal Real Property Portfolio Management System (''FRPP MS'') that meets the required cost threshold of the final rule for cases both before and after the 25,000 Sf minimum triggering E.O. 14057 compliance.[20]

Additionally, DOE identified an estimated rate of Federal major renovation projects that would be influenced by this rule. To do so, DOE utilized data from the Federal

[17] AGA, Doc. No. 100, pg. 4. NPGA supported AGA comments with respect to ''the questionable foundation on which this rulemaking was proposed.'' NPGA, Doc. No. 90, pg. 7.

[18] The Environmental Assessment (EA) (DOE/EA–2165) is entitled, ''Environmental Assessment for Final Rule, 10 CFR part 433, 'Energy Efficiency Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings' Baseline Standards Update.'' The EA may be found in the docket for this rulemaking and at *www.energy.gov/node/472482.*

[19] *See* DOE's analysis of the cost savings of the 2016 and 2019 ASHRAE 90.1 Standards at *www.energycodes.gov/sites/default/files/2020-07/90.1-2016_National_Cost-Effectiveness.pdf* and *www.energycodes.gov/sites/default/files/2021-07/90.1-2019_National_Cost-Effectiveness.pdf,* respectively.

[20] See *www.realpropertyprofile.gov/FRPPMS/FRPP_Login.*

Compliance Tracking System (''CTS'') where agencies report data on building efficiency improvement projects. The data from CTS was queried to include only those projects that would meet the cost threshold and have impacts on site fossil fuel energy consumption. As not all agencies are compliant in reporting data into CTS, results were scaled up to account for agencies out of compliance. As CTS does not supply data on the types of buildings for the reported projects, the distribution of eligible Federal buildings for a renovation that would meet the cost threshold was applied to the estimated total project square footage. DOE identified an estimated rate of new Federal major renovation construction of 1.36 million square feet per year with a distribution of building types as shown in Table V–1. As noted above, Executive Order 14057 effectively reduces the impact of this rule to apply only to new construction and major renovation projects that fall above the cost threshold but are also below 25,000 gross square feet. Taking this into account for the year 2030 and beyond, the estimated new Federal commercial and multi-family high-rise residential building major renovation construction volume per year will be 0.4 million square feet per year, with a distribution of building types as shown in Table V–1 and Table V–2 of this document.

These tables also show the prototype buildings incorporated into simulations that are used to estimate energy use in each building type. DOE derived these prototype buildings from 16 building types in 17 climate zones [21] using its Commercial Prototype Building models.[22] Of the 16 prototype buildings, DOE developed costs for 6 prototype buildings that represent the majority of the building types used by Federal agencies to determine the cost effectiveness of Standard 90.1–2016 and Standard 90.1–2019.[23] DOE then extracted the cost-effectiveness information for those prototype buildings and weighted those values as appropriate to obtain an average cost effectiveness value for building types found in the Federal commercial sector.

TABLE V–1—NEW FEDERAL COMMERCIAL AND HIGH-RISE MULTI-FAMILY CONSTRUCTION VOLUME BY BUILDING TYPE FOR BUILDINGS CONSTRUCTED IN YEARS 2025–2029

Building type	Fraction of Federal construction volume (by floor area) (%)	Assumed BECP prototypes for energy savings	Assumed BECP prototypes for cost effectiveness
Office	17.77	Small Office, Medium Office, Large Office	Small Office, Large Office.
Dormitories and Barracks	14.57	Small Hotel, Mid-rise Apartment, High-rise Apartment.	Small Hotel, Mid-rise Apartment.
School	15.65	Secondary School	Primary School.
Service	15.16	Stand-alone Retail, Non-refrigerated Warehouse	Stand-alone Retail.
Other Institutional Uses	5.76	None *	None.
Hospital	7.80	Hospital	Small Office, Large Office.
Warehouses	2.95	Non-Refrigerated Warehouse	None.
Laboratories	4.24	Medium Office, Hospital	Small Office, Large Office.
All Other	2.74	None	None.
Outpatient Healthcare Facility	5.00	Outpatient Healthcare	Small Office.
Industrial	1.63	None	None.
Child Care Center	0.89	Primary School	Primary School.
Communications Systems	1.42	None	None.
Prisons and Detention Centers	0.18	None	None.
Family Housing	1.06	Mid-rise Apartment	Mid-rise Apartment.
Navigation and Traffic Aids	0.53	None	None.
Land Port of Entry	0.68	Non-refrigerated Warehouse	None.
Border/Inspection Station	0.64	Small Office, Non-refrigerated Warehouse	Small Office.
Facility Security	0.25	Small Office	Small Office.
Data Centers	0.34	None	None.
Museum	0.74	None	None.
Comfort Station/Restrooms	0.01	Non-refrigerated Warehouse	None.
Public Facing Facility	0.02	Stand-alone Retail	Stand-alone Retail.
Aviation Security Related	0.00	Small Office	Small Office.
Post Office	0.00	Stand-alone Retail	Stand-alone Retail.

* Note that energy savings and cost-effectiveness mapping are not available for a number of Federal building types, with ''other institutional uses,'' warehouses, and ''all other'' being the largest Federal building types with no reliable mapping. As described in this section, DOE considered energy savings and costs for these unmapped Federal building types to be equivalent to the weighted energy savings and cost for the mapped Federal building types.

[21] Briggs, R.S., R.G. Lucas, and Z.T. Taylor. 2003. ''Climate classification for building energy codes and standards: Part 1—Development Process.'' ASHRAE Transactions 109(1): 109:121. American Society of Heating, Refrigerating and Air-Conditioning Engineers. Atlanta, Georgia.

[22] DOE's prototype buildings are described at *www.energycodes.gov/prototype-building-models.*

[23] *See* DOE's technical support document chapter 1 for more information on DOE's analysis of building prototypes.

TABLE V–2—NEW FEDERAL COMMERCIAL AND HIGH-RISE MULTI-FAMILY CONSTRUCTION VOLUME BY BUILDING TYPE FOR BUILDINGS CONSTRUCTED IN YEARS 2030–2054

Building type	Fraction of Federal construction volume (by floor area) (%)	Assumed BECP prototypes for energy savings	Assumed BECP prototypes for cost effectiveness
Office	14.24	Small Office, Medium Office	Small Office, Large Office.
Dormitories and Barracks	4.02	Small Hotel, Mid-rise Apartment, High-rise Apartment.	Small Hotel, Mid-rise Apartment.
School	10.88	Secondary School	Primary School.
Service	18.34	Stand-alone Retail, Non-refrigerated Warehouse	Stand-alone Retail.
Other Institutional Uses	12.63	None *	None.
Hospital	2.97	Hospital	Small Office, Large Office.
Warehouses	6.88	Non-Refrigerated Warehouse	None.
Laboratories	4.37	Medium Office, Hospital	Small Office, Large Office.
All Other	5.58	None	None.
Outpatient Healthcare Facility	7.66	Outpatient Healthcare	Small Office.
Industrial	2.05	None	None.
Child Care Center	2.67	Primary School	Primary School.
Communications Systems	0.87	None	None.
Prisons and Detention Centers	0.26	None	None.
Family Housing	1.49	Mid-rise Apartment	Mid-rise Apartment.
Navigation and Traffic Aids	1.95	None	None.
Land Port of Entry	0.99	Non-refrigerated Warehouse	None.
Border/Inspection Station	0.36	Small Office, Non-refrigerated Warehouse	Small Office.
Facility Security	1.36	Small Office	Small Office.
Data Centers	0.19	None	None.
Museum	0.10	None	None.
Comfort Station/Restrooms	0.03	Non-refrigerated Warehouse	None.
Public Facing Facility	0.09	Stand-alone Retail	Stand-alone Retail.
Aviation Security Related	0.00	Small Office	Small Office.
Post Office	0.00	Stand-alone Retail	Stand-alone Retail.

* Note that energy savings and cost-effectiveness mapping are not available for a number of Federal building types, with other institutional uses, warehouses, and all other being the largest Federal building types with no reliable mapping. As described in this section, DOE considered energy savings and costs for these unmapped Federal building types to be equivalent to the weighted energy savings and cost for the mapped Federal building types.

DOE has determined estimated incremental construction first cost information for the building types and climate zones analyzed for buildings compliant with this final rule (compliant buildings) versus Standard 90.1–2019 (see Table V–3).[24]

TABLE V–3—INCREMENTAL CONSTRUCTION FIRST COST (2022$) FOR COMPLIANT BUILDING DESIGN UNDER THE FINAL RULE VS. STANDARD 90.1–2019

Prototype	Value	ASHRAE Climate Zone *				
		2A	3A	3B	4A	5A
Small Office	First Cost	$673	$584	$515	$1,666	$641
	/ft²	0.12	0.11	0.09	0.30	0.12
Large Office	First Cost	261,781	268,194	196,408	354,808	223,553
	/ft²	0.52	0.54	0.39	0.71	0.45
Stand-alone Retail	First Cost	19,608	20,240	19,740	21,563	19,363
	/ft²	0.79	0.82	0.80	0.87	0.78
Primary School	First Cost	(126,946)	(121,994)	(116,139)	(94,722)	(122,894)
	/ft²	(1.72)	(1.65)	(1.57)	(1.28)	(1.66)
Small Hotel	First Cost	(104,866)	(104,624)	(104,396)	(101,194)	(103,044)
	/ft²	(2.43)	(2.42)	(2.42)	(2.34)	(2.38)
Mid-rise Apartment	First Cost	(18,343)	(17,490)	(18,113)	(12,445)	(25,126)
	/ft²	(0.54)	(0.52)	(0.54)	(0.37)	(0.74)

* Negative costs (shown in parentheses) indicate a reduction in cost due to changes in the code, usually due to reduced HVAC capital cost and reduction of venting required for on-site combustion.

[24] Note that the values in Table V–3 have been adjusted to reflect 2022$ from the table that appears in DOE's determination of energy savings for Standard 90.1–2019, which were in 2020$. This adjustment was made using the GDP deflator value to correct for inflation between 2020 and 2022. Organization for Economic Co-operation and Development, GDP Implicit Price Deflator in United States, retrieved from FRED, Federal Reserve Bank of St. Louis; *fred.stlouisfed.org/series/USAGDPDEFAISMEI.* These values have also been adjusted to reflect the same underlying economic assumptions as the 2019 version, and sales tax has also been removed.

DOE used data from Table V–3 to calculate preliminary values for overall estimated incremental first cost of construction for Federal commercial and high-rise, multi-family residential buildings. DOE calculated the incremental first cost of the Federal building types based on the DOE cost prototypes shown in the far-right column of Table V–1 of this document. DOE then calculated the weighted average incremental cost for mapped Federal building types based on their corresponding prototypes, which represent an estimated 79.3 percent of new Federal construction. This weighted incremental cost was assigned to un-mapped Federal building types, and a total weighted incremental cost was calculated by multiplying the incremental cost for each Federal building type by the fraction of Federal construction shown in Table V–1.

The estimated national incremental first cost for building types was developed by multiplying the average (across climate zones) incremental first cost of the prototypes Standard 90.1 cost-effectiveness analysis by the fraction of the Federal sector construction volume shown in Table V–1, and then multiplying that by the total estimate of Federal new construction floorspace.[25] DOE estimates that total first cost outlays for new Federal buildings will be less under compliant designs than under Standard 90.1–2019, primarily due to lower HVAC equipment costs for some building types (*see* Table V–3). The decrease in capital cost is primarily driven by lower equipment cost as well as the avoidance of gas infrastructure costs, which can include gas lines and venting. See Chapter 1, section 3 of DOE's technical support document for more information. The resulting total incremental first cost estimate is a savings of $8.44 million per year. The average first cost decrease is $1.82 per square foot. These first cost decreases are a result of the lower capital costs of the assumed electric equipment types as dictated in the ASHRAE and IECC energy codes (as mandated in 10 CFR part 433 and 10 CFR part 435 and are the baseline for this modified building efficiency standard). Minimally compliant electric equipment was assumed in the proposed case as hitting the ''30% better'' (than baseline) performance goal as generally required by regulation, but include a cost effectiveness caveat that can reduce the goal down to minimal compliance. As can be seen in Table V–4,[26] most building types are projected to switch their space heating systems from a fossil fuel burning system over to an electric resistance-based system.

TABLE V–4—BREAKDOWN OF PROPOSED HEATING SYSTEM BY BUILDING PROTOTYPE

Building prototype	Yearly constructed SF—Post 2030 (%)	Yearly constructed SF—Pre 2030 (%)	Baseline gas unit efficiency	Proposed electric unit efficiency	Space heat notes
Small Office	12.8	14.8	0.81	99% Electric Boilers	Convert using AFUE for gas furnace and AFUE Estimate for Electric Furnace.
Medium Office	2.6	5.5	0.79	99% Electric Furnaces	Convert using pre 1/1/2023 Et estimated Et for Furnaces assuming 0.75 casing loss.
Large Office	0.0	2.3	0.82	99% Electric Boilers	Convert using Et Estimate for boilers.
Stand-Alone Retail	13.2	8.8	0.79	1.76 COP RTU Heat Pump	Convert using national weight heat pump efficiency from office analysis.
Primary School	3.8	1.0	0.81	99% ¼ Furnaces, ¾ boilers.	¼ Furnaces, ¾ boilers. Convert both to electric equivalents.
Secondary School	15.5	18.1	0.82	99% Electric Boilers	Convert using Et Estimate for boilers.
Outpatient Health Care	10.9	5.8	0.82	99% Electric Boilers	Convert using Et Estimate for boilers.
Hospital	8.9	12.7	0.82	99% Electric Boilers	Convert using Et Estimate for boilers.
Small Hotel	0.4	1.2	0.81	99% Electric Furnaces	Convert using AFUE for Gas and AFUE Estimate for Electric.
Warehouse	24.4	13.1	0.79	99% Electric Furnaces	Note Model uses a 0.8 gas AFUE for office space, but 0.7925 for Fine storage and unit heater.
Mid-Rise Apartment	4.7	8.7	0.81	2.4 COP Residential Heat Pump.	Convert using AFUE Estimate to residential HSPF.
High-Rise Apartment	2.7	8.2	0.82	99% Electric Boilers	Convert using Et Estimate for boilers.

An estimated 17.7 percent of the projects would utilize heat pumps in their proposed ''all electric'' case (those that map to Stand Alone Retail and Mid-Rise Apartment prototype models) with assumed efficiency performance metrics as noted. Service hot water systems (when not already specified as an electric system per the 10 CFR parts 433 and 435 requirements) are similarly assumed to be minimally compliant electric resistance systems with 99-percent efficiencies. Cooking systems, where present, are assumed to switch from 40-percent efficient gas systems to 70-percent standard efficiency electric systems.

It should be noted that in all cases higher efficiency electric equipment is available on the market, but the statutory authority of this rule is limited to total building reduction targets and does not specify specific equipment types or efficiency levels. An agency is free to design a project per their own site, cost, and usage specific needs, while complying with applicable efficiency targets. As such, the analysis presented in this final rule intends to capture the base-level compliance cases only. DOE encourages agencies to carefully consider and select higher efficiency equipment (such as even higher efficiency heat pumps and/or more widespread adoption) to the greatest extent possible, given project-specific needs and constraints. Higher efficiency equipment can often provide projects with a lifecycle cost effective solution that saves even more energy and emissions (potentially with higher up-front capital costs) than agencies would achieve through just base compliance with this rule.

DOE also analyzed the relative impact of the final rule on the first cost of newly constructed Federal buildings as

[25] For the Federal office building, the small and large office prototype first costs were averaged. For the Federal education building, the primary school prototype first cost was used. For the Federal dormitories/barracks building type, the small hotel and mid-rise apartment prototype first costs were averaged.

[26] See Chapter 1 of DOE's technical support document supporting this rulemaking for more information.

a percentage of the overall annual cost of newly constructed Federal commercial and high-rise buildings. In order to estimate the total cost of construction for new Federal buildings, DOE obtained estimated construction costs for new Federal commercial and high-rise multifamily buildings from RS Means (2020) [27] for the six building types analyzed in DOE's cost-effectiveness report. These new construction costs were weighted by the percent of Federal floorspace to develop an estimated average cost of a new Federal building of $198 per square foot, as shown in Table V–5. This average construction cost may be multiplied by the overall total of 19.54 million square feet of new Federal construction per year used in this rulemaking to estimate the annual total cost of all new Federal commercial and high-rise multi-family construction, which is $3.86 billion. As previously noted, first cost savings associated with this rulemaking are estimated at $8.62 million per year, indicating a potential cost reduction in new Federal construction costs of 0.223 percent ($8.62 million divided by $3.86 billion).

TABLE V–5—FIRST COST OF TYPICAL NEW FEDERAL BUILDING IN $/FT^2

Federal building type	Weight (%)	First cost *	Weighted cost
Office	20.74	$210	$43.51
Barracks and Dormitories	14.85	217	32.18
School	14.33	225	32.25
Service	13.31	116	15.44
Hospital	5.57	200	11.14
Laboratories	4.37	200	8.73
Outpatient Healthcare Facility	3.35	220	7.38
Child Care Center	1.18	225	2.67
Family Housing >3 Stories	0.68	218	1.48
Border/Inspection Station	0.49	220	1.07
Facility Security	0.31	220	0.69
Aviation Security Related	0.01	220	0.02
Public Facing Facility	0.05	116	0.06
Post Office	0.01	116	0.01
Remaining Federal Stock	20.75	198	41.00
Federal Average	100.00	198	197.62

* All building first cost data from RS Means 2020.

DOE determined that the total incremental first cost estimate for Federal buildings (as mapped to the prototype buildings in Table V–1) is a savings of $149.2 million (at a 3-percent discount rate) and a savings of $91.5 million (based on a 7-percent discount rate), with an average first cost decrease of $1.07 per square foot (at a 3-percent discount rate) and $0.66 per square foot (at a 3-percent discount rate).

For annualized energy cost savings, DOE used a similar approach to that used for incremental first cost. That is, DOE developed the national annualized energy cost savings [28] for building types by multiplying the average (across climate zones) energy cost savings (determined from the same Standard 90.1 cost-effectiveness analysis) by the fraction of the Federal sector construction volume shown in Table V–1, and then multiplying that by the total estimate of Federal new construction floorspace.[29] DOE notes that it used the best publicly-available data in its analysis, but data about the location of future new construction or major renovations in the Federal sector are limited. Table V–6 shows the estimated annual energy cost savings by prototype buildings for a compliant building compared to buildings meeting only Standard 90.1–2019. This comparison shows projected increases in energy costs across the board because despite the increases in equipment efficiency and overall site energy savings, the projected difference between the cost of fossil fuels (primarily natural gas) and purchased electricity, when evaluated at a national level, are too high for the improvements to overcome. EIA's Annual Energy Outlook for 2023 (AEO 2023) [30] outlook rate projections indicate that for the same amount of site energy consumed, electricity is about 3.68 times more expensive than natural gas. This number is projected to gradually fall over time to 3.34 times more expensive by the year 2050.

As it did for the incremental cost analysis, DOE adjusted the 2019 energy cost savings analysis to use the same underlying economic assumptions for its analysis of compliant building designs, including fuel prices, fuel price escalations, labor and material costs, and the removal of sales tax. The resulting total annualized energy cost impacts for the affected buildings' 14.7 million square feet of annual construction for years 2025–2029 and 2.6 million square feet of annual construction for years 2030–2054 was estimated to be an additional cost of $11.05 million per year (at a 3-percent discount rate) and $8.43 million per year (at a 7-percent discount rate). The annualized energy cost impacts were estimated to be an additional $2.38 per square foot (at a 3-percent discount rate) and an additional $1.82 per square foot (at a 7-percent discount rate). The annual energy cost impacts are estimated for one year of Federal commercial and high-rise multi-family

[27] RS Means. 2020. RS Means Building Construction Cost Data, 78th Ed. Construction Publishers & Consultants. Norwell, MA.

[28] The energy costs used were the national average energy costs used by ASHRAE in the development of Standard 90.1–2019. To quote the cost-effectiveness analysis report ''Energy rates used to calculate the energy costs from the modeled energy usage were $0.98/therm for fossil fuel and $0.1063/kWh for electricity. These rates were used for the Standard 90.1–2019 energy analysis and derived from the EIA data. These were the values approved by the SSPC 90.1 for cost-effectiveness for the evaluation of individual addenda during the development of Standard 90.1–2019.''

[29] For the Federal office building, the small and large office prototype LCCs were weighted by estimated fraction of small and large offices observed in the FRPP MS database over the past 10 years of construction. For the Federal education building, the primary school prototype LCC was used. For the Federal dorm/barracks building type, the small office, small hotel, and mid-rise apartment prototype LCCs were averaged.

[30] DOE—U.S. Department of Energy. 2022. Annual Energy Outlook 2023 with Projections to 2050. Washington, DC. Available at *www.eia.gov/outlooks/aeo/*.

residential construction, and those impacts accumulate over the evaluation period.

TABLE V–6—ANNUALIZED ENERGY COSTS (2022$) FOR COMPLIANT BUILDING DESIGN VS. STANDARD 90.1–2019

Building prototype	Total prototype usage (%)	Annualized energy cost savings (M$2022)		Annualized energy cost savings intensity (M$2022/SF)	
		3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate
Small Office	14.78	($1.63)	($1.25)	($0.35)	($0.27)
Medium Office	5.53	(0.61)	(0.47)	(0.13)	(0.10)
Large Office	2.26	(0.25)	(0.19)	(0.05)	(0.04)
Stand-Alone Retail	8.76	(0.97)	(0.74)	(0.21)	(0.16)
Strip Mall	0.00	0.00	0.00	0.00	0.00
Primary School	1.02	(0.11)	(0.09)	(0.02)	(0.02)
Secondary School	18.06	(2.00)	(1.52)	(0.43)	(0.33)
Outpatient Health Care	5.76	(0.64)	(0.49)	(0.14)	(0.10)
Hospital	12.68	(1.40)	(1.07)	(0.30)	(0.23)
Small Hotel	1.18	(0.13)	(0.10)	(0.03)	(0.02)
Large Hotel	0.00	0.00	0.00	0.00	0.00
Quick-service Restaurant	0.00	0.00	0.00	0.00	0.00
Full-service Restaurant	0.00	0.00	0.00	0.00	0.00
Mid-Rise Apartment	8.95	(0.99)	(0.75)	(0.21)	(0.16)
High-Rise Apartment	7.90	(0.87)	(0.67)	(0.19)	(0.14)
Non-Refrigerated Warehouse	13.12	(1.45)	(1.11)	(0.31)	(0.24)
Total	100.00	(11.05)	(8.43)	(2.38)	(1.82)

Note: Negative numbers (shown in parentheses) represent an increased cost.

For LCC net savings, DOE used a similar approach to that used for incremental first cost and first year energy cost savings. That is, DOE developed the national annual LCC net savings [31] for the entire rule by multiplying the average (across climate zones) LCC net savings (determined from the same Standard 90.1 cost-effectiveness analysis) by the fraction of the Federal sector construction volume shown in Table V–1, and then multiplying that result by the total estimate of Federal new construction floorspace.[32] DOE only used the climate zones per table V–3 to help further estimate first cost of equipment given variances in equipment type requirements per building type per climate zone. Table V–7 shows annual LCC net savings by prototype buildings for the compliant buildings compared to buildings meeting only Standard 90.1–2019. As DOE did for the incremental cost analysis, DOE adjusted the 2019 LCC analysis to use the same underlying economic assumptions as the compliant buildings, including fuel prices, fuel price escalations, labor and material costs, and the removal of sales tax. The resulting total LCC net savings for 14.7 million square feet of annual construction for years 2025–2029 and 2.6 million square feet of annual construction for years 2030–2054 was estimated to be a cost of $54.87 million (at a 3-percent discount rate) and a savings of $0.089 million (based on a 7 percent discount rate). The average LCC net impacts in year 1 was estimated to be a cost o- $2.97 million (at a 3 percent discount rate) and a savings of $0.01 million (based on a 7-percent discount rate. The annual LCC savings are for one year of Federal commercial and high-rise multi-family residential construction, and those savings would accumulate over the LCC evaluation period. For the purpose of this analysis, DOE relied on a 30-year period.[33]

TABLE V–7—ANNUAL NET LIFE-CYCLE COST (LCC) (2022$) FOR COMPLIANT BUILDING DESIGN VS. STANDARD 90.1–2019

Building prototype	Total prototype usage	Cumulative LCC cost savings, (M$2022)		Annualized LCC cost savings, annualized (M$2022)	
		3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate
Small Office	14.78	($8.11)	$0.013	($0.44)	$0.0015
Medium Office	5.53	(3.03)	0.005	(0.16)	0.0006
Large Office	2.26	(1.24)	0.002	(0.07)	0.0002
Stand-Alone Retail	8.76	(4.81)	0.008	(0.26)	0.0009

[31] The energy costs used were the national average energy costs used by ASHRAE in the development of Standard 90.1–2019. To quote the cost-effectiveness analysis report ''Energy rates used to calculate the energy costs from the modeled energy usage were $0.98/therm for fossil fuel and $0.1063/kWh for electricity. These rates were used for the Standard 90.1–2019 energy analysis and derived from the EIA data. These were the values approved by the SSPC 90.1 for cost-effectiveness for the evaluation of individual addenda during the development of Standard 90.1–2019.''

[32] For the Federal office building, the small and large office prototype LCCs were weighted by estimated fraction of small and large offices observed in the FRPP MS database over the past 10 years of construction. For the Federal education building, the primary school prototype LCC was used. For the Federal dorm/barracks building type, the small office, small hotel, and mid-rise apartment prototype LCCs were averaged.

[33] Lavappa, P and J Kneifel. 2021. Energy Price Indices and Discount Factors for Life-Cycle Cost Analysis-2021 Annual Supplement to NIST Handbook 135.

TABLE V–7—ANNUAL NET LIFE-CYCLE COST (LCC) (2022$) FOR COMPLIANT BUILDING DESIGN VS. STANDARD—Continued
90.1–2019

Building prototype	Total prototype usage	Cumulative LCC cost savings, (M$2022)		Annualized LCC cost savings, annualized (M$2022)	
		3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate
Strip Mall	0.00	0.00	0.000	0.00	0.0000
Primary School	1.02	(0.56)	0.001	(0.03)	0.0001
Secondary School	18.06	(9.91)	0.016	(0.54)	0.0018
Outpatient Health Care	5.76	(3.16)	0.005	(0.17)	0.0006
Hospital	12.68	(6.96)	0.011	(0.38)	0.0013
Small Hotel	1.18	(0.65)	0.001	(0.04)	0.0001
Large Hotel	0.00	0.00	0.000	0.00	0.0000
Quick-service Restaurant	0.00	0.00	0.000	0.00	0.0000
Full-service Restaurant	0.00	0.00	0.000	0.00	0.0000
Mid-Rise Apartment	8.95	(4.91)	0.008	(0.27)	0.0009
High-Rise Apartment	7.90	(4.33)	0.007	(0.23)	0.0008
Non-Refrigerated Warehouse	13.12	(7.20)	0.012	(0.39)	0.0013
Total	100.00	(54.87)	0.089	(2.97)	0.0100

Note: Negative numbers (shown in parentheses) represent an increased cost or disbenefit.

DOE calculated the net present value (''NPV'') of the change in equipment cost and reduced operating cost associated with the difference between the compliant case and Standard 90.1–2019. The NPV is the value in the present of a time-series of costs and savings, equal to the present value of savings in operating cost minus the present value of the increased total equipment cost.

DOE determined the total increased equipment cost for each year of the analysis period (2024–2053) using the incremental construction cost described previously. DOE determined the present value of operating cost savings for each year from the beginning of the analysis period to the year when all Federal buildings constructed by 2054 have been retired, assuming a 30-year lifetime of the building.

The average annual operating cost includes the costs for energy, repair, or replacement of building components (*e.g.,* heating and cooling equipment, lighting, and envelope measures), and maintenance of the building. DOE determined the per-unit annual increase in operating cost based on the differences in energy costs plus replacement and maintenance cost savings, which were calculated in the underlying cost-effectiveness analysis by DOE's Building Energy Codes Program. While DOE used the methodology and prices described above to calculate first year energy cost savings and LCC net savings, for the NPV calculations, DOE determined the per-unit annual savings in operating cost by multiplying the per square foot annual electricity and natural gas savings in energy consumption by the appropriate energy price from AEO 2023. DOE forecasted energy prices based on projected average annual price changes in AEO 2023 to develop the operating cost savings through the analysis period.

DOE uses national discount rates to calculate national NPV. DOE estimated NPV using both a 3-percent and a 7-percent real discount rate, in accordance with the Office of Management and Budget's guidance to Federal agencies on the development of regulatory analysis, particularly section E therein: *Identifying and Measuring Benefits and Costs.*[34] The NPV is the sum over time of the discounted net savings.

The present value of increased equipment costs is the annual total cost increase in each year (the difference between the final rule and Standard 90.1–2019), discounted to the present, and summed throughout the analysis period (2024 through 2053) plus 30-year lifetime. Because new construction is held constant through the analysis period, the installed cost is constant.

The present value of savings in operating cost is the annual savings in operating cost (the difference between final rule and Standard 90.1–2019), discounted to the present and summed through the analysis period (2024 through 2053) plus 30-year lifetime. Savings are decreases in operating cost associated with the higher energy efficiency associated with buildings designed to the final rule compared to Standard 90.1–2019. Total annual savings in operating cost are the savings per square foot multiplied by the number of square feet that survive in a particular year through the lifetime of the buildings constructed in the last year of the analysis period.

[34] U.S. Office of Management and Budget, *Circular A–4: Regulatory Analysis* (Sept. 17, 2003) (Available at: *www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf* (Last accessed Oct. 23, 2023).

B. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential Federal building energy standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential Federal building energy standards on emissions of two additional greenhouse gases, CH_4 and N_2O, as well as the changes to emissions of other gases due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion.

The analysis of electric power sector emissions of CO_2, NO_X, SO_2, and Hg uses emissions factors intended to represent the marginal impacts of the change in electricity consumption associated with Federal building energy standards. The methodology is based on results published for the AEO 2023, including a set of side cases that implement a variety of efficiency-related policies. The analysis presented in this notice uses projections from *AEO 202*3. Power sector emissions of CH_4 and N_2O

from fuel combustion are estimated using Emission Factors for Greenhouse Gas Inventories published by the Environmental Protection Agency (''EPA'').[35]

To demonstrate this final rule's effects under the Biden-Administration clean-electricity goals, DOE analyzed an additional case where the future grid emission factors were assumed to follow a ''100% reduction by 2035'' (100 by 2035) profile as utilized in the National Renewable Energy Lab's 100% Clean Electricity by 2035 Study and as defined in NREL's ''Cambium 2022 Scenario Descriptions and Documentation'' report [36] detailed in the accompanying TSD for this final rule. This case represents a change in national electricity generation that assumes national power sector CO_2 emissions reach 100-percent below 2005 levels by 2035. This more aggressive case results in the final rule producing immediate decreases in CO_2e gas emissions on a yearly basis (starting in the first analysis year of 2025). Details of this analysis can be found in Chapter 1 of the TSD for this final rule.

Until 2030, the on-site operation of construction subject to this final rule allows combustion of fossil fuels and results in emissions of CO_2, NO_X, SO_2, CH_4, and N_2O where these products are used. Site emissions of these gases were estimated using Emission Factors for Greenhouse Gas Inventories and, for NO_X and SO_2 emissions intensity factors from an EPA publication.[37]

Full fuel cycle upstream emissions, which include emissions from fuel combustion during extraction, processing, and transportation of fuels, and ''fugitive'' emissions (direct leakage to the atmosphere) of CH_4 and CO_2, are estimated based on the methodology described in Chapter 1 of the TSD.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. For power sector emissions, specific emissions intensity factors are calculated by sector and end use. Total emissions changes are estimated using the energy savings calculated in the national impact analysis with energy savings derived from a load shifting modeling analysis of the Standard 90.1–2019 prototype models.

1. Air Quality Regulations Incorporated in DOE's Analysis

DOE's analysis for the electric power sector reflects the AEO, which incorporates the projected impacts of existing air quality regulations on emissions. AEO 2023 reflects, to the extent possible, laws and regulations adopted through mid-November 2022, including the emissions control programs discussed in the following paragraphs and the Inflation Reduction Act.[38]

SO_2 emissions from affected electric generating units (''EGUs'') are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (''D.C.''). 42 U.S.C. 7651 *et seq.* SO_2 emissions from numerous States in the eastern half of the United States are also limited under the Cross-State Air Pollution Rule (''CSAPR''). 76 FR 48208 (Aug. 8, 2011). CSAPR requires these States to reduce certain emissions, including annual SO_2 emissions, and went into effect as of January 1, 2015. The AEO 2023 incorporates implementation of CSAPR, including the update to the CSAPR ozone season program emission budgets and target dates issued in 2016. 81 FR 74504 (Oct. 26, 2016). Compliance with CSAPR is flexible among EGUs and is enforced through the use of tradable emissions allowances. Under existing EPA regulations, for states subject to SO_2 emissions limits under CSAPR, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by another regulated EGU.

However, beginning in 2016, SO_2 emissions began to fall as a result of the Mercury and Air Toxics Standards (''MATS'') for power plants. 77 FR 9304 (Feb. 16, 2012). The final MATS rule establishes power plant emission standards for mercury, acid gases, and non-mercury metallic toxic pollutants. Because of the emissions reductions under the MATS, it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by another regulated EGU. DOE estimated SO_2 emissions impacts using emissions factors based on AEO 2023.

CSAPR also established limits on NO_X emissions for numerous States in the eastern half of the United States. Federal building energy standards would have little effect on NO_X emissions in those States covered by CSAPR emissions limits if excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other EGUs. In such case, NO_X emissions would remain near the limit even if electricity generation goes down. Depending on the configuration of the power sector in the different regions and the need for allowances, however, NO_X emissions might not remain at the limit in the case of lower electricity demand. That would mean that Federal building energy standards might reduce NO_X emissions in covered States. Despite this possibility, DOE has chosen to be conservative in its analysis and has maintained the assumption that Federal building energy standards will not reduce NO_X emissions in States covered by CSAPR. Federal building energy standards would be expected to reduce NO_X emissions in the States not covered by CSAPR. DOE used AEO 2023 data to derive NO_X emissions factors for the group of States not covered by CSAPR.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's Federal building energy standards would be expected to slightly reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on AEO 2023, which incorporates the MATS.

C. Monetizing Emissions Impacts

As part of the development of this final rule, for the purpose of complying with the requirements of Executive Order 12866, DOE considered the estimated monetary benefits from the reduced emissions of CO_2, CH_4, N_2O, NO_X, and SO_2 that are expected to result from the energy performance standards considered. This section summarizes the basis for the values used for monetizing the emissions benefits and presents the values considered in this final rule.

To monetize the benefits of reducing GHG emissions, this analysis uses the interim estimates presented in the Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990, published in February 2021 by the Interagency Working Group on the Social Cost of

[35] Available at *www.epa.gov/sites/production/files/2023-04/documents/emission-factors_apr2023.pdf* (last accessed July 12, 2023).

[36] Available at *www.nrel.gov/analysis/100-percent-clean-electricity-by-2035-study.html* (last accessed January 19, 2024).

[37] U.S. Environmental Protection Agency. External Combustion Sources. In *Compilation of Air Pollutant Emission Factors.* AP–42. Fifth Edition. Volume I: Stationary Point and Area Sources. Chapter 1. Available at *www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors* (last accessed April 15, 2022).

[38] For further information, *see* the Assumptions to *AEO 2023* report that sets forth the major assumptions used to generate the projections in the Annual Energy Outlook. Available at *www.eia.gov/outlooks/aeo/assumptions/.*

Greenhouse Gases (''IWG'') (''February 2021 SC–GHG TSD'').

1. Monetization of Greenhouse Gas Emissions

DOE estimates the monetized benefits of the reductions in emissions of CO_2, CH_4, and N_2O by using a measure of the social cost (''SC'') of each pollutant (*e.g.,* SC–CO_2). These estimates represent the monetary value of the net harm to society associated with a marginal increase in emissions of these pollutants in a given year, or the benefit of avoiding that increase. These estimates are intended to include (but are not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services.

DOE exercises its own judgment in presenting monetized climate benefits as directed by applicable Executive orders, and DOE would reach the same conclusion presented in this rule in the absence of the social cost of greenhouse gases. That is, the social costs of greenhouse gases, whether measured using the February 2021 interim estimates presented by the Interagency Working Group on the Social Cost of Greenhouse Gases or by another means, did not affect the rule ultimately finalized by DOE because section 433 of EISA specifically directs DOE to establish regulations that require certain new Federal buildings and Federal buildings undergoing major renovations to reduce their on-site fossil fuel-generated energy consumption by specific amounts and by specific dates; that is, the achievable emissions reductions, and their monetized benefits, would not have changed the energy-consumption reductions required by this rule.

DOE estimated the global social benefits of CO_2, CH_4, and N_2O reductions using SC–GHG values that were based on the interim values presented in the February 2021 SC–GHG TSD. The SC–GHG is the monetary value of the net harm to society associated with a marginal increase in emissions in a given year, or the benefit of avoiding that increase. In principle, the SC–GHG includes the value of all climate change impacts, including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk and natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. The SC–GHG therefore, reflects the societal value of reducing emissions of the gas in question by one metric ton. The SC–GHG is the theoretically appropriate value to use in conducting benefit-cost analyses of policies that affect CO_2, N_2O and CH_4 emissions. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agreed that the interim SC–GHG estimates represent the most appropriate estimate of the SC–GHG until revised estimates were developed reflecting the latest, peer-reviewed science. *See* 87 FR 78382, 78406–78408 for discussion of the development and details of the IWG SC–GHG estimates.

There are a number of limitations and uncertainties associated with the SC–GHG estimates. First, the current scientific and economic understanding of discounting approaches suggests discount rates appropriate for intergenerational analysis in the context of climate change are likely to be less than 3-percent, near 2-percent or lower. Second, the IAMs used to produce these interim estimates do not include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature and the science underlying their ''damage functions''—*i.e.,* the core parts of the IAMs that map global mean temperature changes and other physical impacts of climate change into economic (both market and nonmarket) damages—lags behind the most recent research. For example, limitations include the incomplete treatment of catastrophic and non-catastrophic impacts in the integrated assessment models, their incomplete treatment of adaptation and technological change, the incomplete way in which inter-regional and intersectoral linkages are modeled, uncertainty in the extrapolation of damages to high temperatures, and inadequate representation of the relationship between the discount rate and uncertainty in economic growth over long time horizons. Likewise, the socioeconomic and emissions scenarios used as inputs to the models do not reflect new information from the last decade of scenario generation or the full range of projections. The modeling limitations do not all work in the same direction in terms of their influence on the SC–CO_2 estimates. However, as discussed in the February 2021 TSD, the IWG has recommended that, taken together, the limitations suggest that the interim SC–GHG estimates used in this rule likely underestimate the damages from GHG emissions. DOE concurs with this assessment.

DOE's derivations of the SC–GHGs (*i.e.,* SC–CO_2, SC–N_2O, and SC–CH_4) values used for this rule are discussed in the following sections, and the results of DOE's analyses estimating the benefits and disbenefits of the changes in emissions of these pollutants are presented in section VI.A. of this document.

a. Social Cost of Carbon

The SC–CO_2 values used for this rule were based on the values developed for the February 2021 SC–GHG TSD, which are shown in Table V–8 in five-year increments from 2020 to 2050. The set of annual values that DOE used, which was adapted from estimates published by EPA,[39] is presented in the final rule TSD. These estimates are based on methods, assumptions, and parameters identical to the estimates published by the IWG, which were based on EPA modeling, and include values for 2051 to 2070. DOE expects additional climate benefits to accrue for products still operating after 2070, but a lack of available SC–CO_2 estimates for emissions years beyond 2070 prevents DOE from monetizing these potential benefits in this analysis.

TABLE V–8—ANNUAL SC–CO_2 VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050 (2020$ PER METRIC TON CO_2)

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2020	14	51	76	152
2025	17	56	83	169

[39] *See* EPA, Revised 2023 and Later Model Year Light-Duty Vehicle GHG Emissions Standards: Regulatory Impact Analysis, Washington, DC, December 2021. Available at *nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1013ORN.pdf* (last accessed February 21, 2023).

TABLE V–8—ANNUAL SC–CO_2 VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050 (2020$ PER METRIC TON CO_2)—Continued

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2030	19	62	89	187
2035	22	67	96	206
2040	25	73	103	225
2045	28	79	110	242
2050	32	85	116	260

DOE multiplied the CO_2 emissions reduction estimated for each year by the SC–CO_2 value for that year in each of the four cases. DOE adjusted the values to 2022$ using the implicit price deflator for gross domestic product (''GDP'') from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SC–CO_2 values in each case.

b. Social Cost of Methane and Nitrous Oxide

The SC–CH_4 and SC–N_2O values used for this rule were based on the values developed for the February 2021 SC–GHG TSD. Table V–9 shows the updated sets of SC–CH_4 and SC–N_2O estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in the final rule TSD. To capture the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC–CH_4 and SC–N_2O values, as recommended by the IWG. DOE derived values after 2050 using the approach described above for the SC–CO_2.

TABLE V–9—ANNUAL SC–CH_4 AND SC–N_2O VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050 (2020$ PER METRIC TON)

Year	SC–CH_4 Discount rate and statistic				SC–N_2O Discount rate and statistic			
	5%	3%	2.5%	3%	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile	Average	Average	Average	95th percentile
2020	670	1500	2000	3900	5800	18000	27000	48000
2025	800	1700	2200	4500	6800	21000	30000	54000
2030	940	2000	2500	5200	7800	23000	33000	60000
2035	1100	2200	2800	6000	9000	25000	36000	67000
2040	1300	2500	3100	6700	10000	28000	39000	74000
2045	1500	2800	3500	7500	12000	30000	42000	81000
2050	1700	3100	3800	8200	13000	33000	45000	88000

DOE multiplied the CH_4 and N_2O emissions change estimated for each year by the SC–CH_4 and SC–N_2O estimates for that year in each of the cases. DOE adjusted the values to 2022$ using the implicit price deflator for GDP from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the cases using the specific discount rate that had been used to obtain the SC–CH_4 and SC–N_2O estimates in each case.

c. Sensitivity Analysis Using Updated 2023 SC–GHG Estimates

In December 2023, EPA issued a new set of SC–GHG estimates (2023 SC–GHG) in connection with a final rulemaking under the Clean Air Act.[40] These estimates incorporate recent research and address recommendations of the National Academies (2017) and comments from a 2023 external peer review of the accompanying technical report. For this rulemaking, DOE used these updated 2023 SC–GHG values to conduct a sensitivity analysis of the value of GHG emissions reductions associated with alternative standards for energy standards for Federal buildings. This sensitivity analysis provides an expanded range of potential climate benefits associated with energy standards for Federal buildings. The final year of EPA's new 2023 SCGHG estimates is 2080; therefore, DOE did not monetize the climate benefits of GHG emissions reductions occurring after 2080. The overall climate benefits are greater when using the higher, updated 2023 SC–GHG estimates, compared to the climate benefits using the older IWG SC–GHG estimates. The results of the sensitivity analysis are presented in appendix 2A of the final rule TSD.

2. Monetization of Other Emissions Impacts

For the final rule, DOE estimated the monetized value of NO_X and SO_2 emissions changes from electricity generation using benefit-per-ton estimates for that sector from the EPA's Benefits Mapping and Analysis Program.[41] DOE used EPA's values for $PM_{2.5}$-related benefits associated with NO_X and SO_2 and for ozone-related benefits associated with NO_X for 2025, 2030, and 2040, calculated with 3-percent and 7-percent discount rates.

[40] *See www.epa.gov/environmental-economics/scghg.*

[41] U.S. Environmental Protection Agency. Estimating the Benefit per Ton of Reducing Directly-Emitted $PM_{2.5}$, $PM_{2.5}$ Precursors and Ozone Precursors from 21 Sectors. Available at *www.epa.gov/benmap/estimating-benefit-ton-reducing-directly-emitted-pm25-pm25-precursors-andand-ozone-precursors.*

DOE used linear interpolation to define values for the years not given in the 2025 to 2040 period; for years beyond 2050 the values are held constant (rather than extrapolated) to be conservative. DOE combined the EPA regional benefit-per-ton estimates with regional information on electricity consumption and emissions from AEO 2023 to define weighted-average national values for NO_X and SO_2.

DOE also estimated the monetized value of NO_X and SO_2 emissions changes from site use of natural gas in buildings impacted by this rule using benefit-per-ton estimates from the EPA's Benefits Mapping and Analysis Program. Although none of the sectors covered by EPA refers specifically to residential and commercial buildings, the sector called ''area sources'' would be a reasonable proxy for Federal buildings.[42] The EPA document provides high and low estimates for 2025 and 2030 at 3- and 7-percent discount rates.[43] DOE used the same linear interpolation and extrapolation as it did with the values for electricity generation.

DOE multiplied the emissions changes (in tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate.

D. Public Comment

DOE received several comments in response to the 2014 and 2022 SNOPRs relating to methodology. These comments covered potential exclusions for thermal and electrical energy storage systems, basing this rule on an agency portfolio (as opposed to on a building-by-building basis), potential credits for nuclear and hydropower electricity, and suggesting a need to rewrite the main equation in the rule.

In response to the comments about the role of energy storage systems in limiting fossil fuel generated energy consumption from purchased electricity, DOE's decision in the final rule to focus only on on-site combustion of fossil fuels makes discussion of electrical energy storage irrelevant. For example, if an agency chooses to burn fossil fuels to store heat in a thermal energy storage system, that fossil fuel use would be counted as part of the consumption of the building. DOE also notes that this rule applies to individual buildings based on statutory requirements, so DOE cannot change this rule to a portfolio approach.

DOE also notes that credits for nuclear and hydropower electricity are no longer relevant to this final rule and that the governing equation in this final rule has been extensively rewritten and simplified in accordance with the change of scope to focus on only on-site fossil fuel use.

E. Conclusion

Table V–10 provides DOE's estimate of cumulative emissions changes expected to result from this rulemaking. DOE recognizes exchanging on-site fossil fuel generated energy for reliance on the electric grid, which may still be generating energy with fossil fuels, does not necessarily lead to an immediate reduction in emissions of GHGs and SO_2 in all cases. In some areas, there will likely be an immediate reduction in GHG emissions, while in other areas, emissions will fall over time as the amount of clean energy on the grid increases. By ensuring that Federal buildings are designed—either from the ground up, or when being renovated—to reduce fossil fuel use, the rule ensures that long-term, as the grid integrates more renewable energies, emissions will be reduced.

TABLE V–10—CUMULATIVE PHYSICAL EMISSIONS CHANGES IN 2025–2084

Pollutant	Total
Primary (plant) Emissions Changes	
CO_2 (million metric tons)	0.7
Hg (tons)	−0.0028
NO_X (thousand tons)	1.1
SO_2 (thousand tons)	−0.4
CH_4 (thousand tons)	−0.1
N_2O (thousand tons)	−0.01
Upstream Emissions Changes	
CO_2 (million metric tons)	0.1
Hg (tons)	−0.00001
NO_X (thousand tons)	2.3
SO_2 (thousand tons)	−0.01
CH_4 (thousand tons)	15.8
N_2O (thousand tons)	−0.0001
Total Emissions Changes	
CO_2 (million metric tons)	0.9
Hg (tons)	−0.003
NO_X (thousand tons)	3.3
SO_2 (thousand tons)	−0.4
CH_4 (thousand tons)	15.8
N_2O (thousand tons)	−0.009

Negative values refer to an increase in emissions.
Numbers may not sum due to rounding.

[42] ''Area sources'' represents all emission sources for which states do not have exact (point) locations in their emissions inventories. Because exact locations would tend to be associated with larger sources, ''area sources'' would be fairly representative of small dispersed sources like homes, businesses and office buildings.

[43] ''Area sources'' are a category in the 2018 document from EPA, but are not used in the 2021 document cited previously. See: *www.epa.gov/sites/default/files/2018-02/documents/sourceapportionmentbpttsd_2018.pdf.*

Table V–11 presents the present value of monetized climate disbenefits associated with the CO_2 emissions changes using the full set of SC–CO_2 estimates described previously.

TABLE V–11—PRESENT VALUE OF MONETIZED CLIMATE BENEFITS FROM CHANGES IN CO_2 EMISSIONS FOR CONSTRUCTION IMPACTS 2025–2054 WITH A 30-YEAR LIFETIME

	SC–CO_2 Case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
Million 2022$				
Total	7.0	31.6	50.1	95.7

Note: Climate benefits and disbenefits associated with CO_2 emissions changes occur over 2025–2070. DOE expects additional climate impacts to accrue from CO_2 emissions changes post 2070, but a lack of available SC–CO_2 estimates for years beyond 2070 prevents DOE from monetizing these additional impacts in this analysis.

Table V–12 presents the monetized climate benefits associated with the estimated CH_4 emissions reduction, and Table V–13 presents the monetized climate disbenefits associated with the estimated changes in N_2O emissions.

TABLE V–12—PRESENT VALUE OF MONETIZED CLIMATE BENEFITS FROM CHANGES IN METHANE EMISSIONS FOR CONSTRUCTION IMPACTS 2025–2054 WITH A 30-YEAR LIFETIME

	SC–CH_4 Case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
Million 2022$				
Total	6.5	19.8	27.8	52.5

Note: Climate benefits and disbenefits associated with CH_4 emissions changes occur over 2025–2070. DOE expects additional climate impacts to accrue from CH_4 emissions changes post 2070, but a lack of available SC–CH_4 estimates for years beyond 2070 prevents DOE from monetizing these additional impacts in this analysis.

TABLE V–13—PRESENT VALUE OF MONETIZED CLIMATE DISBENEFITS FROM CHANGES IN NITROUS OXIDE EMISSIONS FOR CONSTRUCTION IMPACTS 2025–2054 WITH A 30-YEAR LIFETIME

	SC–N_2O Case			
	Discount rate and statistics			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
Million 2022$				
Total	0.0	−0.1	−0.2	−0.3

Note: Negative numbers represent an increase cost or disbenefit. Climate benefits and disbenefits associated with N_2O emissions changes occur over 2025–2070. DOE expects additional climate impacts to accrue from N_2O emissions changes post 2070, but a lack of available SC–N_2O estimates for years beyond 2070 prevents DOE from monetizing these additional impacts in this analysis.

DOE is aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the global and U.S. economy continues to evolve rapidly. DOE, together with other Federal agencies, will continue to review methodologies for estimating the monetary value of changes in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues.

DOE also estimated the monetary value of the health benefits and disbenefits associated with changes in NO_X and SO_2 emissions anticipated to result from this rule. The dollar-per-ton values that DOE used are discussed in

section V.C of this document. Table V–14 presents the present value for NO_X emissions reduction calculated using 7-percent and 3-percent discount rates, and Table V–15 presents similar results for SO_2 emissions increases. The results in these tables reflect application of EPA's low dollar-per-ton values, which DOE used to be conservative.

TABLE V–14—PRESENT VALUE OF NO_X EMISSIONS REDUCTION

	3% Discount rate	7% Discount rate
Million 2022$		
Total	81.2	28.8

TABLE V–15—PRESENT VALUE OF SO_2 EMISSIONS INCREASE

	3% Discount rate	7% Discount rate
Million 2022$		
Total	−25.3	−10.4

Note: Negative numbers represent an increase cost or disbenefit.

Not all the public health and environmental benefits from the reduction of greenhouse gases, NO_X, and SO_2 are captured in the values above, and additional unquantified benefits from the reductions of those pollutants as well as from the reduction of direct PM and other co-pollutants may be significant. DOE has not included monetary benefits of the reduction of Hg emissions because the amount of reduction is very small.

DOE's analysis estimates the energy impacts, emissions savings, and cost savings over a 30-year period. The Federal building energy standards in this final rule are projected to result in an estimated national increased energy use of 0.029 quads. The increase is for the full fuel cycle which is essentially accounting for source energy impacts. The actual breakdown is .00221 quads of upstream energy savings and an increase of 0.031 quads of primary energy use (energy use impacts at the power plants) for a grand total of an increase in .029 quads of full fuel cycle energy. However, the Federal building energy standards are projected to result in estimated savings of 0.9 million metric tons (''MMT'') of CO_2 emissions according to DOE's base analysis, which uses AEO 2023. When combining CO_2 savings with methane (CH_4) savings and slight increases N_2O emissions into a CO_2 equivalent metric, there results in an overall net savings of CO_2e emissions of approximately 1.29 MMT CO_2e.

Notably, the recent enactment of the Inflation Reduction Act of 2022 (Pub. L. 117–169) and the Infrastructure Investment and Jobs Act (Pub. L. 117–58) will drive power sector emissions reductions in both the near-term and the short-term. With these laws in place, DOE has projected that U.S. economy-wide greenhouse gas emissions will decline to 35 to 41% below 2005 levels in 2030,[44] with the power sector representing the largest source of these reductions. In contrast to the base case presented in this rulemaking, there are alternative scenarios for projecting the future emissions associated with grid electricity that better align with these new policy drivers. These scenarios, discussed in section V.B of this document, have a large effect on the net emissions impacts of the rulemakings and present larger environmental and overall net benefits. With these policy drivers now in place, power sector reductions beyond those projected would only further increase the emissions benefits of this rulemaking in the future. These scenarios do not present comprehensive profiles for all additional climate factors beyond CO_2 emissions (such as NO_X, Hg, N_2O, CH_4, and SO_2), and have been presented only in the corresponding TSD for reference.

The cumulative NPV of the final rule for compliant buildings ranges from $70 million (at a 7-percent discount rate) to $52 million (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-costs and the estimated increased capital costs for a compliant building constructed in 2025–2054, although in reality, those costs will be realized throughout the 30-year project time period analyzed.

In addition, compliant buildings are projected to impact emissions of multiple greenhouse gases and other pollutants. DOE estimates that the rule would result in cumulative emissions (over the same period as for energy savings) impacts of a decrease of 0.9 MMT of carbon dioxide (''CO_2''), an increase of 0.4 thousand tons of sulfur dioxide (''SO_2''), a decrease of 3.3 thousand tons of nitrogen oxides (''NO_X''), a decrease of 15.8 thousand tons of methane (''CH_4''), an increase of 0.009 thousand tons of nitrous oxide (''N_2O''), and an increase of 0.003 tons of mercury (''Hg'').[45]

DOE estimates the value of climate benefits and disbenefits from a change in emissions of greenhouse gases using four different estimates of the social cost of CO_2 (''SC–CO_2''), the social cost of methane (''SC–CH_4''), and the social cost of nitrous oxide (''SC–N_2O''). Together these represent the social cost of greenhouse gases (''SC–GHG''). DOE used interim SC–GHG values developed by the ''IWG''.[46] The derivation of these values is discussed in section V.C of this document. For presentational purposes, the climate benefits (including both the climate benefits and disbenefits) associated with the average SC–GHG at a 3-percent discount rate is $51.3 million, primarily driven by savings in CH_4. DOE does not have a single central SC–GHG point estimate and DOE emphasizes the value of considering the benefits calculated using all four SC–GHG estimates.

DOE also estimates health benefits and disbenefits from changes of SO_2 and NO_X emissions.[47] DOE estimates the present value of the health benefits would be $18.4 million using a 7-percent discount rate, and $55.9 million using a 3-percent discount rate.[48] DOE is currently only monetizing $PM_{2.5}$ precursor health effects and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health effects from reductions in direct $PM_{2.5}$ emissions.[49]

Table VI–1 summarizes the economic benefits and costs expected to result from this final rule. There are other important unquantified effects, including certain unquantified climate benefits, unquantified public health benefits from the reduction of toxic air pollutants and other emissions, unquantified energy security benefits, and distributional effects, among others.

[44] U.S. Department of Energy's Office of Policy. Investing in American Energy, DOE OP Economy Wide Report_0.pdf (*energy.gov*), August 2023.

[45] DOE calculated emissions changes relative to the no-new-standards case, which reflects key assumptions in the AEO2023. AEO 2023 represents current federal and state legislation and final implementation of regulations as of the time of its preparation. *See* section VI.K of this document for further discussion of AEO 2023 assumptions that effect air pollutant emissions.

[46] See Interagency Working Group on Social Cost of Greenhouse Gases, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990,* Washington, DC, February 2021, *available at www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf?source=email.*

[47] DOE estimated the monetized value of NO_X and SO_2 emissions changes associated with this final rule using benefit per ton estimates from the scientific literature. See section IV.L.2 of this document for further discussion.

[48] DOE estimates the economic value of these emissions changes resulting from the considered TSLs for the purpose of complying with the requirements of Executive Order 12866.

TABLE VI–1—SUMMARY OF MONETIZED ECONOMIC BENEFITS AND COSTS (2025–2054 PLUS 30-YEAR LIFETIME)

[Million 2022$]

	Million 2022$	
	3% discount rate	7% discount rate
Capital Cost Savings of Equipment *	149.2	91.5
Climate Benefits **	51.3	51.3
Health Benefits ***	55.9	18.4
Total Benefits †	256.4	161.1
Operating Costs ††	−204.1	−91.4
Net Benefits	52.3	69.7

Note: This table presents the costs and benefits associated with compliant buildings built and operated in 2025–2084. These results include consumer, climate, and health benefits and disbenefits that accrue after 2054 from the buildings constructed or renovated in 2025–2054.

* Capital costs are a savings to consumers due to the base level efficiency electric equipment being less expensive than equivalent gas equipment as well as infrastructure savings from avoided gas line installation and exhaust venting.

** Climate benefits are calculated using four different estimates of the social cost of carbon ($SC–CO_2$), methane ($SC–CH_4$), and nitrous oxide ($SC–N_2O$) (model average at 2.5-percent, 3-percent, and 5-percent discount rates; 95th percentile at 3-percent discount rate). Together these represent the social cost of greenhouse gases (SC–GHG). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are shown; however, DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates. To monetize the benefits of reducing GHG emissions, this analysis uses the interim estimates presented in the February 2021 SC–GHG TSD.

*** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. See section V.C of this document for more details.

† Total and net benefits include those consumer, climate, and health benefits that can be quantified and monetized. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate.

†† Negative number indicates an increased cost to building owners, driven primarily by higher relative cost of electricity compared to natural gas.

A more detailed discussion of the basis for these tentative conclusions is contained in the remainder of this document and the accompanying TSD.

F. Reference Resources

DOE has prepared a list of resources to help Federal agencies address the reduction of fossil fuel-generated energy consumption. These resources come in many forms such as design guidance, case studies and in a variety of media such as printed documents or websites. The resources for energy efficiency improvement will also provide guidance for fossil fuel-generated energy consumption reductions.

U.S. Department of Energy, Federal Energy Management Program. (*https://www.energy.gov/femp/federal-energy-management-program*). FEMP provides access to numerous resources and tools that can help Federal agencies improve the energy efficiency of new and existing buildings. Specific resources to support this Final Rule will include, but are not limited to:

Implementation Guidance
Petition Template

U.S. Department of Energy, Building Technologies Office. Database of high-performance buildings. (*https://buildingdata.energy.gov/*).

U.S. Department of Energy, Better Buildings Program. Decarbonization Resource Hub. (*https://betterbuildingssolutioncenter.energy.gov/carbon-hub*).

New York State Energy Research and Development Authority (NYSERDA). Building Decarbonization Insights. (*https://www.nyserda.ny.gov/All-Programs/Empire-Building-Challenge/Building-Decarbonization-Insights*).

New Buildings Institute. Zero Energy Buildings Database. (*https://newbuildings.org/resource/getting-to-zero-database/*).

VI. Procedural Issues and Regulatory Review

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

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving 'Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011) and amended by E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to the Office of Information and Regulatory Affairs (''OIRA'') for review. OIRA has

determined that this regulatory action constitutes a ''significant regulatory action'' under section 3(f)(1) of E.O. 12866. Accordingly, pursuant to section 6(a)(3)(C) of E.O. 12866, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments are summarized in the tables that follows. Further detail can be found in the TSD accompanying this final rule.

DOE's analyses indicate that the final rule saves a significant amount of site energy. Switching from gas loads burned on-site to electric loads produced off-site, at national average level emission rates, would result in a decrease in CO_2, NO_X and CH_4 emissions and an increase of N_2O, Hg, and SO_2 emissions. Electrifying the end-use equipment results in emissions that become dependent upon the electricity generation mix delivered to the building. Relative to the case without the amended standards, compliant buildings constructed in the 30-year period that begins in the anticipated year of compliance with the amended standards (2025–2034) are projected to result in an increased full fuel cycle lifetime energy use of 0.029 quadrillion Btus.

The benefits and costs of this final rule presented in Section V.A can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are (1) the decrease in capital cost, (2) the increase in operating costs, plus (3) the monetized value of changes in GHG, and NO_X, and SO_2 emissions, all annualized.[50] The benefits and disbenefits associated with estimated changes in emissions as a result of the rule are also calculated based on the lifetime of a compliant building constructed in 2025–2054.

Estimates of annualized benefits and costs of this final rule are shown in Table VI–1 and Table VI–2. The results shown as the primary estimate utilize a 7-percent discount rate for operating benefits, costs, and health benefits and disbenefits (from changes to NO_X and SO_2 emissions), and a 3-percent discount rate case for climate benefits (from GHG emissions) as follows:

Capital cost of impacts of the standards in this case are estimated to be $8.44 million per year in decreased equipment costs.

Annual operating disbenefits are estimated to be $8.43 million per year in increased equipment operating costs, primarily driven by the higher relative cost of electricity compared to natural gas.

Net climate benefits total $2.77 million per year, primarily driven by savings from CH_4.

Net health benefits total $1.69 million per year, primarily driven by NO_X emissions savings overshadowing increased SO_2 emissions.

Overall net monetized benefits would amount to a savings of $4.48 million per year.

Using a 3-percent discount rate for all benefits, disbenefits and costs, the annualized results are as follows:

Capital cost impacts of the standards in this case are estimated to be $8.08 million per year in decreased equipment costs.

Annual operating disbenefits are estimated to be $11.05 million per year in increased equipment operating costs, driven by the higher relative cost of electricity compared to natural gas.

Net climate benefits total $2.77 million per year, primarily driven by savings from CH_4.

Net health benefits total $3.03 million per year, primarily driven by NO_X emissions savings overshadowing increased SO_2 emissions.

Overall net monetized benefits would amount to a savings of $2.83 million per year.

TABLE VI–2—ANNUALIZED MONETIZED BENEFITS AND COSTS OF FINAL REGULATION BASE SCENARIO USING AEO 2023

[Million 2022$]

Category	Million 2022$/year	
	3% discount rate	7% discount rate
Capital Costs of Equipment Savings *	8.08	8.44
Climate Benefits **	2.77	2.77
Health Benefits ***	3.03	1.69
Total Benefits †	13.88	12.91
Operating Costs ††	−11.05	−8.43
Net Benefits	2.83	4.48

Note: This table presents the costs and benefits associated with this final rule impacted buildings in 2025–2084. These results include consumer, climate, and health benefits and disbenefits which accrue after 2054 from the buildings constructed in 2025–2054.

* Capital costs of equipment are a savings to consumers due to the base level efficiency electric equipment being less expensive than equivalent gas equipment as well as infrastructure savings from avoided gas line installation and exhaust venting.

** Climate benefits are calculated using four different estimates of the SC–GHG (see section V.C of this document). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3-percent discount rate are shown; however, DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates. To monetize the benefits of reducing GHG emissions, this analysis uses the interim estimates presented in the February 2021 SC–GHG TSD.

*** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions.

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate.

[50] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in $2022, the year used for discounting the NPV of total costs and savings. For the benefits, DOE calculated a present value associated with each year's construction or renovations in the year in which the construction or renovation occur (*e.g.,* 2030), and then discounted the present value from each year to 2022. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

†† Negative number indicates an increased cost to building owners, driven primarily by higher relative cost of electricity compared to natural gas.

DOE's analysis of the national impacts of the final standards is described in sections V.B, and V.C of this document.

DOE's analysis is sensitive to how emission factors per unit of grid electricity purchased change over time. The base case presented in this rulemaking utilizes emission factors obtained through AEO 2023. AEO 2023 reflects, to the extent possible, laws and regulations adopted through mid-November 2022, including the Inflation Reduction Act (IRA). This is consistent with the methodology used in other rulemakings (including the efficiency portions for the analysis behind 10 CFR parts 433 and 435) and representative of an expected or ''business as usual'' case. However, AEO 2023 does not fully account for President Biden's goal to achieve 100-percent carbon pollution-free electricity by 2035. Such accelerated clean grid scenarios significantly impact the overall emissions profile of the rule allowing for more climate benefits sooner in the lifecycle of the expected projects.

Results and details for a 100-percent reduction by 2035 case are presented in the TSD. As noted previously, alternative cases are presented to show the emissions and climate impacts of this rule in accelerated clean grid scenarios that may flow from recent legislation and Administration priorities, but that are not represented in the base case utilizing AEO 2023 (the ''business as usual'' case).

DOE's analysis of the impacts of the final regulation on Federal agencies is described in section V.A, Cost Effectiveness, of this document.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*www.energy.gov/gc/office-general-counsel*).

In the 2022 SNOPR, DOE stated that the proposed rule only applies to the fossil fuel-generated energy consumption of new Federal buildings and Federal buildings undergoing major renovations. 87 FR 78382, 78417. Thus, the only entities directly regulated by this rulemaking would be Federal agencies. *Id.* Accordingly, DOE determined that an IRFA was not required. *Id.*

APGA claimed that DOE erred in its determination that the rule would not have a significant economic impact on a substantial number of small businesses. APGA, Doc. No. 102, pg. 5. APGA asserted most of its members are small businesses. *Id.* APGA stated that ''[r]educing fossil fuels to zero will certainly impact the load and revenue of many public gas systems across the country.'' *Id.* Thus, APGA argued that the rule would have a significant economic impact on a substantial number of small businesses and DOE must prepare an IRFA or withdraw the 2022 SNOPR. *Id.*

This final rule applies only to the fossil fuel-generated energy consumption of new Federal buildings and Federal buildings undergoing major renovation. As such, the only entities directly regulated by this rulemaking would be Federal agencies. Under the Regulatory Flexibility Act, an ''agency may properly certify that no regulatory flexibility analysis is necessary when it determines that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule.*'' *Mid-Tex Elec. Co-op., Inc.* v. *FERC,* 773 F.3d 327, 342 (D.C. Cir. 1985) (emphasis added); *see Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855, 870 (holding that the Regulatory Flexibility Act does not apply to small businesses indirectly affected by regulation of other entities).

On the basis of the foregoing, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis was provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This final rule will impose no new information or record keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.*

D. Review Under the National Environmental Policy Act of 1969

DOE prepared a draft Environmental Assessment (EA) (DOE/EA–1778) entitled, ''Environmental Assessment for Supplemental Notice of Proposed Rulemaking, 10 CFR parts 433 and 435, 'Clean Energy for New Federal Buildings and Major Renovations of Federal Buildings,' '' pursuant to the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) (40 CFR parts 1500–1508), NEPA, as amended (42 U.S.C. 4321 *et seq.*), and DOE's NEPA Implementing Procedures (10 CFR part 1021).

This draft EA addressed the possible environmental effects attributable to the implementation of this final rule. The draft EA stated that the rule, by its fundamental intent, would have a positive impact on the environment and the anticipated impacts of this rulemaking would be an overall decrease in CO_2 equivalent gases (despite modest increases in base CO_2 and N_2O emissions, CH_4 emission reductions result in net savings) with an additional decrease in NO_X emission and an increase in SO_2 emissions resulting from reduced fossil fuel-generated energy consumption in new Federal buildings and major renovations of Federal buildings but increased electric purchases from the grid. In the draft EA, DOE concluded that the new Federal buildings designed and constructed and major renovations of Federal buildings designed and completed to be compliant with the proposed rule would not have a significant environmental impact.

DOE posted this draft EA on its Office of NEPA Policy and Compliance website on December 7, 2022.[51] The draft EA requested interested parties to submit comments by December 22, 2022. No comments were received.

DOE recently updated its analysis to included data made available since it prepared the draft EA. DOE again

[51] Available at *www.energy.gov/nepa/articles/doeea-2183-draft-environmental-assessment.*

concludes that the new Federal buildings designed and constructed and major renovations of Federal buildings designed and completed to be compliant with this rule will not have a significant environmental impact in a Finding of No Significant Impact (FONSI).[52]

In its comments on the rule, APGA stated that it is unclear how the draft EA addresses the possible environmental affects attributable to the implementation of the 2022 SNOPR. APGA, Doc. No. 102, pg. 4. APGA asserted that because the rule proposed in the 2022 SNOPR is significantly different than the rule proposed in the 2010 NOPR, DOE cannot rely on the draft EA that was developed over a decade ago in support of the 2010 NOPR. *Id.* However, as explained in the 2022 SNOPR, DOE prepared a new draft EA that considered the possible environmental effects attributable to the implementation of the rule proposed in the 2022 SNOPR. 87 FR 78382, 78417. Thus, DOE did not rely on the draft EA prepared in 2010, but rather prepared a new draft EA prior to publishing the 2022 SNOPR.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this final rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) 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. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, section 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. 2 U.S.C. 1532(a), (b). The UMRA also requires a federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

This final rulemaking contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year by State, local and Tribal governments, in the aggregate, or by the private sector so these requirements under the UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 15, 1988), DOE has determined that this final rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at

[52] Available at *www.energy.gov/nepa/listings/findings-no-significant-impact-fonsis.*

www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf. DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

One commenter raised procedural concerns related to the preparation of a Statement of Energy Effects in response to the 2022 SNOPR. APGA, Doc. No. 102, pg. 4. Specifically, APGA stated that DOE's conclusion that the proposed rule would not have a significant energy impact does not mean that it would not, especially when the Federal government is the largest energy consumer in the nation, *Id.,* pg. 5.

Although it may be true that the government as whole is the largest energy consumer in the nation, this rule affects a subset of qualified new Federal buildings and major renovation projects and does not directly affect the supply, distribution, or consumption of energy for all Federal buildings. Rather, the impact of this rule is estimated to be less than an additional 0.029 quads of full fuel cycle energy. When compared with the total estimated use of 22 quads of energy per year in the U.S. buildings sector, the impact of this rule only represents 0.004 percent of the total energy consumption of the sector over the 30-year analysis period. Furthermore, the rule is not anticipated to have any direct effect on energy supplies.

This final rule would not have a significant adverse effect on the supply, distribution, or use of energy. Moreover, as the rulemaking would result in increased building level energy efficiency, it would not have a significant adverse effect on energy. For these reasons, the rulemaking is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Information Quality

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''), issued its Final Information Quality Bulletin for Peer Review (''the Bulletin''). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, EIA's CBECS and RECS are ''influential scientific information,'' which the Bulletin defines as ''scientific 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.'' 70 FR 2664, 2667 (Jan. 14, 2005). The Academy recommendations have been peer reviewed pursuant to section II.2 of the Bulletin. Both surveys are peer reviewed internally within EIA and other DOE offices before they are published. In addition, both surveys are subject to public comment that EIA addresses before finalizing CBECS and RECS.

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 433

Buildings and facilities, Energy conservation, Engineers, Federal buildings and facilities, Fossil fuel reductions, Housing, Multi-family residential buildings.

10 CFR Part 435

Buildings and facilities, Energy conservation, Engineers, Federal buildings and facilities, Fossil fuel reductions, Housing.

Signing Authority

This document of the Department of Energy was signed on April 12, 2024, by Mary Sotos, the Director of the Federal Energy Management Program, 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 April 12, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons set forth in the preamble, DOE amends parts 433 and 435 of chapter II of title 10 of the Code of Federal Regulations as set forth below:

PART 433—ENERGY EFFICIENCY STANDARDS FOR THE DESIGN AND CONSTRUCTION OF NEW FEDERAL COMMERCIAL AND MULTI–FAMILY HIGH–RISE RESIDENTIAL BUILDINGS

■ 1. The authority citation for part 433 continues to read as follows:

Authority: 42 U.S.C. 6831–6832, 6834–6835; 42 U.S.C. 7101 *et seq.*

■ 2. Amend § 433.1 by adding paragraph (b) to read as follows:

§ 433.1 Purpose and scope.

* * * * *

(b) This part also establishes a maximum allowable fossil fuel-generated energy consumption standard for new Federal buildings that are commercial or multi-family high-rise residential buildings and major renovations to Federal buildings that are commercial or multi-family high-rise residential buildings, for which design for construction began on or after May 1, 2025.

* * * * *

■ 3. Amend § 433.2 by:

■ a. Adding in alphabetical order the definitions of ''Construction cost,'' ''Design for renovation,'' ''EISA-subject building or project'', ''Federal building,'' ''Fiscal year (FY),'' ''Fossil fuel-generated energy consumption,'' ''Major renovation,'' ''Major renovation cost,'' ''Major renovation of all Scope 1 fossil fuel-using systems in a building,'' ''Major renovation of a Scope 1 fossil fuel-using building system or Scope 1 fossil-fuel-using component,'' and ''Multi-family high-rise residential building'';

■ b. Revising the definition of ''Proposed building''; and
■ c. Adding in alphabetical order the definitions of ''Shift adjustment multiplier,'' and ''Technical impracticability''.

The additions and revision read as follows:

§ 433.2 Definitions.

* * * * *

Construction cost means all costs associated with the construction of a new Federal building. It includes, but is not limited to, the cost of preliminary planning, engineering, architectural, permitting, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other similar actions necessary for the construction of a new Federal building. It does not include the cost of acquiring the land.

* * * * *

Design for renovation means the stage when the energy efficiency and sustainability details (such as insulation levels, HVAC systems, water-using systems, etc.) are either explicitly determined or implicitly included in a renovation project cost specification.

EISA-subject building or project means, for purposes of this rule, any new Federal building or renovation project that is subject to the cost thresholds and reporting requirements in Section 433 of Energy Independence and Security Act of 2007 (EISA) ((Pub. L. 110–140, codified at 42 U.S.C. 6834(a)(3)(D)(i))).

* * * * *

Federal building means any building to be constructed by, or for the use of, any Federal agency. Such term shall include buildings built for the purpose of being leased by a Federal agency and privatized military housing.

Fiscal year (FY) means the 12-month period beginning on October 1 of the year prior to the specified calendar year and ending on September 30 of the specified calendar year.

Fossil fuel-generated energy consumption means the on-site stationary consumption of fossil fuels that contribute to Scope 1 emissions for generation of electricity, heat, cooling, or steam as defined by ''Federal Greenhouse Gas Accounting and Reporting Guidance'' (Council on Environmental Quality, January 17, 2016). This includes, but is not limited to, combustion of fuels in stationary sources (*e.g.,* boilers, furnaces, turbines, and emergency generators). This term does not include mobile sources, fugitive emissions, or process emissions as defined by ''Federal Greenhouse Gas Accounting and Reporting Guidance'' (Council on Environmental Quality, January 17, 2016).

* * * * *

Major renovation means either major renovation of all Scope 1 fossil fuel-using systems in a Federal building or major renovation of one or more Scope 1 fossil fuel-using building systems or components, as defined in this section.

Major renovation cost means all costs associated with the repairing, remodeling, improving, extending, or other changes in a federal building. It includes, but is not limited to, the cost of preliminary planning, engineering, architectural, permitting, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other similar actions necessary for the alteration of a Federal building.

Major renovation of all Scope 1 fossil fuel-using systems in a building means construction on an existing Federal building that is so extensive that it replaces all Scope 1 fossil fuel-using systems in the building. This term includes, but is not limited to, comprehensive replacement or restoration of most or all major systems, interior work (such as ceilings, partitions, doors, floor finishes, etc.), or building elements and features.

Major renovation of a Scope 1 fossil fuel-using building system or Scope 1 fossil fuel-using component means changes to a federal building that provide significant opportunities for energy efficiency or reduction in fossil fuel-related energy consumption. This includes, but is not limited to, replacement of the HVAC system, hot water system, or cooking system, or other fossil fuel-using systems or components of the building that have a major impact on fossil fuel usage.

Multi-family high-rise residential building means a residential Federal building that contains 3 or more dwelling units and that is designed to be 4 or more stories above grade.

* * * * *

Proposed building means the design for construction of a new Federal commercial or multi-family high-rise residential building, proposed for construction, or a major renovation to a Federal commercial or multi-family high-rise residential building.

* * * * *

Shift adjustment multiplier means a multiplication factor that agencies may apply to their Maximum Allowable Fossil Fuel-Generated Energy Consumption by Building Category target based upon the weekly hours of active operation of the building. The weekly hours of operation used as a basis for the shift adjustment multiplier lookup include the time in which in the building is actively occupied and operating per its intended use type and unoccupied hours or other times of limited use (such as night-time setback hours).

Technical impracticability means achieving the fossil fuel-based energy consumption targets would:

(1) Not be feasible from an engineering design or execution standpoint due to existing physical or site constraints that prohibit modification or addition of elements or spaces;

(2) Significantly obstruct building operations and the functional needs of a building, specifically for industrial process loads, critical national security functions, mission critical information systems as defined in NIST SP 800–60 Vol. 2 Rev. 1, and research operations; or

(3) Significantly degrade energy resiliency and energy security of building operations as defined in 10 U.S.C. 101(e)(6) and 10 U.S.C. 101(e)(7) respectively.

■ 4. Subpart B is added to part 433 to read as follows:

Subpart B—Reduction in Scope 1 Fossil Fuel-Generated Energy Consumption

Sec.

§ 433.200 Scope 1 Fossil fuel-generated energy consumption requirement.

(a) *New EISA-Subject buildings.* (1) New Federal buildings that are commercial or multi-family high-rise residential buildings, for which design for construction began on or after May 1, 2025 must be designed to meet the requirements of paragraph (c) of this section if:

(i) For Federally owned public buildings or leased Federal buildings, the construction cost of the new building exceeds GSA's Annual Prospectus Thresholds that are found at *https://www.gsa.gov/real-estate/design-construction/gsa-annual-prospectus-thresholds;* or

(ii) For Federally owned non-public buildings, the cost of the building is at least $2,500,000 (in 2007 dollars, adjusted for inflation). For the purposes of calculating this threshold, projects should set the Bureau of Labor and

Statistics CPI Inflation calculator to $2,500,000 in October of 2006 (to represent the value of the original cost threshold) and then set for October of the FY during which the design for construction of the project began or is set to begin.

(2) [Reserved]

(b) *Major renovations of EISA-Subject buildings.* (1) Major renovations to Federal buildings that are commercial or multi-family high-rise residential buildings, for which design for construction began on or after May 1, 2025, must be designed to meet the requirements of paragraphs (c) or (d) of this section, as applicable, if:

(i) The renovation is a major renovation to a public building as defined in 40 U.S.C. 3301 and for which transmittal of a prospectus to Congress is required under 40 U.S.C. 3307; or

(ii) The cost of the major renovation of a Federally owned building is at least $2,500,000 (in 2007 dollars, adjusted for inflation). For the purposes of calculating this threshold, projects should set the Bureau of Labor and Statistics CPI Inflation calculator to $2,500,000 in October of 2006 (to represent the value of the original cost threshold) and then set for October of the FY during which the design for construction of the project began or is set to begin. The cost of a major renovation for a Federally leased building is at least the amount listed for alterations in leased buildings that would need to transmit a prospectus to Congress under section 3307 of title 40. *See* GSA Annual Prospectus Thresholds at *https://www.gsa.gov/real-estate/design-construction/gsa-annual-prospectus-thresholds.*

(2) This subpart only applies to major renovations that meet the definition of ''major renovation of all Scope 1 fossil fuel-using systems in a federal building'' or ''major renovation of a Scope 1 fossil fuel-using building system or Scope 1 fossil fuel-using component.''

(3) For leased buildings, this subpart applies to major renovations only if the building was originally built for the use of any Federal agency, including being leased by a Federal agency.

(4) This subpart applies only to the portions of the proposed building or proposed building systems that are being renovated and to the extent that the scope of the renovations permits compliance with the applicable requirements of this subpart. Unaltered portions of the proposed building or proposed building systems are not required to comply with this subpart.

(c) *Federal buildings that are of the type included in appendix A of this subpart.*

(1) *New Construction and Major Renovations of all Scope 1 Fossil Fuel-Using Systems in EISA-Subject Buildings.*

(i) *Design for construction began during FY 2024 through FY 2029.* For new construction or major renovations of all Scope 1 fossil fuel-using systems in a Federal building for which design for construction or renovation, as applicable, began during FY 2024 through 2029, the Scope 1 fossil fuel-generated energy consumption of the proposed building, based on the building design and calculated according to § 433.201(a), must not exceed the value identified in Tables A–1a to A–2a (if targets based on emissions are used) or Tables A–1b to A–2b (if targets based on kBtu of fossil fuel usage are used) of appendix A of this subpart for the associated building type, climate zone, and fiscal year in which design for construction begins.

(A) Federal agencies may apply a shift adjustment multiplier to the values in Tables A–1a to A–2a or Tables A–1b to A–2b based on the following baseline hours of operation assumed in Tables A–1a to A–2a or Tables A–1b to A–2b. To calculate the shift adjustment multiplier, agencies shall estimate the number of shifts for their new building and multiply by the appropriate factor shown below in Table 1 of this section for their building type.

(B) The Scope 1 fossil fuel-generated energy consumption target for the building is the applicable value in either Tables A–1a to A–2a or Tables A–1b to A–2b multiplied by the shift adjustment multiplier calculated for that building.

TABLE 1—SHIFT ADJUSTMENT MULTIPLIER BY HOURS OF OPERATION AND BUILDING TYPE

Building activity type	Weekly hours of operation		
	50 or less	51 to 167	168
Admin/professional office	1	1	1.4
Bank/other financial	1	1	1.4
Government office	1	1	1.4
Medical office (non-diagnostic)	1	1	1.4
Mixed-use office	1	1	1.4
Other office	1	1	1.4
Laboratory	1	1	1.4
Distribution/shipping center	0.7	1.4	2.1
Nonrefrigerated warehouse	0.7	1.4	2.1
Convenience store	1	1	1.4
Convenience store with gas	1	1	1.4
Grocery store/food market	1	1	1.4
Other food sales	1	1	1.4
Fire station/police station	0.8	0.8	1.1
Other public order and safety	0.8	0.8	1.1
Medical office (diagnostic)	1	1	1.5
Clinic/other outpatient health	1	1	1.5
Refrigerated warehouse	1	1	1
Religious worship	0.9	1.7	1.7
Entertainment/culture	0.8	1.5	1.5
Library	0.8	1.5	1.5
Recreation	0.8	1.5	1.5
Social/meeting	0.8	1.5	1.5
Other public assembly	0.8	1.5	1.5
College/university	0.8	1.3	1.3
Elementary/middle school	0.8	1.3	1.3
High school	0.8	1.3	1.3
Preschool/daycare	0.8	1.3	1.3

TABLE 1—SHIFT ADJUSTMENT MULTIPLIER BY HOURS OF OPERATION AND BUILDING TYPE—Continued

Building activity type	Weekly hours of operation		
	50 or less	51 to 167	168
Other classroom education	0.8	1.3	1.3
Fast food	0.4	1.1	2.1
Restaurant/cafeteria	0.4	1.1	2.1
Other food service	0.4	1.1	2.1
Hospital/inpatient health	1	1	1
Nursing home/assisted living	1	1	1
Dormitory/fraternity/sorority	1	1	1
Hotel	1	1	1
Motel or inn	1	1	1
Other lodging	1	1	1
Vehicle dealership/showroom	0.8	1.2	1.8
Retail store	0.8	1.2	1.8
Other retail	0.8	1.2	1.8
Post office/postal center	0.7	1.5	1.5
Repair shop	0.7	1.5	1.5
Vehicle service/repair shop	0.7	1.5	1.5
Vehicle storage/maintenance	0.7	1.5	1.5
Other service	0.7	1.5	1.5
Strip shopping mall	1	1	1
Enclosed mall	1	1	1
Bar/Pub/Lounge	1	1	1.4
Courthouse/Probation Office	1	1	1.4

(ii) *Design for construction began during or after FY 2030.* For new construction or major renovations of all fossil fuel-using systems in an EISA-subject building for which design for construction or renovation, as applicable, began during or after FY 2030, the Scope 1 fossil fuel-generated energy consumption of the proposed building, based on building design and calculated according to § 433.201(a), must be zero.

(C) *Major Renovations of a Federal Building System or Component within an EISA-Subject Building.* System level renovations shall follow the renovation requirements in section 4.2.1.3 of the applicable building baseline energy efficiency standards listed in § 433.100 substituting the ''design for construction'' with ''design for renovation'' for the relevant date and shall replace all equipment that is included in the renovation with all electric or non-fossil fuel-using ENERGY STAR or Federal Energy Management Program (FEMP) designated products as defined in § 436.42 of this chapter. For component level renovations, Agencies shall replace all equipment that is part of the renovation with all electric or non-fossil fuel-using ENERGY STAR or FEMP designated products as defined in § 436.42 of this chapter.

(D) *Mixed-use buildings.*

(*1*) For Federal buildings subject to the requirements of paragraph (c)(1)(A) of this section that combine two or more building types identified in Tables 1a to 2a or Tables 1b to 2b of appendix A of this subpart, the maximum allowable fossil fuel-generated energy consumption of the proposed building is equal to the averaged applicable building type values in Tables A–1a to A–2a or Tables A–1b to A–2b weighted by floor area of the two or more building types. The equation which follows shall be used for mixed use buildings.

Equation 1: Scope 1 Fossil fuel-generated energy consumption for a mixed-use building = the sum across all building uses of (the fraction of total floor building floor area for building use i times the allowable fossil fuel-generated energy consumption for building use i)

Equation 1 may be rewritten as:

$$\textit{Scope 1 Fossil Fuel} - \textit{Generated Energy Consumption for a Mixed Use Building} = \sum_{i=1}^{n} (\textit{Fraction of Total Building Floor Area for Building Use i times Allowable Scope 1 Fossil Fuel} - \textit{Generated Energy Consumption for Building Use i})$$

(*2*) For example, if a proposed building for which design for construction began in FY 2026 that is to be built in climate zone 4a has a total of 200 square feet—100 square feet of which qualifies as College/University and 100 square feet of which qualifies as Laboratory—the maximum allowable Scope 1 fossil fuel-generated energy consumption is equal to:

[(100 sqft. × 3 kBtu/yr.-sqft.) + (100 sqft × 10 kBtu/yr.-sqft.)]/200 sqft. = 6.5 kBtu/yr.-sqft.

(d) *Federal buildings that are of the type not included in Appendix A of this subpart—*

(1) *Process load buildings.* For building types that are not included in any of the building types listed in Tables A–1a to A–2a or A–1b to A–2b of appendix A of this subpart, or for building types in these tables that contain significant process loads that are not likely to be found in the Commercial Buildings Energy Consumption Survey (CBECS) and qualify for exemption per § 433.202, Federal agencies must select the applicable building type, climate zone, and fiscal year in which design for construction began from Tables 1a to 2a or 1b to 2b of appendix A of this subpart

that most closely corresponds to the proposed building without the process load. The estimated Scope 1 fossil fuel-generated energy consumption of the process load must be added to the maximum allowable Scope 1 fossil fuel-generated energy consumption of the applicable building type for the appropriate fiscal year and climate zone to calculate the maximum allowable Scope 1 fossil fuel-generated energy consumption for the building. The same estimated Scope 1 fossil fuel-generated energy consumption of the process load that is added to the maximum allowable Scope 1 fossil fuel-generated energy consumption of the applicable building must also be used in determining the Scope 1 fossil fuel-generated energy consumption of the proposed building.

(2) *Mixed-use buildings.* For buildings that combine two or more building types with process loads or, alternatively, that combine one or more building types with process loads with one or more building types in Tables A–1a to A–2a or A–1b to A–2b of appendix A of this subpart, the maximum allowable Scope 1 fossil fuel-generated energy consumption of the proposed building is equal to the averaged process load building values determined under paragraph (d)(1) of this section and the applicable building type values in Tables A–1a to A–2a or A–1b to A–2b of appendix A of this subpart, weighted by floor area.

§ 433.201 Scope 1 Fossil fuel-generated energy consumption determination.

(a) The fossil fuel-generated energy consumption of a proposed building is calculated as follows:

Equation 2: Fossil fuel-generated energy consumption = Direct Scope 1 Fossil Fuel-Generated Consumption of Proposed Building/Floor Area

Where:

Direct Scope 1 Fossil Fuel-Generated Energy Consumption of Proposed Building equals the total Scope 1 fossil fuel-generated energy consumption of the proposed building calculated in accordance with the method required in § 433.101(a)(5) and measured in thousands of British thermal units per year (kBtu/yr), except that this term does not include fossil fuel consumption for emergency electricity generation. Agencies must include all on-site fossil fuel use or Scope 1 emissions associated with non-emergency generation from backup generators (such as those for peak shaving or peak shifting). Any energy generation or Scope 1 emissions associated with biomass fuels are excluded. Any emissions associated with natural gas for alternatively fueled vehicles (''AFVs'') (or any other alternative fuel defined at 42 U.S.C. 13211 that is provided at a Federal building) is excluded. For buildings with manufacturing or industrial process loads, the process loads should be accounted for in the analysis for the building's fossil fuel consumption and GHG emissions, but are not subject to the phase down targets.

Floor Area is the area enclosed by the exterior walls of a building, both finished and unfinished, including indoor parking facilities, basements, hallways, lobbies, stairways, and elevator shafts.

§ 433.202 Petition for downward adjustment.

(a) *New Federal buildings, major renovations of all Scope 1 fossil fuel-using systems, and major renovations of a Scope 1 fossil fuel-using building system or component in an EISA-subject building.* (1) Upon petition by a Federal agency, the Director of FEMP may adjust the applicable maximum allowable Scope 1 fossil fuel-generated energy consumption standard with respect to a specific building, upon written certification from the head of the agency designing the building or major renovation, that the requested adjustment is the largest feasible reduction in Scope 1 fossil fuel energy consumption that can practicably be achieved in light of the specified functional needs for that building, as demonstrated by the following (which is not an exhaustive list and whose components may be further modified by guidance):

(i) A statement from the Head of the Agency or their designee requesting the petition for downward adjustment for the building or renovation, that the building or renovation reduces consumption of Scope 1 fossil fuel energy consumption in accordance with the applicable energy performance standard to the maximum extent practicable and that each fossil fuel using product included in the proposed building that is of a product category covered by the ENERGY STAR program or FEMP for designated products is an ENERGY STAR product or a product meeting the FEMP designation criteria, as applicable;

(ii) A description of the systems, technologies, and practices that were evaluated and unable to meet the required fossil fuel reduction, including a justification of why achieving the Scope 1 fossil fuel-based energy consumption targets would be technically impracticable;

(iii) Any other information the agency determines would help explain its request;

(iv) A general description of the building or major renovation, including but not limited to location, use type, floor area, stories, expected number of occupants and occupant schedule, project type, project cost, and functional needs, mission critical activity, research, and national security operations as applicable;

(v) The maximum allowable Scope 1 fossil fuel energy consumption for the building from § 433.200(c) or (d);

(vi) The estimated Scope 1 fossil fuel energy consumption of the proposed building; and

(vii) A description of the proposed building's energy-related features, such as:

(A) HVAC system or component type and configuration;

(B) HVAC equipment sizes and efficiencies;

(C) Ventilation systems or components (including outdoor air volume, controls technique, heat recovery systems, and economizers, if applicable);

(D) Service water heating system or component configuration and equipment (including solar hot water, wastewater heat recovery, and controls for circulating hot water systems, if applicable);

(E) Estimated industrial process loads; and

(F) Any other on-site fossil fuel using equipment.

(2)(i) Agencies may file one petition for a project with multiple buildings if the buildings are

(A) Of the same building, building system, or component type and of similar size, location, and functional purpose;

(B) Are being designed and constructed to the same set of targets for fossil fuel-generated energy consumption reduction; and

(C) would require similar measures to reduce fossil fuel-generated energy consumption and similar adjustment to the numeric reduction requirement.

(ii) The bundled petition must include the information in paragraph (a) of this section that pertains to all buildings, building systems, or components included in the petition and an additional description of the differences between each building, building system, or component. The agency is only required to show work for adjustment once.

(3) Petitions for downward adjustment should be submitted to *cer-petition@hq.doe.gov,* or to: U.S. Department of Energy, FEMP, Director, Clean Energy Reduction Petitions, EE–5F, 1000 Independence Ave. SW, Washington, DC 20585–0121.

(4) The Director of FEMP will make a best effort to notify the requesting

agency in writing whether the petition for downward adjustment to the numeric reduction requirement is approved or rejected, in 30 calendar days of submittal, provided that the petition is complete. If the Director rejects the petition or establishes a value other than that presented in the petition, the Director will forward its reasons for rejection to the petitioning agency.

(b) *Exclusions.* The General Services Administration (GSA) may not submit petitions under paragraph (a) of this section. Agencies that are tenants of GSA buildings for which the agency, not GSA, has significant design control may submit petitions in accordance with this section.

Appendix A to Subpart B of Part 433—Maximum Allowable Scope 1 Fossil Fuel-Generated Energy Consumption

(a) For purposes of the tables in this appendix, the climate zones are the same as those listed in the performance standards required by § 433.100(a)(5)(i).

(b) For purpose of appendix A, the following definitions apply:

(1) *Education* means a category of buildings used for academic or technical classroom instruction, such as elementary, middle, or high schools, and classroom buildings on college or university campuses. Buildings on education campuses for which the main use is not as a classroom are included in the category relating to their use. For example, administration buildings are part of ''Office,'' dormitories are ''Lodging,'' and libraries are ''Public Assembly.''

(2) *Food sales* means a category of buildings used for retail or wholesale of food. For example, grocery stores are ''Food Sales.''

(3) *Food service* means a category of buildings used for preparation and sale of food and beverages for consumption. For example, restaurants are ''Food Service.''

(4) *Health care (Inpatient)* means a category of buildings used as diagnostic and treatment facilities for inpatient care.

(5) *Health care (Outpatient)* means a category of buildings used as diagnostic and treatment facilities for outpatient care. Medical offices are included here if they use any type of diagnostic medical equipment (if they do not, they are categorized as an office building).

(6) *Laboratory* means a category of buildings equipped for scientific experimentation or research as well as other technical, analytical and administrative activities.

(7) *Lodging* means a category of buildings used to offer multiple accommodations for short-term or long-term residents, including skilled nursing and other residential care buildings.

(8) *Mercantile (Enclosed and Strip Malls)* means a category of shopping malls comprised of multiple connected establishments.

(9) *Multi-Family High-Rise Residential Buildings* means a category of residential buildings that contain 3 or more dwelling units and that is designed to be 4 or more stories above grade.

(10) *Office* means a category of buildings used for general office space, professional office, or administrative offices. Medical offices are included here if they do not use any type of diagnostic medical equipment (if they do, they are categorized as an outpatient health care building).

(11) *Public assembly* means a category of public or private buildings, or spaces therein, in which people gather for social or recreational activities.

(12) *Public order and safety* means a category of buildings used for the preservation of law and order or public safety.

(13) *Religious worship* means a category of buildings in which people gather for religious activities, (such as chapels, churches, mosques, synagogues, and temples).

(14) *Retail (Other Than Mall)* means a category of buildings used for the sale and display of goods other than food.

(15) *Service* means a category of buildings in which some type of service is provided, other than food service or retail sales of goods.

(16) *Warehouse and storage* means a category of buildings used to store goods, manufactured products, merchandise, raw materials, or personal belongings (such as self-storage).

BILLING CODE 6450–01–P

Table A-1a – FY 2020-FY 2024 Maximum Allowable Fossil Fuel-Generated Energy Consumption by Building Category, Building Type and Climate Zone, Commercial Buildings and Multi-Family High-Rise Residential Buildings (CO_2e/yr-sqft)

Building Category	Climate Zone:	0A	0B	1A	1B	2A	2B	3A	3B	3C	4A	4B	4C	5A	5B	5C	6A	6B	7	8
	Building Type	Fossil Fuel-Generated Energy Use Intensity (CO_2e/yr-sqft)																		
Education	College/ university	0.21	0.22	0.23	0.28	0.35	0.33	0.47	0.42	0.47	0.61	0.59	0.60	0.76	0.72	0.64	0.89	0.89	1.04	1.39
Education	Elementary/ middle school	0.33	0.34	0.36	0.44	0.54	0.51	0.73	0.65	0.73	0.95	0.92	0.94	1.19	1.13	1.01	1.38	1.39	1.63	2.17
Education	High school	0.02	0.02	0.06	0.17	0.34	0.29	0.62	0.50	0.62	0.96	0.90	0.94	1.33	1.22	1.04	1.62	1.63	1.99	2.82
Education	Other classroom education	0.13	0.13	0.14	0.16	0.20	0.19	0.27	0.25	0.27	0.36	0.35	0.35	0.45	0.42	0.38	0.52	0.52	0.61	0.82
Education	Preschool/ daycare	0.30	0.31	0.33	0.40	0.49	0.46	0.66	0.59	0.66	0.87	0.83	0.85	1.08	1.02	0.92	1.26	1.26	1.48	1.97
Enclosed Mall	Enclosed mall	0.35	0.35	0.38	0.46	0.57	0.54	0.76	0.68	0.76	1.00	0.96	0.99	1.25	1.18	1.06	1.45	1.46	1.71	2.27
Food Sales	Convenience store	0.33	0.34	0.36	0.43	0.54	0.51	0.73	0.65	0.73	0.95	0.91	0.94	1.19	1.12	1.00	1.38	1.39	1.62	2.16
Food Sales	Convenience store with gas station	0.24	0.24	0.26	0.31	0.39	0.36	0.52	0.46	0.52	0.68	0.65	0.67	0.85	0.80	0.72	0.98	0.99	1.16	1.54
Food Sales	Grocery store/food market	0.35	0.36	0.38	0.46	0.58	0.54	0.77	0.69	0.78	1.01	0.97	1.00	1.27	1.20	1.07	1.47	1.48	1.73	2.30
Food Sales	Other food sales	1.09	1.11	1.18	1.43	1.78	1.68	2.38	2.13	2.39	3.12	3.00	3.08	3.91	3.69	3.30	4.54	4.56	5.33	7.11
Food Service	Fast food	2.06	2.09	2.23	2.70	3.37	3.16	4.50	4.02	4.51	5.90	5.67	5.82	7.39	6.97	6.24	8.56	8.60	10.06	13.41
Food Service	Other food service	0.27	0.27	0.29	0.35	0.44	0.41	0.59	0.52	0.59	0.77	0.74	0.76	0.96	0.91	0.81	1.11	1.12	1.31	1.74
Food Service	Restaurant/ cafeteria	1.47	1.49	1.59	1.92	2.40	2.25	3.21	2.87	3.21	4.20	4.04	4.15	5.26	4.96	4.44	6.10	6.13	7.17	9.56
Inpatient Health Care	Hospital/ inpatient health	1.06	1.08	1.13	1.31	1.56	1.48	1.99	1.81	2.00	2.53	2.44	2.50	3.10	2.93	2.66	3.54	3.56	4.12	5.40
Laboratory	Laboratory	0.79	0.80	0.85	1.03	1.28	1.21	1.72	1.53	1.72	2.25	2.16	2.22	2.82	2.66	2.38	3.26	3.28	3.83	5.11
Lodging	Dormitory/fraternity/sorority	0.51	0.51	0.55	0.66	0.83	0.78	1.10	0.99	1.11	1.45	1.39	1.43	1.81	1.71	1.53	2.10	2.11	2.47	3.29
Lodging	Hotel	0.46	0.47	0.50	0.60	0.75	0.71	1.00	0.90	1.01	1.32	1.26	1.30	1.65	1.55	1.39	1.91	1.92	2.24	2.99
Lodging	Motel or inn	0.60	0.61	0.65	0.78	0.98	0.92	1.31	1.17	1.31	1.71	1.65	1.69	2.14	2.02	1.81	2.49	2.50	2.92	3.90
Lodging	Other lodging	0.23	0.24	0.25	0.30	0.38	0.36	0.51	0.45	0.51	0.66	0.64	0.65	0.83	0.78	0.70	0.96	0.97	1.13	1.51
Nursing	Nursing home/ assisted living	0.82	0.83	0.88	1.07	1.33	1.25	1.78	1.60	1.79	2.34	2.25	2.31	2.93	2.76	2.47	3.39	3.41	3.99	5.32
Office	Administrative/	0.30	0.31	0.33	0.39	0.49	0.46	0.66	0.59	0.66	0.86	0.83	0.85	1.08	1.02	0.91	1.25	1.26	1.47	1.96

Building Category	Climate Zone:	0A	0B	1A	1B	2A	2B	3A	3B	3C	4A	4B	4C	5A	5B	5C	6A	6B	7	8
	Building Type	Fossil Fuel-Generated Energy Use Intensity (CO_2e/yr-sqft)																		
	professional office																			
Office	Bank/other financial	0.18	0.19	0.20	0.24	0.30	0.28	0.40	0.36	0.40	0.53	0.50	0.52	0.66	0.62	0.56	0.76	0.77	0.90	1.19
Office	Government office	0.31	0.31	0.33	0.40	0.50	0.47	0.67	0.60	0.67	0.88	0.84	0.87	1.10	1.04	0.93	1.27	1.28	1.50	2.00
Office	Medical office (non-diagnostic)	0.34	0.35	0.37	0.45	0.56	0.52	0.74	0.66	0.74	0.97	0.94	0.96	1.22	1.15	1.03	1.41	1.42	1.66	2.21
Office	Mixed-use office	0.26	0.27	0.28	0.34	0.43	0.40	0.58	0.51	0.58	0.75	0.72	0.74	0.94	0.89	0.80	1.10	1.10	1.29	1.72
Office	Other office	0.40	0.40	0.43	0.52	0.65	0.61	0.86	0.77	0.87	1.13	1.09	1.12	1.42	1.34	1.20	1.64	1.65	1.93	2.58
Outpatient Health Care	Clinic/other outpatient health	0.25	0.25	0.27	0.33	0.41	0.38	0.55	0.49	0.55	0.71	0.69	0.71	0.90	0.84	0.76	1.04	1.04	1.22	1.63
Outpatient Health Care	Medical office (diagnostic)	0.27	0.27	0.29	0.35	0.44	0.41	0.58	0.52	0.59	0.77	0.74	0.76	0.96	0.90	0.81	1.11	1.12	1.31	1.74
Public Assembly	Entertainment/ culture	0.20	0.20	0.21	0.25	0.32	0.30	0.43	0.38	0.43	0.56	0.54	0.55	0.70	0.66	0.59	0.81	0.81	0.95	1.27
Public Assembly	Library	0.23	0.24	0.25	0.30	0.38	0.36	0.51	0.45	0.51	0.67	0.64	0.66	0.83	0.79	0.70	0.97	0.97	1.14	1.51
Public Assembly	Other public assembly	0.23	0.24	0.25	0.31	0.38	0.36	0.51	0.46	0.51	0.67	0.64	0.66	0.84	0.79	0.71	0.97	0.97	1.14	1.52
Public Assembly	Recreation	0.24	0.24	0.26	0.31	0.39	0.37	0.53	0.47	0.53	0.69	0.66	0.68	0.86	0.81	0.73	1.00	1.00	1.17	1.57
Public Assembly	Social/meeting	0.30	0.30	0.32	0.39	0.49	0.46	0.65	0.58	0.65	0.85	0.82	0.84	1.06	1.00	0.90	1.23	1.24	1.45	1.93
Public Order & Safety	Fire station/ police station	0.54	0.55	0.58	0.70	0.88	0.83	1.17	1.05	1.18	1.54	1.48	1.52	1.93	1.82	1.63	2.23	2.25	2.62	3.50
Public Order & Safety	Other public order and safety	0.26	0.27	0.29	0.35	0.43	0.40	0.58	0.52	0.58	0.75	0.73	0.74	0.95	0.89	0.80	1.10	1.10	1.29	1.72
Religious Worship	Religious worship	0.24	0.24	0.26	0.31	0.39	0.37	0.52	0.47	0.52	0.68	0.66	0.67	0.85	0.81	0.72	0.99	1.00	1.16	1.55
Retail (except malls)	Other retail	0.40	0.40	0.43	0.52	0.65	0.61	0.86	0.77	0.86	1.13	1.09	1.12	1.42	1.34	1.20	1.64	1.65	1.93	2.57
Retail (except malls)	Retail store	0.01	0.01	0.04	0.11	0.22	0.18	0.40	0.32	0.40	0.62	0.58	0.61	0.85	0.79	0.67	1.04	1.05	1.28	1.81
Retail (except malls)	Vehicle dealership/ showroom	0.56	0.57	0.60	0.73	0.91	0.86	1.22	1.09	1.22	1.60	1.54	1.58	2.00	1.89	1.69	2.32	2.33	2.72	3.63
Service	Other service	0.58	0.59	0.63	0.76	0.95	0.89	1.27	1.13	1.27	1.66	1.60	1.64	2.08	1.96	1.76	2.41	2.42	2.83	3.78

Building Category	Climate Zone:	0A	0B	1A	1B	2A	2B	3A	3B	3C	4A	4B	4C	5A	5B	5C	6A	6B	7	8
	Building Type	**Fossil Fuel-Generated Energy Use Intensity (CO_2e/yr-sqft)**																		
Service	Post office/postal center	0.24	0.25	0.26	0.32	0.40	0.37	0.53	0.47	0.53	0.69	0.67	0.69	0.87	0.82	0.73	1.01	1.01	1.19	1.58
Service	Repair shop	0.18	0.18	0.20	0.24	0.30	0.28	0.40	0.35	0.40	0.52	0.50	0.51	0.65	0.61	0.55	0.75	0.76	0.89	1.18
Service	Vehicle service/repair shop	0.37	0.37	0.39	0.48	0.60	0.56	0.80	0.71	0.80	1.04	1.00	1.03	1.31	1.23	1.10	1.51	1.52	1.78	2.37
Service	Vehicle storage/maintenance	0.29	0.30	0.31	0.38	0.47	0.45	0.63	0.57	0.64	0.83	0.80	0.82	1.04	0.98	0.88	1.21	1.21	1.42	1.89
Strip Shopping Mall	Strip shopping mall	0.35	0.35	0.38	0.45	0.57	0.53	0.76	0.68	0.76	0.99	0.96	0.98	1.25	1.17	1.05	1.44	1.45	1.70	2.26
Warehouse	Distribution/ shipping center	0.20	0.20	0.21	0.26	0.32	0.31	0.43	0.39	0.44	0.57	0.55	0.56	0.71	0.67	0.60	0.83	0.83	0.97	1.29
Warehouse	Non-refrigerated warehouse	0.19	0.19	0.20	0.25	0.31	0.29	0.41	0.37	0.41	0.54	0.52	0.53	0.68	0.64	0.57	0.78	0.79	0.92	1.23
Warehouse	Refrigerated warehouse	0.03	0.04	0.04	0.05	0.06	0.05	0.08	0.07	0.08	0.10	0.10	0.10	0.12	0.12	0.11	0.14	0.15	0.17	0.23

Table A-1b – FY 2020-FY 2024 Maximum Allowable Fossil Fuel-Generated Energy Consumption by Building Category, Building Type and Climate Zone, Commercial Buildings and Multi-Family High-Rise Residential Buildings (source kBtu/yr-sqft)

Building Category	Climate Zone:	0A	0B	1A	1B	2A	2B	3A	3B	3C	4A	4B	4C	5A	5B	5C	6A	6B	7	8
	Building Type	Fossil Fuel-Generated Energy Use Intensity (site kBtu/yr-sqft)																		
Education	College/ university	2	2	2	3	3	3	4	4	4	6	5	5	7	7	6	8	8	9	13
Education	Elementary/ middle school	3	3	3	4	5	5	7	6	7	9	8	9	11	10	9	13	13	15	20
Education	High school	0	0	1	2	3	3	6	5	6	9	8	9	12	11	9	15	15	18	26
Education	Other classroom education	1	1	1	1	2	2	2	2	2	3	3	3	4	4	3	5	5	6	7
Education	Preschool/ daycare	3	3	3	4	4	4	6	5	6	8	8	8	10	9	8	11	11	13	18
Enclosed Mall	Enclosed mall	3	3	3	4	5	5	7	6	7	9	9	9	11	11	10	13	13	15	21
Food Sales	Convenience store	3	3	3	4	5	5	7	6	7	9	8	9	11	10	9	13	13	15	20
Food Sales	Convenience store with gas station	2	2	2	3	4	3	5	4	5	6	6	6	8	7	7	9	9	10	14
Food Sales	Grocery store/ food market	3	3	3	4	5	5	7	6	7	9	9	9	12	11	10	13	13	16	21
Food Sales	Other food sales	10	10	11	13	16	15	22	19	22	28	27	28	36	33	30	41	41	48	64
Food Service	Fast food	19	19	20	24	31	29	41	37	41	54	51	53	67	63	57	78	78	91	122
Food Service	Other food service	2	2	3	3	4	4	5	5	5	7	7	7	9	8	7	10	10	12	16
Food Service	Restaurant/ cafeteria	13	14	14	17	22	20	29	26	29	38	37	38	48	45	40	55	56	65	87
Inpatient Health Care	Hospital/ inpatient health	10	10	10	12	14	13	18	16	18	23	22	23	28	27	24	32	32	37	49
Laboratory	Laboratory	7	7	8	9	12	11	16	14	16	20	20	20	26	24	22	30	30	35	46
Lodging	Dormitory/ fraternity/ sorority	5	5	5	6	7	7	10	9	10	13	13	13	16	16	14	19	19	22	30
Lodging	Hotel	4	4	5	5	7	6	9	8	9	12	11	12	15	14	13	17	17	20	27
Lodging	Motel or inn	5	6	6	7	9	8	12	11	12	16	15	15	19	18	16	23	23	27	35
Lodging	Other lodging	2	2	2	3	3	3	5	4	5	6	6	6	8	7	6	9	9	10	14
Nursing	Nursing home/ assisted living	7	8	8	10	12	11	16	14	16	21	20	21	27	25	22	31	31	36	48
Office	Administrative/	3	3	3	4	4	4	6	5	6	8	8	8	10	9	8	11	11	13	18

Building Category	Climate Zone:	0A	0B	1A	1B	2A	2B	3A	3B	3C	4A	4B	4C	5A	5B	5C	6A	6B	7	8
	Building Type	Fossil Fuel-Generated Energy Use Intensity (site kBtu/yr-sqft)																		
	professional office																			
Office	Bank/ other financial	2	2	2	2	3	3	4	3	4	5	5	5	6	6	5	7	7	8	11
Office	Government office	3	3	3	4	5	4	6	5	6	8	8	8	10	9	8	12	12	14	18
Office	Medical office (non-diagnostic)	3	3	3	4	5	5	7	6	7	9	8	9	11	10	9	13	13	15	20
Office	Mixed-use office	2	2	3	3	4	4	5	5	5	7	7	7	9	8	7	10	10	12	16
Office	Other office	4	4	4	5	6	6	8	7	8	10	10	10	13	12	11	15	15	18	23
Outpatient Health Care	Clinic/other outpatient health	2	2	2	3	4	3	5	4	5	6	6	6	8	8	7	9	9	11	15
Outpatient Health Care	Medical office (diagnostic)	2	2	3	3	4	4	5	5	5	7	7	7	9	8	7	10	10	12	16
Public Assembly	Entertainment/ culture	2	2	2	2	3	3	4	3	4	5	5	5	6	6	5	7	7	9	11
Public Assembly	Library	2	2	2	3	3	3	5	4	5	6	6	6	8	7	6	9	9	10	14
Public Assembly	Other public assembly	2	2	2	3	3	3	5	4	5	6	6	6	8	7	6	9	9	10	14
Public Assembly	Recreation	2	2	2	3	4	3	5	4	5	6	6	6	8	7	7	9	9	11	14
Public Assembly	Social/meeting	3	3	3	4	4	4	6	5	6	8	7	8	10	9	8	11	11	13	18
Public Order & Safety	Fire station/ police station	5	5	5	6	8	7	11	10	11	14	13	14	17	16	15	20	20	24	32
Public Order & Safety	Other public order and safety	2	2	3	3	4	4	5	5	5	7	7	7	9	8	7	10	10	12	16
Religious Worship	Religious worship	2	2	2	3	4	3	5	4	5	6	6	6	8	7	7	9	9	11	14
Retail (except malls)	Other retail	4	4	4	5	6	6	8	7	8	10	10	10	13	12	11	15	15	17	23
Retail (except malls)	Retail store	0	0	0	1	2	2	4	3	4	6	5	5	8	7	6	9	9	12	16
Retail (except malls)	Vehicle dealership/ showroom	5	5	5	7	8	8	11	10	11	14	14	14	18	17	15	21	21	25	33
Service	Other service	5	5	6	7	9	8	12	10	12	15	14	15	19	18	16	22	22	26	34

Building Category	Climate Zone:	0A	0B	1A	1B	2A	2B	3A	3B	3C	4A	4B	4C	5A	5B	5C	6A	6B	7	8
	Building Type	Fossil Fuel-Generated Energy Use Intensity (site kBtu/yr-sqft)																		
Service	Post office/ postal center	2	2	2	3	4	3	5	4	5	6	6	6	8	7	7	9	9	11	14
Service	Repair shop	2	2	2	2	3	3	4	3	4	5	5	5	6	6	5	7	7	8	11
Service	Vehicle service/ repair shop	3	3	4	4	5	5	7	6	7	9	9	9	12	11	10	14	14	16	22
Service	Vehicle storage/ maintenance	3	3	3	3	4	4	6	5	6	8	7	7	9	9	8	11	11	13	17
Strip Shopping Mall	Strip shopping mall	3	3	3	4	5	5	7	6	7	9	9	9	11	11	10	13	13	15	21
Warehouse	Distribution/ shipping center	2	2	2	2	3	3	4	4	4	5	5	5	6	6	5	7	8	9	12
Warehouse	Non-refrigerated warehouse	2	2	2	2	3	3	4	3	4	5	5	5	6	6	5	7	7	8	11
Warehouse	Refrigerated warehouse	0	0	0	0	1	0	1	1	1	1	1	1	1	1	1	1	1	2	2

Table A-2a – FY 2025-FY 2029 Maximum Allowable Fossil Fuel-Generated Energy Consumption by Building Category, Building Type and Climate Zone, Commercial Buildings and Multi-Family High-Rise Residential Buildings (CO_2e/yr-sqft)

Building Category	Climate Zone:	0A	0B	1A	1B	2A	2B	3A	3B	3C	4A	4B	4C	5A	5B	5C	6A	6B	7	8
	Building Type	Fossil Fuel-Generated Energy Use Intensity (CO_2e/yr-sqft)																		
Education	College/ university	0.11	0.11	0.12	0.14	0.17	0.16	0.23	0.21	0.23	0.30	0.29	0.30	0.38	0.36	0.32	0.44	0.44	0.52	0.69
Education	Elementary/ middle school	0.17	0.17	0.18	0.22	0.27	0.26	0.36	0.33	0.36	0.48	0.46	0.47	0.60	0.56	0.50	0.69	0.70	0.81	1.08
Education	High school	0.01	0.01	0.03	0.09	0.17	0.14	0.31	0.25	0.31	0.48	0.45	0.47	0.66	0.61	0.52	0.81	0.81	0.99	1.41
Education	Other classroom education	0.06	0.06	0.07	0.08	0.10	0.10	0.14	0.12	0.14	0.18	0.17	0.18	0.22	0.21	0.19	0.26	0.26	0.31	0.41
Education	Preschool/dayc are	0.15	0.15	0.16	0.20	0.25	0.23	0.33	0.30	0.33	0.43	0.42	0.43	0.54	0.51	0.46	0.63	0.63	0.74	0.98
Enclosed Mall	Enclosed mall	0.17	0.18	0.19	0.23	0.29	0.27	0.38	0.34	0.38	0.50	0.48	0.49	0.63	0.59	0.53	0.73	0.73	0.85	1.14
Food Sales	Convenience store	0.17	0.17	0.18	0.22	0.27	0.25	0.36	0.32	0.36	0.48	0.46	0.47	0.60	0.56	0.50	0.69	0.69	0.81	1.08
Food Sales	Convenience store with gas station	0.12	0.12	0.13	0.15	0.19	0.18	0.26	0.23	0.26	0.34	0.33	0.33	0.42	0.40	0.36	0.49	0.49	0.58	0.77
Food Sales	Grocery store/ food market	0.18	0.18	0.19	0.23	0.29	0.27	0.39	0.35	0.39	0.51	0.49	0.50	0.63	0.60	0.54	0.74	0.74	0.86	1.15
Food Sales	Other food sales	0.55	0.55	0.59	0.71	0.89	0.84	1.19	1.07	1.19	1.56	1.50	1.54	1.96	1.85	1.65	2.27	2.28	2.66	3.55
Food Service	Fast food	1.03	1.05	1.11	1.35	1.68	1.58	2.25	2.01	2.26	2.95	2.83	2.91	3.69	3.48	3.12	4.28	4.30	5.03	6.71
Food Service	Other food service	0.13	0.14	0.14	0.18	0.22	0.21	0.29	0.26	0.29	0.38	0.37	0.38	0.48	0.45	0.41	0.56	0.56	0.65	0.87
Food Service	Restaurant/cafe teria	0.74	0.75	0.79	0.96	1.20	1.13	1.60	1.43	1.61	2.10	2.02	2.07	2.63	2.48	2.22	3.05	3.06	3.58	4.78
Inpatient Health Care	Hospital/ inpatient health	0.53	0.54	0.56	0.65	0.78	0.74	1.00	0.91	1.00	1.26	1.22	1.25	1.55	1.47	1.33	1.77	1.78	2.06	2.70
Laboratory	Laboratory	0.39	0.40	0.42	0.51	0.64	0.60	0.86	0.77	0.86	1.12	1.08	1.11	1.41	1.33	1.19	1.63	1.64	1.92	2.56
Lodging	Dormitory/ fraternity/ sorority	0.25	0.26	0.27	0.33	0.41	0.39	0.55	0.49	0.55	0.72	0.70	0.71	0.91	0.85	0.76	1.05	1.06	1.23	1.65
Lodging	Hotel	0.23	0.23	0.25	0.30	0.38	0.35	0.50	0.45	0.50	0.66	0.63	0.65	0.82	0.78	0.70	0.96	0.96	1.12	1.50
Lodging	Motel or inn	0.30	0.30	0.32	0.39	0.49	0.46	0.65	0.58	0.66	0.86	0.82	0.84	1.07	1.01	0.91	1.24	1.25	1.46	1.95
Lodging	Other lodging	0.12	0.12	0.13	0.15	0.19	0.18	0.25	0.23	0.25	0.33	0.32	0.33	0.42	0.39	0.35	0.48	0.48	0.57	0.75
Nursing	Nursing home/ assisted living	0.41	0.42	0.44	0.53	0.67	0.63	0.89	0.80	0.89	1.17	1.12	1.15	1.46	1.38	1.24	1.70	1.71	1.99	2.66

Building Category	Climate Zone:	0A	0B	1A	1B	2A	2B	3A	3B	3C	4A	4B	4C	5A	5B	5C	6A	6B	7	8
	Building Type	**Fossil Fuel-Generated Energy Use Intensity (CO_2e/yr-sqft)**																		
Office	Administrative/ professional office	0.15	0.15	0.16	0.20	0.25	0.23	0.33	0.29	0.33	0.43	0.41	0.43	0.54	0.51	0.46	0.63	0.63	0.74	0.98
Office	Bank/other financial	0.09	0.09	0.10	0.12	0.15	0.14	0.20	0.18	0.20	0.26	0.25	0.26	0.33	0.31	0.28	0.38	0.38	0.45	0.60
Office	Government office	0.15	0.16	0.17	0.20	0.25	0.24	0.33	0.30	0.34	0.44	0.42	0.43	0.55	0.52	0.46	0.64	0.64	0.75	1.00
Office	Medical office (non-diagnostic)	0.17	0.17	0.18	0.22	0.28	0.26	0.37	0.33	0.37	0.49	0.47	0.48	0.61	0.58	0.51	0.71	0.71	0.83	1.11
Office	Mixed-use office	0.13	0.13	0.14	0.17	0.22	0.20	0.29	0.26	0.29	0.38	0.36	0.37	0.47	0.45	0.40	0.55	0.55	0.64	0.86
Office	Other office	0.20	0.20	0.21	0.26	0.32	0.30	0.43	0.39	0.43	0.57	0.54	0.56	0.71	0.67	0.60	0.82	0.83	0.97	1.29
Outpatient Health Care	Clinic/ other outpatient health	0.13	0.13	0.13	0.16	0.20	0.19	0.27	0.24	0.27	0.36	0.34	0.35	0.45	0.42	0.38	0.52	0.52	0.61	0.81
Outpatient Health Care	Medical office (diagnostic)	0.13	0.14	0.14	0.18	0.22	0.21	0.29	0.26	0.29	0.38	0.37	0.38	0.48	0.45	0.41	0.56	0.56	0.65	0.87
Public Assembly	Entertainment/ culture	0.10	0.10	0.11	0.13	0.16	0.15	0.21	0.19	0.21	0.28	0.27	0.27	0.35	0.33	0.29	0.40	0.41	0.48	0.63
Public Assembly	Library	0.12	0.12	0.13	0.15	0.19	0.18	0.25	0.23	0.25	0.33	0.32	0.33	0.42	0.39	0.35	0.48	0.49	0.57	0.76
Public Assembly	Other public assembly	0.12	0.12	0.13	0.15	0.19	0.18	0.25	0.23	0.26	0.33	0.32	0.33	0.42	0.39	0.35	0.49	0.49	0.57	0.76
Public Assembly	Recreation	0.12	0.12	0.13	0.16	0.20	0.18	0.26	0.23	0.26	0.34	0.33	0.34	0.43	0.41	0.36	0.50	0.50	0.59	0.78
Public Assembly	Social/ meeting	0.15	0.15	0.16	0.19	0.24	0.23	0.32	0.29	0.33	0.42	0.41	0.42	0.53	0.50	0.45	0.62	0.62	0.72	0.97
Public Order & Safety	Fire station /police station	0.27	0.27	0.29	0.35	0.44	0.41	0.59	0.53	0.59	0.77	0.74	0.76	0.96	0.91	0.81	1.12	1.12	1.31	1.75
Public Order & Safety	Other public order and safety	0.13	0.13	0.14	0.17	0.22	0.20	0.29	0.26	0.29	0.38	0.36	0.37	0.47	0.45	0.40	0.55	0.55	0.64	0.86
Religious Worship	Religious worship	0.12	0.12	0.13	0.16	0.19	0.18	0.26	0.23	0.26	0.34	0.33	0.34	0.43	0.40	0.36	0.50	0.50	0.58	0.78
Retail (except malls)	Other retail	0.20	0.20	0.21	0.26	0.32	0.30	0.43	0.39	0.43	0.57	0.54	0.56	0.71	0.67	0.60	0.82	0.82	0.96	1.29
Retail (except malls)	Retail store	0.01	0.01	0.02	0.06	0.11	0.09	0.20	0.16	0.20	0.31	0.29	0.30	0.43	0.39	0.34	0.52	0.52	0.64	0.90
Retail (except malls)	Vehicle dealership/ showroom	0.28	0.28	0.30	0.37	0.46	0.43	0.61	0.55	0.61	0.80	0.77	0.79	1.00	0.94	0.84	1.16	1.17	1.36	1.82

Building Category	Climate Zone:	0A	0B	1A	1B	2A	2B	3A	3B	3C	4A	4B	4C	5A	5B	5C	6A	6B	7	8
	Building Type	**Fossil Fuel-Generated Energy Use Intensity (CO_2e/yr-sqft)**																		
Service	Other service	0.29	0.29	0.31	0.38	0.47	0.45	0.63	0.57	0.64	0.83	0.80	0.82	1.04	0.98	0.88	1.21	1.21	1.42	1.89
Service	Post office/ postal center	0.12	0.12	0.13	0.16	0.20	0.19	0.27	0.24	0.27	0.35	0.33	0.34	0.44	0.41	0.37	0.50	0.51	0.59	0.79
Service	Repair shop	0.09	0.09	0.10	0.12	0.15	0.14	0.20	0.18	0.20	0.26	0.25	0.26	0.33	0.31	0.27	0.38	0.38	0.44	0.59
Service	Vehicle service/ repair shop	0.18	0.19	0.20	0.24	0.30	0.28	0.40	0.36	0.40	0.52	0.50	0.51	0.65	0.62	0.55	0.76	0.76	0.89	1.19
Service	Vehicle storage/ maintenance	0.15	0.15	0.16	0.19	0.24	0.22	0.32	0.28	0.32	0.42	0.40	0.41	0.52	0.49	0.44	0.60	0.61	0.71	0.95
Strip Shopping Mall	Strip shopping mall	0.17	0.18	0.19	0.23	0.28	0.27	0.38	0.34	0.38	0.50	0.48	0.49	0.62	0.59	0.53	0.72	0.73	0.85	1.13
Warehouse	Distribution/ shipping center	0.10	0.10	0.11	0.13	0.16	0.15	0.22	0.19	0.22	0.28	0.27	0.28	0.36	0.34	0.30	0.41	0.41	0.49	0.65
Warehouse	Non-refrigerated warehouse	0.09	0.10	0.10	0.12	0.15	0.14	0.21	0.18	0.21	0.27	0.26	0.27	0.34	0.32	0.29	0.39	0.39	0.46	0.61
Warehouse	Refrigerated warehouse	0.02	0.02	0.02	0.02	0.03	0.03	0.04	0.03	0.04	0.05	0.05	0.05	0.06	0.06	0.05	0.07	0.07	0.08	0.11

Table A-2b – FY 2025-FY 2029 Maximum Allowable Fossil Fuel-Generated Energy Consumption by Building Category, Building Type and Climate Zone, Commercial Buildings and Multi-Family High-Rise Residential Buildings (site kBtu/yr-sqft)

Building Category	Climate Zone:	0A	0B	1A	1B	2A	2B	3A	3B	3C	4A	4B	4C	5A	5B	5C	6A	6B	7	8
	Building Type	Fossil Fuel-Generated Energy Use Intensity (site kBtu/yr-sqft)																		
Education	College/ university	1	1	1	1	2	1	2	2	2	3	3	3	3	3	3	4	4	5	6
Education	Elementary/ middle school	2	2	2	2	2	2	3	3	3	4	4	4	5	5	5	6	6	7	10
Education	High school	0	0	0	1	2	1	3	2	3	4	4	4	6	6	5	7	7	9	13
Education	Other classroom education	1	1	1	1	1	1	1	1	1	2	2	2	2	2	2	2	2	3	4
Education	Preschool/ daycare	1	1	1	2	2	2	3	3	3	4	4	4	5	5	4	6	6	7	9
Enclosed Mall	Enclosed mall	2	2	2	2	3	2	3	3	3	5	4	4	6	5	5	7	7	8	10
Food Sales	Convenience store	2	2	2	2	2	2	3	3	3	4	4	4	5	5	5	6	6	7	10
Food Sales	Convenience store with gas station	1	1	1	1	2	2	2	2	2	3	3	3	4	4	3	4	4	5	7
Food Sales	Grocery store/ food market	2	2	2	2	3	2	4	3	4	5	4	5	6	5	5	7	7	8	10
Food Sales	Other food sales	5	5	5	6	8	8	11	10	11	14	14	14	18	17	15	21	21	24	32
Food Service	Fast food	9	9	10	12	15	14	20	18	20	27	26	26	34	32	28	39	39	46	61
Food Service	Other food service	1	1	1	2	2	2	3	2	3	3	3	3	4	4	4	5	5	6	8
Food Service	Restaurant/ cafeteria	7	7	7	9	11	10	15	13	15	19	18	19	24	23	20	28	28	33	43
Inpatient Health Care	Hospital/ inpatient health	5	5	5	6	7	7	9	8	9	11	11	11	14	13	12	16	16	19	24
Laboratory	Laboratory	4	4	4	5	6	5	8	7	8	10	10	10	13	12	11	15	15	17	23
Lodging	Dormitory/ fraternity/ sorority	2	2	2	3	4	4	5	4	5	7	6	6	8	8	7	10	10	11	15
Lodging	Hotel	2	2	2	3	3	3	5	4	5	6	6	6	7	7	6	9	9	10	14
Lodging	Motel or inn	3	3	3	4	4	4	6	5	6	8	7	8	10	9	8	11	11	13	18
Lodging	Other lodging	1	1	1	1	2	2	2	2	2	3	3	3	4	4	3	4	4	5	7
Nursing	Nursing home/ assisted living	4	4	4	5	6	6	8	7	8	11	10	10	13	13	11	15	15	18	24
Office	Administrative/ professional office	1	1	1	2	2	2	3	3	3	4	4	4	5	5	4	6	6	7	9

Building Category	Climate Zone:	0A	0B	1A	1B	2A	2B	3A	3B	3C	4A	4B	4C	5A	5B	5C	6A	6B	7	8
	Building Type	Fossil Fuel-Generated Energy Use Intensity (site kBtu/yr-sqft)																		
Office	Bank/ other financial	1	1	1	1	1	1	2	2	2	2	2	2	3	3	3	3	3	4	5
Office	Government office	1	1	2	2	2	2	3	3	3	4	4	4	5	5	4	6	6	7	9
Office	Medical office (non-diagnostic)	2	2	2	2	3	2	3	3	3	4	4	4	6	5	5	6	6	8	10
Office	Mixed-use office	1	1	1	2	2	2	3	2	3	3	3	3	4	4	4	5	5	6	8
Office	Other office	2	2	2	2	3	3	4	4	4	5	5	5	6	6	5	7	7	9	12
Outpatient Health Care	Clinic/ other outpatient health	1	1	1	1	2	2	2	2	2	3	3	3	4	4	3	5	5	6	7
Outpatient Health Care	Medical office (diagnostic)	1	1	1	2	2	2	3	2	3	3	3	3	4	4	4	5	5	6	8
Public Assembly	Entertainment/ culture	1	1	1	1	1	1	2	2	2	3	2	2	3	3	3	4	4	4	6
Public Assembly	Library	1	1	1	1	2	2	2	2	2	3	3	3	4	4	3	4	4	5	7
Public Assembly	Other public assembly	1	1	1	1	2	2	2	2	2	3	3	3	4	4	3	4	4	5	7
Public Assembly	Recreation	1	1	1	1	2	2	2	2	2	3	3	3	4	4	3	5	5	5	7
Public Assembly	Social/meeting	1	1	1	2	2	2	3	3	3	4	4	4	5	5	4	6	6	7	9
Public Order & Safety	Fire station/ police station	2	2	3	3	4	4	5	5	5	7	7	7	9	8	7	10	10	12	16
Public Order & Safety	Other public order and safety	1	1	1	2	2	2	3	2	3	3	3	3	4	4	4	5	5	6	8
Religious Worship	Religious worship	1	1	1	1	2	2	2	2	2	3	3	3	4	4	3	4	5	5	7
Retail (except malls)	Other retail	2	2	2	2	3	3	4	3	4	5	5	5	6	6	5	7	7	9	12
Retail (except malls)	Retail store	0	0	0	1	1	1	2	1	2	3	3	3	4	4	3	5	5	6	8
Retail (except malls)	Vehicle dealership/ showroom	3	3	3	3	4	4	6	5	6	7	7	7	9	9	8	11	11	12	16
Service	Other service	3	3	3	3	4	4	6	5	6	8	7	7	9	9	8	11	11	13	17
Service	Post office/ postal center	1	1	1	1	2	2	2	2	2	3	3	3	4	4	3	5	5	5	7

Building Category	Climate Zone:	0A	0B	1A	1B	2A	2B	3A	3B	3C	4A	4B	4C	5A	5B	5C	6A	6B	7	8
	Building Type	Fossil Fuel-Generated Energy Use Intensity (site kBtu/yr-sqft)																		
Service	Repair shop	1	1	1	1	1	1	2	2	2	2	2	2	3	3	2	3	3	4	5
Service	Vehicle service/repair shop	2	2	2	2	3	3	4	3	4	5	5	5	6	6	5	7	7	8	11
Service	Vehicle storage/ maintenance	1	1	1	2	2	2	3	3	3	4	4	4	5	4	4	5	6	6	9
Strip Shopping Mall	Strip shopping mall	2	2	2	2	3	2	3	3	3	5	4	4	6	5	5	7	7	8	10
Warehouse	Distribution/ shipping center	1	1	1	1	1	1	2	2	2	3	2	3	3	3	3	4	4	4	6
Warehouse	Non-refrigerated warehouse	1	1	1	1	1	1	2	2	2	2	2	2	3	3	3	4	4	4	6
Warehouse	Refrigerated warehouse	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	1	1	1	1

PART 435—ENERGY EFFICIENCY STANDARDS FOR THE DESIGN AND CONSTRUCTION OF NEW FEDERAL LOW–RISE RESIDENTIAL BUILDINGS

■ 5. The authority citation for part 435 continues to read as follows:

Authority: 42 U.S.C. 6831–6832; 6834–6836; 42 U.S.C. 8253–54; 42 U.S.C. 7101 *et seq.*

■ 6. Amend § 435.1, by adding paragraph (b) to read as follows:

§ 435.1 Purpose and scope.

* * * * *

(b) This part also establishes a maximum allowable fossil fuel-generated energy consumption standard for new Federal buildings that are low-rise residential buildings and major renovations to Federal buildings that are low-rise residential buildings, for which design for construction began on or after May 1, 2025

* * * * *

■ 7. Amend § 435.2 by:
■ a. Adding in alphabetical order, the definitions of ''Construction cost,'' ''Design for renovation'', ''EISA-subject building or project'', ''Federal building,'' ''Fiscal year (FY),'' ''Fossil fuel-generated energy consumption,'' ''Major renovation,'' ''Major renovation cost,'' ''Major renovation of all Scope fossil fuel-using systems in a building,'' and ''Major renovation of a Scope 1 fossil fuel-using building system or Scope 1 fossil fuel-using component'';
■ b. Revising the definition of ''Proposed building''; and
■ c. Adding in alphabetical order, the definitions of ''Shift adjustment multiplier'' and ''Technical impracticability''.

The additions and revision read as follows:

§ 435.2 Definitions.

* * * * *

Construction cost means all costs associated with the construction of a new Federal building. It includes, but not limited to, the cost of preliminary planning, engineering, architectural, permitting, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other similar actions necessary for the construction of a new Federal building. It does not include the cost of acquiring the land.

* * * * *

Design for renovation means the stage when the energy efficiency and sustainability details (such as insulation levels, HVAC systems, water-using systems, etc.) are either explicitly determined or implicitly included in a renovation project cost specification.

* * * * *

EISA-subject building or project means, for purposes of this rule, any new building or renovation project that is subject to the cost thresholds and reporting requirements in Section 433 of EISA ((42 U.S.C. 6834(a)(3)(D)(i))). The cost threshold referenced in Section 433 of EISA is $2.5 million in 2007 dollars. GSA provides a table of annual updates to this cost threshold at *https://www.gsa.gov/real-estate/design-and-construction/annual-prospectus-thresholds.* GSA also provides a second cost threshold for renovations of leased buildings that is ½ of the cost threshold for renovation of Federally owned buildings.

* * * * *

Federal building means any building to be constructed by, or for the use of, any Federal agency. Such term shall include buildings built for the purpose of being leased by a Federal agency and privatized military housing.

Fiscal Year (FY) means the 12-month period beginning on October 1 of the year prior to the specified calendar year and ending on September 30 of the specified calendar year.

Fossil fuel-generated energy consumption means the on-site stationary consumption of fossil fuels that contribute to Scope 1 emissions for generation of electricity, heat, cooling, or steam as defined by ''Federal Greenhouse Gas Accounting and Reporting Guidance'' (Council on Environmental Quality, January 17, 2016). This includes, but is not limited to, emissions that result from combustion of fuels in stationary sources (*e.g.,* boilers, furnaces, turbines, and emergency generators). This term does not include mobile sources, fugitive emissions, or process emissions as defined by ''Federal Greenhouse Gas Accounting and Reporting Guidance'' (Council on Environmental Quality, January 17, 2016).

* * * * *

Major renovation means either major renovation of all Scope 1 fossil fuel-using systems in a building or major renovation of one or more Scope 1 fossil fuel-using building systems or components, as defined in this section.

Major renovation cost means all costs associated with the repairing, remodeling, improving, extending, or other changes in a Federal building. It includes, but is not limited to, the cost of preliminary planning, engineering, architectural, permitting, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other similar actions necessary for the alteration of a Federal building.

Major renovation of all Scope 1 fossil fuel-using systems in a building means construction on an existing building that is so extensive that it replaces all Scope 1 fossil fuel-using systems in the building. This term includes, but is not limited to, comprehensive replacement or restoration of most or all major systems, interior work (such as ceilings, partitions, doors, floor finishes, etc.), or building elements and features.

Major renovation of a Scope 1 fossil fuel-using building system or Scope 1 fossil fuel-using component means changes to a building that provide significant opportunities for energy efficiency or reduction in fossil fuel-related energy consumption. This includes, but is not limited to, replacement of the HVAC system, hot water system, or cooking system, or other fossil fuel-using systems or components of the building that have a major impact on fossil fuel usage.

* * * * *

Proposed building means the design for construction of a new Federal low-rise residential building, or major renovation to a Federal low-rise residential building, proposed for construction.

Shift adjustment multiplier means that agencies can apply a multiplication factor to their Maximum Allowable Fossil Fuel-Generated Energy Consumption by Building Category target based upon the weekly hours of active operation of the building. The weekly hours of operation to use as a basis for the shift adjustment multiplier lookup should be based upon the time in which in the building is actively occupied and operating per its intended use type and should include unoccupied hours or other times of limited use (such as night-time setback hours).

Technical impracticability means achieving the Scope 1 fossil fuel-based energy consumption targets would:

(1) Not be feasible from an engineering design or execution standpoint due to existing physical or site constraints that prohibit modification or addition of elements or spaces;

(2) Significantly obstruct building operations and the functional needs of a building, specifically for industrial process loads, critical national security functions, mission critical information systems as defined in NIST SP 800–60 Vol. 2 Rev. 1, and research operations, or

(3) Significantly degrade energy resiliency and energy security of

building operations as defined in 10 U.S.C. 101(e)(6) and 10 U.S.C. 101(e)(7) respectively.

■ 8. Subpart B is added to part 435 to read as follows:

Subpart B—Reduction in Scope 1 Fossil Fuel-Generated Energy Consumption

Sec.

Appendix A to Subpart B of Part 435—Maximum Allowable Scope 1 Fossil Fuel-Generated Energy Consumption

§ 435.200 Scope 1 Fossil fuel-generated energy consumption requirement.

(a) *New EISA-Subject buildings.* (1) New Federal buildings that are low-rise residential buildings, for which design for construction began on or after May 1, 2025, must be designed to meet the requirements of paragraph (c) of this section if:

(i) For all leased buildings, the construction cost of the new building exceeds GSA's Annual Prospectus Thresholds that are found at *www.gsa.gov/real-estate/design-construction/gsa-annual-prospectus-thresholds.*

(ii) For all Federally owned non-public buildings, the cost of the building is at least $2,500,000 (in 2007 dollars, adjusted for inflation). For the purposes of calculating this threshold, agencies must set the Bureau of Labor and Statistics CPI Inflation calculator to $2,500,000 in October of 2006 (to represent the value of the original cost threshold) and then set for October of the FY during which the design for construction of the project began or is set to begin.

(b) *Major renovations of EISA-Subject buildings.* (1) Major renovations to Federal buildings that are low-rise residential buildings, for which design for construction began on or after May 1, 2025, must be designed to meet the requirements of paragraph (c) of this section if the cost of the major renovation is at least $2,500,000 (in 2007 dollars, adjusted for inflation). For the purposes of calculating this threshold, projects should set the Bureau of Labor and Statistics CPI Inflation calculator to $2,500,000 in October of 2006 (to represent the value of the original cost threshold) and then set for October of the FY during which the design for construction of the project began or is set to begin.

(2) This subpart applies only to the portions of the proposed building or proposed building systems that are being renovated and to the extent that the scope of the renovation permits compliance with the applicable requirements in this subpart. Unaltered portions of the proposed building or proposed building systems are not required to comply with this subpart.

(3) For leased buildings, this subpart applies to major renovations only if the proposed building was originally built for the use of any Federal agency, including for the purpose of being leased by a Federal agency.

(c) *Federal buildings that are of the type included in Appendix A of this subpart*—(1) *New Construction and Major Renovations of all Scope 1 Fossil Fuel-Using Systems in an EISA-Subject Building.*

(i) Design for construction began during FY 2024 through FY 2029. For new construction or major renovations of all fossil fuel-using systems in an EISA-subject building, for which design for construction or renovation, as applicable, began during FY 2024 through 2029, the Scope 1 fossil fuel-generated energy consumption of the proposed building, based on the building design and calculated according to § 435.201(a), must not exceed the value identified in Tables A–1a to A–2a (if targets based on Scope 1 emissions are used) or Tables A–1b to A–2b (if targets based on kBtu of fossil fuel usage are used) of Appendix A of this subpart for the associated building type, climate zone, and fiscal year in which design for construction began.

(A) Federal agencies may apply a shift adjustment multiplier to the values in Tables A–1a to A–2a or Tables A–1b to A–2b based on the following baseline hours of operation assumed in Tables A–1a to A–2a or Tables A–1b to A–2b.

(B) To calculate the shift adjustment multiplier, agencies shall estimate the number of shifts for their new building and multiply by the appropriate factor shown below in Table 1 for their building type. The Scope 1 fossil fuel-generated energy consumption target for the building would be the value in either Tables A–1a to A–2a or Tables A–1b to A–2b multiplied by the multiplier calculated in the previous sentence.

TABLE 1—SHIFT ADJUSTMENT MULTIPLIER BY HOURS OF OPERATION AND BUILDING TYPE

Building activity/type	Weekly hours of operation		
	50 or less	51 to 167	168
Admin/professional office	1	1	1.4
Bank/other financial	1	1	1.4
Government office	1	1	1.4
Medical office(non-diagnostic)	1	1	1.4
Mixed-use office	1	1	1.4
Other office	1	1	1.4
Laboratory	1	1	1.4
Distribution/shipping center	0.7	1.4	2.1
Nonrefrigerated warehouse	0.7	1.4	2.1
Convenience store	1	1	1.4
Convenience store with gas	1	1	1.4
Grocery store/food market	1	1	1.4
Other food sales	1	1	1.4
Fire station/police station	0.8	0.8	1.1
Other public order and safety	0.8	0.8	1.1
Medical office (diagnostic)	1	1	1.5
Clinic/other outpatient health	1	1	1.5
Refrigerated warehouse	1	1	1
Religious worship	0.9	1.7	1.7
Entertainment/culture	0.8	1.5	1.5
Library	0.8	1.5	1.5
Recreation	0.8	1.5	1.5
Social/meeting	0.8	1.5	1.5

TABLE 1—SHIFT ADJUSTMENT MULTIPLIER BY HOURS OF OPERATION AND BUILDING TYPE—Continued

Building activity/type	Weekly hours of operation		
	50 or less	51 to 167	168
Other public assembly	0.8	1.5	1.5
College/university	0.8	1.3	1.3
Elementary/middle school	0.8	1.3	1.3
High school	0.8	1.3	1.3
Preschool/daycare	0.8	1.3	1.3
Other classroom education	0.8	1.3	1.3
Fast food	0.4	1.1	2.1
Restaurant/cafeteria	0.4	1.1	2.1
Other food service	0.4	1.1	2.1
Hospital/inpatient health	1	1	1
Nursing home/assisted living	1	1	1
Dormitory/fraternity/sorority	1	1	1
Hotel	1	1	1
Motel or inn	1	1	1
Other lodging	1	1	1
Vehicle dealership/showroom	0.8	1.2	1.8
Retail store	0.8	1.2	1.8
Other retail	0.8	1.2	1.8
Post office/postal center	0.7	1.5	1.5
Repair shop	0.7	1.5	1.5
Vehicle service/repair shop	0.7	1.5	1.5
Vehicle storage/maintenance	0.7	1.5	1.5
Other service	0.7	1.5	1.5
Strip shopping mall	1	1	1
Enclosed mall	1	1	1
Bar/Pub/Lounge	1	1	1.4
Courthouse/Probation Office	1	1	1.4

(ii) Design for construction began during or after FY 2030. For new construction and major renovations of all Scope 1 fossil fuel-using systems in an EISA-subject building, the Scope 1 fossil fuel-generated energy consumption of the proposed building, based on building design and calculated according to § 435.201(a), must be zero.

(2) Major Renovations of a Scope 1 Fossil Fuel-Using Building System or Component within an EISA-Subject Building shall follow the renovation requirements in section 4.2.1.3 of the applicable building baseline energy efficiency standards listed in § 435.4 substituting the term ''design for construction'' with ''design for renovation'' for the relevant date, and shall replace all equipment that is included in the renovation with all electric or non-fossil fuel-using ENERGY STAR or FEMP designated products as defined in § 436.42. For component level renovations, Agencies shall replace all equipment that is part of the renovation with all electric or non-fossil fuel-using ENERGY STAR or FEMP designated products as defined in § 436.42.

(d) *EISA-Subject buildings that are of the type not included in Appendix A of this subpart*—(1) *Process load buildings.* For building types that are not included in any of the building types listed in Tables A–1a to A–2a or A–1b to A–2b of appendix A of this subpart, or for building types in these tables that contain significant process loads, Federal agencies must select the applicable building type, climate zone, and fiscal year in which design for construction began from Tables A–1a to A–2a or A–1b to A–2b of appendix A of this subpart that most closely corresponds to the proposed building without the process load. The estimated Scope 1 fossil fuel-generated energy consumption of the process load must be added to the maximum allowable Scope 1 fossil fuel-generated energy consumption of the applicable building type for the appropriate fiscal year and climate zone to calculate the maximum allowable Scope 1 fossil fuel-generated energy consumption for the building. The same estimated Scope 1 fossil fuel-generated energy consumption of the process load that is added to the maximum allowable Scope 1 fossil fuel-generated energy consumption of the applicable building must also be used in determining the Scope 1 fossil fuel-generated energy consumption of the proposed building.

(2) *Mixed-use buildings.* For buildings that combine two or more building types with process loads or, alternatively, that combine one or more building types with process loads with one or more building types in Tables A–1a toA–2a or A–1b to A–2b of appendix A of this subpart, the maximum allowable Scope 1 fossil fuel-generated energy consumption of the proposed building is equal to the averaged process load building values determined under paragraph (d)(1) of this section and the applicable building type values in Tables A–1a toA–2a or A–1b to A–2b of appendix A of this subpart, weighted by floor area. Equation 1 shall be used for mixed use buildings.

Equation 1: Scope 1 Fossil fuel generated energy consumption for a mixed-use building = the sum across all building uses of (the fraction of total floor building floor area for building use i times the allowable fossil fuel-generated energy consumption for building use i)

Equation 1 may be rewritten as:

$$Scope\ 1\ Fossil\ Fuel - Generated\ Energy\ Consumption\ for\ a\ Mixed\ Use\ Building = \sum_{i=1}^{n} (Fraction\ of\ Total\ Building\ Floor\ Area\ for\ Building\ Use\ i\ times\ Allowable\ Scope\ 1\ Fossil\ Fuel - Generated\ Energy\ Consumption\ for\ Building\ Use\ i)$$

§ 435.201 Scope 1 Fossil fuel-generated energy consumption determination.

(a) The Scope 1 fossil fuel-generated energy consumption of a proposed design is calculated as follows:

Equation: Scope 1 Fossil Fuel-Generated Energy Consumption = Direct Fossil Fuel Consumption of Proposed Building/Floor Area

Where:

Direct Scope 1 Fossil Fuel-Generated Energy Consumption of Proposed Building equals the total site Scope 1 fossil fuel-generated energy consumption of the proposed building calculated in accordance with the method required in § 435.5(d), and measured in thousands of British thermal units per year (kBtu/yr), except that this term does not include fossil fuel consumption for emergency electricity generation. Agencies must include all on-site fossil fuel use or Scope 1 emissions associated with non-emergency generation from backup generators (such as those for peak shaving or peak shifting). Any energy generation or Scope 1 emissions associated with biomass fuels are excluded. Any emissions associated with natural gas for alternatively fueled vehicles (''AFVs'') (or any other alternative fuel defined at 42 U.S.C. 13211 that is provided at a Federal building) is excluded. For buildings with manufacturing or industrial process loads, such process loads shall be accounted for in the analysis for the building's fossil fuel consumption and GHG emissions, but the process loads are not subject to the phase down targets.

Floor Area is the floor area of the structure that is enclosed by exterior walls, including finished or unfinished basements, finished or heated space in attics, and garages if they have an uninsulated wall in common with the house. Not included are crawl spaces, and sheds and other buildings that are not attached to the house.

§ 435.202 Petition for downward adjustment.

(a) *New Federal buildings major renovations of all Scope 1 fossil fuel-using systems, and major renovations of a Scope 1 fossil fuel-using building system or component in an EISA-subject building.* (1) Upon petition by a Federal agency, the Director of FEMP may adjust the applicable maximum allowable Scope 1 fossil fuel energy consumption standard with respect to a specific building, upon written certification from the head of the agency designing the building, that the requested adjustment is the largest feasible reduction in Scope 1 fossil fuel energy consumption that can practicably be achieved in light of the specified functional needs for that building, as demonstrated by:

(i) A statement from the Head of the Agency or their designee requesting the petition for downward adjustment for the building or renovation, that the building or renovation reduces consumption of Scope 1 fossil fuel energy consumption in accordance with the applicable energy performance standard to the maximum extent practicable and that each fossil fuel using product included in the proposed building that is of a product category covered by the ENERGY STAR program or FEMP for designated products is an ENERGY STAR product or a product meeting the FEMP designation criteria, as applicable;

(ii) A description of the systems, technologies, and practices that were evaluated and unable to meet the required fossil fuel reduction including a justification of why achieving the Scope 1 fossil fuel-based energy consumption targets would be technically impracticable; and

(iii) Any other information the agency determines would help explain its request.

(2) The head of the agency designing the building, or their designee, must also include the following information in the petition:

(i) A general description of the building or major renovation, including but not limited to location, use type, floor area, stories, expected number of occupants and occupant schedule, project type, project cost, and functional needs, mission critical activity, research, and national security operations as applicable;

(ii) The maximum allowable Scope 1 fossil fuel energy consumption for the building from paragraphs (c) or (d) of this section;

(iii) The estimated Scope 1 fossil fuel energy consumption of the proposed building; and

(iv) A description of the proposed building's energy-related features, such as:

(A) HVAC system or component type and configuration;

(B) HVAC equipment sizes and efficiencies;

(C) Ventilation systems or components (including outdoor air volume, controls technique, heat recovery systems, and economizers, if applicable);

(D) Service water heating system or component configuration and equipment (including solar hot water, wastewater heat recovery, and controls for circulating hot water systems, if applicable);

(E) Estimated industrial process loads; and

(F) Any other on-site fossil fuel using equipment.

(3) (i) Agencies may file one petition for a project with multiple buildings if the buildings are

(A) Of the same building, building system, or component type and of similar size and location;

(B) Are being designed and constructed to the same set of targets for fossil fuel-generated energy consumption reduction; and

(C) Would require similar measures to reduce fossil fuel-generated energy consumption and similar adjustment to the numeric reduction requirement.

(ii) The bundled petition must include the information in section (a) that pertains to all buildings, building systems or components included in the petition and an additional description of the differences between each of the buildings, building systems or components. The agency is only required to show work for adjustment once.

(4) Petitions for downward adjustment should be submitted to *cer-petition@hq.doe.gov,* or to:

U.S. Department of Energy, FEMP, Director, Clean Energy Reduction Petitions, EE–5F, 1000 Independence Ave. SW, Washington, DC 20585–0121.

(5) The Director will make a best effort to notify the requesting agency in writing whether the petition for downward adjustment to the numeric reduction requirement is approved or rejected, in 30 calendar days of submittal of a complete petition. If the Director rejects the petition or establishes a value other than that presented in the petition, the Director will forward the reasons for rejection to the petitioning agency.

(b) *Exclusions.* The General Services Administration (GSA) may not submit petitions under paragraphs (a) of this section. Agencies that are tenants of GSA buildings for which the agency, not GSA, has significant design control may

submit petitions in accordance with this section.

Appendix A to Subpart B of Part 435 Maximum Allowable Fossil Fuel Generated Energy Consumption

(a) For purposes of the tables in this appendix, the climate zones are listed in the performance standards required by § 435.4(a)(4)(i).

(b) For purpose of appendix A, the following definitions apply:

(1) *Mobile Home* means a dwelling unit built to the Federal Manufactured Home Construction and Safety Standards in 24 CFR part 3280, that is built on a permanent chassis and moved to a site. It may be placed on a permanent or temporary foundation and may contain one or more rooms.

(2) *Multi-Family in 2–4 Unit Buildings* means a category of structures that is divided into living quarters for two, three, or four families or households in which one household lives above or beside another. This category also includes houses originally intended for occupancy by one family (or for some other use) that have since been converted to separate dwellings for two to four families.

(3) *Multi-Family in 5 or More Unit Buildings* means a category of structures that contain living quarters for five or more households or families and in which one household lives above or beside another.

(4) *Single-Family Attached* means a building with two or more connected dwelling units, generally with a shared wall, each providing living space for one household or family. Attached houses are considered single-family houses as long as they are not divided into more than one dwelling unit and they have independent outside entrances. A single-family house is contained within walls extending from the basement (or the ground floor, if there is no basement) to the roof. Townhouses, row houses, and duplexes are considered single-family attached dwelling units, as long as there is no dwelling unit above or below another.

(5) *Single-Family Detached* means a separate, unconnected dwelling unit, not sharing a wall with any other building or dwelling unit, which provides living space for one household or family. A single-family house is contained within walls extending from the basement (or the ground floor, if there is no basement) to the roof. This includes modular homes but does not include mobile homes.

Table A-1a – FY 2020-FY 2024 Maximum Allowable Fossil Fuel-Generated Energy Consumption by Building Category, Building Type and Climate Zone, Residential Buildings (CO_2e/yr-sqft)

Building Category	Climate Zone:	0A	0B	1A	1B	2A	2B	3A	3B	3C	4A	4B	4C	5A	5B	5C	6A	6B	7	8
	Building Activity/ Type	Fossil Fuel-Generated Energy Use Intensity (CO_2e/yr-sqft)																		
Residential	Mobile	0.66	0.67	0.68	0.73	0.80	0.78	0.92	0.76	0.87	0.92	1.07	1.05	1.06	1.23	1.19	1.11	1.36	1.36	1.51
Residential	Single-family detached	0.40	0.41	0.41	0.45	0.50	0.48	0.58	0.47	0.55	0.58	0.69	0.67	0.68	0.79	0.76	0.71	0.88	0.88	0.99
Residential	Single-family attached	0.76	0.76	0.77	0.78	0.80	0.79	0.83	0.79	0.82	0.83	0.87	0.87	0.87	0.92	0.90	0.88	0.95	0.95	0.99
Residential	Multi-family (in 2-4 unit building)	0.56	0.57	0.61	0.74	0.93	0.87	1.25	0.83	1.11	1.25	1.64	1.58	1.62	2.06	1.95	1.74	2.40	2.41	2.82
Residential	Multi-family (in 5+ unit building)	0.24	0.25	0.29	0.42	0.61	0.55	0.93	0.51	0.80	0.93	1.32	1.26	1.30	1.74	1.63	1.42	2.08	2.09	2.50

Table A-1b – FY 2020-FY 2024 Maximum Allowable Fossil Fuel-Generated Energy Consumption by Building Category, Building Type and Climate Zone, Residential Buildings (source kBtu/yr-sqft)

Building Category	Climate Zone:	0A	0B	1A	1B	2A	2B	3A	3B	3C	4A	4B	4C	5A	5B	5C	6A	6B	7	8
	Building Activity/ Type	Fossil Fuel-Generated Energy Use Intensity (site kBtu/yr-sqft)																		
Residential	Mobile	6	6	6	7	7	7	8	7	8	8	10	10	10	11	11	10	12	12	14
Residential	Single-family detached	4	4	4	4	5	4	5	4	5	5	6	6	6	7	7	6	8	8	9
Residential	Single-family attached	7	7	7	7	7	7	8	7	7	8	8	8	8	8	8	8	9	9	9
Residential	Multi-family (in 2-4 unit building)	5	5	6	7	8	8	11	8	10	11	15	14	15	19	18	16	22	22	26
Residential	Multi-family (in 5+ unit building)	2	2	3	4	6	5	8	5	7	8	12	11	12	16	15	13	19	19	23

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Table A-2a – FY 2025-FY 2029 Maximum Allowable Fossil Fuel-Generated Energy Consumption by Building Category, Building Type and Climate Zone, Residential Buildings (CO_2e/yr-sqft)

Building Category	Climate Zone:	0A	0B	1A	1B	2A	2B	3A	3B	3C	4A	4B	4C	5A	5B	5C	6A	6B	7	8
	Building Activity/ Type	Fossil Fuel-Generated Energy Use Intensity (CO_2e/yr-sqft)																		
Residential	Mobile	0.33	0.34	0.37	0.40	0.39	0.46	0.38	0.44	0.46	0.54	0.52	0.53	0.62	0.59	0.55	0.68	0.68	0.76	0.33
Residential	Single-family detached	0.20	0.21	0.22	0.25	0.24	0.29	0.24	0.27	0.29	0.34	0.33	0.34	0.40	0.38	0.35	0.44	0.44	0.50	0.20
Residential	Single-family attached	0.38	0.38	0.39	0.40	0.40	0.42	0.39	0.41	0.42	0.44	0.43	0.44	0.46	0.45	0.44	0.47	0.48	0.50	0.38
Residential	Multi-family (in 2-4 unit building)	0.28	0.30	0.37	0.46	0.44	0.62	0.41	0.56	0.63	0.82	0.79	0.81	1.03	0.97	0.87	1.20	1.20	1.41	0.28
Residential	Multi-family (in 5+ unit building)	0.13	0.14	0.21	0.30	0.28	0.46	0.25	0.40	0.47	0.66	0.63	0.65	0.87	0.81	0.71	1.04	1.04	1.25	0.13

Table A-2b – FY 2025-FY 2029 Maximum Allowable Fossil Fuel-Generated Energy Consumption by Building Category, Building Type and Climate Zone, Residential Buildings (source kBtu/yr-sqft)

Building Category	Climate Zone:	0A	0B	1A	1B	2A	2B	3A	3B	3C	4A	4B	4C	5A	5B	5C	6A	6B	7	8
	Building Activity/ Type	Fossil Fuel-Generated Energy Use Intensity (site kBtu/yr-sqft)																		
Residential	Mobile	3	3	3	3	4	4	4	3	4	4	5	5	5	6	5	5	6	6	7
Residential	Single-family detached	2	2	2	2	2	2	3	2	2	3	3	3	3	4	3	3	4	4	4
Residential	Single-family attached	3	3	3	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	5
Residential	Multi-family (in 2-4 unit building)	3	3	3	3	4	4	6	4	5	6	7	7	7	9	9	8	11	11	13
Residential	Multi-family (in 5+ unit building)	1	1	1	2	3	3	4	2	4	4	6	6	6	8	7	6	9	9	11

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Part IV

Council on Environmental Quality

40 CFR Parts 1500, 1501, 1502, et al.
National Environmental Policy Act Implementing Regulations Revisions Phase 2; Final Rule

COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508

[CEQ–2023–0003]

RIN 0331–AA07

National Environmental Policy Act Implementing Regulations Revisions Phase 2

AGENCY: Council on Environmental Quality.

ACTION: Final rule.

SUMMARY: The Council on Environmental Quality (CEQ) is finalizing its ''Bipartisan Permitting Reform Implementation Rule'' to revise its regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA), including the recent amendments to NEPA in the Fiscal Responsibility Act. CEQ is making these revisions to provide for an effective environmental review process; ensure full and fair public engagement; enhance efficiency and regulatory certainty; and promote sound Federal agency decision making that is grounded in science, including consideration of relevant environmental, climate change, and environmental justice effects. These changes are grounded in NEPA's statutory text and purpose, including making decisions informed by science; CEQ's extensive experience implementing NEPA; CEQ's perspective on how NEPA can best inform agency decision making; longstanding Federal agency experience and practice; and case law interpreting NEPA's requirements.

DATES: The effective date is July 1, 2024.

ADDRESSES: CEQ established a docket for this action under docket number CEQ–2023–0003. All documents in the docket are listed on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amy B. Coyle, Deputy General Counsel, 202–395–5750, *Amy.B.Coyle@ceq.eop.gov;* Megan Healy, Deputy Director for NEPA, 202–395–5750, *Megan.E.Healy@ceq.eop.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This final rule completes a multiphase rulemaking process that CEQ initiated in 2021 to revise its regulations to improve implementation of the National Environmental Policy Act (NEPA). Throughout the process, CEQ engaged with agency experts who implement NEPA on a daily basis to develop revisions to the regulations to enhance the clarity of the regulatory text, improve the efficiency and effectiveness of the NEPA process, enhance regulatory certainty and address potential sources of litigation risk, and promote consistency across the Federal Government while recognizing the importance of providing agencies with flexibility to tailor their NEPA processes to the specific statutes and factual contexts in which they administer their programs and decisions. CEQ also engaged with individuals affected by agency implementation of NEPA, including representatives of Tribal Nations, environmental justice experts, and representatives of various industries, to gather input on how to improve the NEPA process. CEQ proposed and is now finalizing this rule to reflect the input CEQ has received, the decades of CEQ and agency experience implementing NEPA, and the recent statutory amendments to NEPA. This final rule will help agencies more successfully implement NEPA and facilitate a more efficient and effective environmental review process.

A. NEPA Statute

To declare an ambitious and visionary national policy to promote environmental protection for present and future generations, Congress enacted NEPA in 1969 by a unanimous vote in the Senate and a nearly unanimous vote in the House,[1] and President Nixon signed it into law on January 1, 1970. NEPA seeks to ''encourage productive and enjoyable harmony'' between humans and the environment, recognizing the ''profound impact'' of human activity and the ''critical importance of restoring and maintaining environmental quality'' to the overall welfare of humankind. 42 U.S.C. 4321, 4331. Furthermore, NEPA seeks to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of people, making it the continuing policy of the Federal Government to use all practicable means and measures to create and maintain conditions under which humans and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of Americans. 42 U.S.C. 4331(a). It also recognizes that each person should have the opportunity to enjoy a healthy environment and has a responsibility to contribute to the preservation and enhancement of the environment. 42 U.S.C. 4331(c).

NEPA requires Federal agencies to interpret and administer Federal policies, regulations, and laws in accordance with NEPA's policies and to consider environmental values in their decision making. 42 U.S.C. 4332. To that end, section 102(2)(C) of NEPA requires Federal agencies to prepare ''detailed statement[s],'' referred to as environmental impact statements (EISs), for ''every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment'' and, in doing so, provide opportunities for public participation to help inform agency decision making. 42 U.S.C. 4332(2)(C). The EIS process embodies the understanding that informed decisions are better decisions and lead to better environmental outcomes when decision makers understand, consider, and publicly disclose environmental effects of their decisions. The EIS process also enriches understanding of the ecological systems and natural resources important to the Nation and helps guide sound decision making based on high-quality information, such as decisions on infrastructure and energy development.[2] *See, e.g., Winter* v. *NRDC,* 555 U.S. 7, 23 (2008) (''Part of the harm NEPA attempts to prevent in requiring an EIS is that, without one, there may be little if any information about prospective environmental harms and potential mitigating measures.'').

In many respects, NEPA was a statute ahead of its time and remains vital today. It codifies the common-sense idea of ''look before you leap'' to guide agency decision making, particularly in complex and consequential areas, because conducting sound environmental analysis before agencies take actions reduces conflict and waste in the long run by avoiding unnecessary harm and uninformed decisions. *See, e.g.,* 42 U.S.C. 4332; *Laclede Gas Co.* v. *FERC,* 873 F.2d 1494, 1499 (D.C. Cir. 1989) (''When so much depends upon the agency having a sure footing, it is not too much for us to demand that it look first, and then leap if it likes.''). It establishes a framework for agencies to ground decisions in science, by

[1] *See* Linda Luther, Cong. Rsch. Serv., RL33152, The National Environmental Policy Act: Background and Implementation, 4 (2011), *https://crsreports.congress.gov/product/details?prodcode=RL33152.*

[2] *See* CEQ, *The National Environmental Policy Act: A Study of Its Effectiveness after Twenty-five Years* 17 (Jan. 1997) (noting that study participants, which included academics, nonprofit organizations, and businesses, ''applauded NEPA for opening the federal process to public input and were convinced that this open process has improved project design and implementation.'').

requiring professional and scientific integrity, and recognizes that the public may have important ideas and information on how Federal actions can occur in a manner that reduces potential harms and enhances ecological, social, and economic well-being. *See, e.g.,* 42 U.S.C. 4332.

On June 3, 2023, President Biden signed into law the Fiscal Responsibility Act of 2023, which included amendments to NEPA. Specifically, it amended section 102(2)(C) and added sections 102(2)(D) through (F) and sections 106 through 111. 42 U.S.C. 4332(2)(C)–(D), 4336–4336e. The amendments codify longstanding principles drawn from CEQ's NEPA regulations, decades of agency practice, and case law interpreting the NEPA regulations, and provide additional direction to improve the efficiency and effectiveness of the NEPA process consistent with NEPA's purposes. Section 102(2)(C) provides that EISs should include discussion of reasonably foreseeable environmental effects of the proposed action, reasonably foreseeable adverse environmental effects that cannot be avoided, and a reasonable range of alternatives to the proposed action; section 102(2)(D) requires Federal agencies to ensure the professional integrity of the discussion and analysis in an environmental document; section 102(2)(E) requires use of reliable data and resources when carrying out NEPA; and section 102(2)(F) requires agencies to study, develop, and describe technically and economically feasible alternatives. 42 U.S.C. 4332(2)(C)–(F).

Section 106 adds provisions for determining the appropriate level of NEPA review. It clarifies that an agency is required to prepare an environmental document when proposing to take an action that would constitute a final agency action, and codifies existing regulations and case law that an agency is not required to prepare an environmental document when doing so would clearly and fundamentally conflict with the requirements of another law or a proposed action is non-discretionary. *See Flint Ridge Development Co.* v. *Scenic Rivers Ass'n of Oklahoma,* 426 U.S. 776, 791 (1976) (holding that a 30–day statutory deadline for a certain agency action created a ''clear and fundamental conflict of statutory duty'' that excused the agency from NEPA compliance with regard to that action); *Dep't of Transp.* v. *Pub. Citizen,* 541 U.S. 752, 756 (2004) (concluding that NEPA did not require an agency to evaluate the environmental effects of certain actions because the agency lacked discretion over those actions). Section 106 also largely codifies the current CEQ regulations and longstanding practice with respect to the use of categorical exclusions (CEs), environmental assessments (EAs), and EISs, as modified by the new provision expressly permitting agencies to adopt CEs from other agencies established in section 109 of NEPA. 42 U.S.C. 4336, 4336c.

Section 107 addresses timely and unified Federal reviews, largely codifying existing practice with a few adjustments, including provisions clarifying lead, joint-lead, and cooperating agency designations, generally requiring development of a single environmental document, directing agencies to develop procedures for project sponsors to prepare EAs and EISs, and prescribing page limits and deadlines. 42 U.S.C. 4336a. Section 108 codifies time lengths and circumstances for when agencies can rely on programmatic environmental documents without additional review, and section 109 allows a Federal agency to adopt and use another agency's CE. 42 U.S.C. 4336b, 4336c. Section 111 adds statutory definitions. 42 U.S.C. 4336e. This final rule updates the regulations to address how agencies should implement NEPA consistent with these recent amendments.

Section 110 directs CEQ to conduct a study and submit a report to Congress on the potential to use online and digital technologies to improve NEPA processes. The development of this report is outside the scope of this rulemaking and the final rule does not incorporate provisions related to implementation of section 110.

B. The Council on Environmental Quality

NEPA codified the existence of the Council on Environmental Quality (CEQ), which had been established 6 months earlier through E.O. 11472, *Establishing the Environmental Quality Council and the Citizen's Advisory Committee on Environmental Quality,* as a component of the Executive Office of the President. 42 U.S.C. 4342. For more than 50 years, CEQ has advised presidents on national environmental policy, assisted Federal agencies in their implementation of NEPA and engaged with them on myriad of environmental policies, and overseen implementation of a variety of other environmental policy initiatives from the expeditious and thorough environmental review of infrastructure projects [3] to the sustainability of Federal operations.[4]

NEPA charges CEQ with overseeing and guiding NEPA implementation across the Federal Government. In addition to issuing the regulations for implementing NEPA, 40 CFR parts 1500 through 1508 (referred to throughout as ''the CEQ regulations''), CEQ has issued guidance on numerous topics related to NEPA review. In 1981, CEQ issued the ''Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,'' [5] which CEQ has routinely identified as an invaluable tool for Federal, Tribal, State, and local governments and officials, and members of the public, who have questions about NEPA implementation.

CEQ also has issued guidance on a variety of other topics, from scoping to cooperating agencies to consideration of

[3] *See, e.g.,* E.O. 14008, *Tackling the Climate Crisis at Home and Abroad,* 86 FR 7619 (Feb. 1, 2021); E.O. 13604, *Improving Performance of Federal Permitting and Review of Infrastructure Projects,* 77 FR 18887 (Mar. 28, 2012); E.O. 13274, *Environmental Stewardship and Transportation Infrastructure Project Reviews,* 67 FR 59449 (Sept. 23, 2002); *see also* Presidential Memorandum, Modernizing Federal Infrastructure Review and Permitting Regulations, Policies, and Procedures, 78 FR 30733 (May 22, 2013).

[4] *See, e.g.,* E.O. 14057, *Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability,* 86 FR 70935 (Dec. 13, 2021); E.O. 13834, *Efficient Federal Operations,* 83 FR 23771 (May 22, 2018); E.O. 13693, *Planning for Federal Sustainability in the Next Decade,* 80 FR 15871 (Mar. 25, 2015); E.O. 13514, *Federal Leadership in Environmental, Energy, and Economic Performance,* 74 FR 52117 (Oct. 8, 2009); E.O. 13423, *Strengthening Federal Environmental, Energy, and Transportation Management,* 72 FR 3919 (Jan. 26, 2007); E.O. 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition,* 63 FR 49643 (Sept. 16, 1998). For Presidential directives pertaining to other environmental initiatives, see E.O. 13432, *Cooperation Among Agencies in Protecting the Environment With Respect to Greenhouse Gas Emissions From Motor Vehicles, Nonroad Vehicles, and Nonroad Engines,* 72 FR 27717 (May 16, 2007) (requiring CEQ and OMB to implement the E.O. and facilitate Federal agency cooperation to reduce greenhouse gas emissions); E.O. 13141, *Environmental Review of Trade Agreements,* 64 FR 63169 (Nov. 18, 1999) (requiring CEQ and the U.S. Trade Representative to implement the E.O., which has the purpose of promoting Trade agreements that contribute to sustainable development); E.O. 13061, *Federal Support of Community Efforts Along American Heritage Rivers,* 62 FR 48445 (Sept. 15, 1997) (charging CEQ with implementing the American Heritage Rivers initiative); E.O. 13547, *Stewardship of the Ocean, Our Coasts, and the Great Lakes,* 75 FR 43023 (July 22, 2010) (directing CEQ to lead the National Ocean Council); E.O. 13112, *Invasive Species,* 64 FR 6183 (Feb. 8, 1999) (requiring the Invasive Species Council to consult with CEQ to develop guidance to Federal agencies under NEPA on prevention and control of invasive species).

[5] CEQ, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 FR 18026 (Mar. 23, 1981) (Forty Questions), *https://www.energy.gov/nepa/downloads/forty-most-asked-questions-concerning-ceqs-national-environmental-policy-act.*

effects.[6] For example, in 1997, CEQ issued guidance documents on the consideration of environmental justice in the NEPA context [7] under E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,*[8] and on analysis of cumulative effects in NEPA reviews.[9] From 2010 to the present, CEQ developed additional guidance on CEs, mitigation, programmatic reviews, and consideration of greenhouse gas (GHG) emissions in NEPA.[10] To ensure coordinated environmental reviews, CEQ has issued guidance to integrate NEPA reviews with other environmental review requirements such as the National Historic Preservation Act, E.O. 11988, *Floodplain Management,* and E.O. 11990, *Protection of Wetlands.*[11] Additionally, CEQ has provided guidance to ensure efficient and effective environmental reviews, particularly for infrastructure projects.[12] Finally, CEQ has published resources for members of the public to assist them in understanding the NEPA process and how they can effectively engage in agency NEPA reviews to make sure their voices are heard.[13]

In addition to guidance, CEQ engages frequently with Federal agencies on their implementation of NEPA. CEQ is responsible for consulting with all agencies on the development of their NEPA implementing procedures and determining that those procedures conform with NEPA and the CEQ regulations. Through this process, CEQ engages with agencies to understand their specific authorities and programs to ensure agencies integrate consideration of environmental effects into their decision-making processes. CEQ also provides feedback and advice on how agencies may effectively implement NEPA through their procedures. Additionally, CEQ provides recommendations on how agencies can coordinate on or align their respective procedures to ensure consistent implementation of NEPA across agencies. This role is particularly important in situations where multiple agencies and applicants are regularly involved, such as the review of infrastructure projects.

Second, CEQ consults with agencies on the efficacy and effectiveness of NEPA implementation. Where necessary or appropriate, CEQ engages with agencies on NEPA reviews for specific projects or project types to provide advice and identify any emerging or cross-cutting issues that would benefit from CEQ issuing formal guidance or assisting with interagency coordination. This includes establishing alternative arrangements for compliance with NEPA when agencies encounter emergency situations where they need to act swiftly while also ensuring they meet their NEPA obligations. CEQ also advises on NEPA compliance when agencies are establishing new programs or implementing new statutory authorities. Finally, CEQ helps advance the environmental review process for projects or initiatives deemed important to an administration such as nationally and regionally significant projects, major infrastructure projects, and consideration of certain types of effects, such as climate change-related effects and effects on communities with environmental justice concerns.[14]

Third, CEQ meets regularly with external stakeholders to understand their perspectives on the NEPA process. These meetings can help inform CEQ's development of guidance or other initiatives and engagement with Federal agencies. Finally, CEQ coordinates with other Federal agencies and components of the White House on a wide array of environmental issues and reviews that intersect with the NEPA process, such as Endangered Species Act consultation or effects to Federal lands and waters from federally authorized activities.

In addition to its NEPA responsibilities, CEQ is currently charged with implementing several of the administration's key environmental priorities, including efficient and effective environmental review and permitting. On January 27, 2021, the President signed E.O. 14008, *Tackling the Climate Crisis at Home and Abroad,* to establish a government-wide approach to the climate crisis by

[6] *See, e.g.,* CEQ, Memorandum for General Counsels, NEPA Liaisons and Participants in Scoping (Apr. 30, 1981), *https://www.energy.gov/nepa/downloads/scoping-guidance-memorandum-general-counsels-nepa-liaisons-and-participants-scoping;* CEQ, Incorporating Biodiversity Considerations Into Environmental Impact Analysis Under the National Environmental Policy Act (Jan. 1993), *https://ceq.doe.gov/publications/incorporating_biodiversity.html;* CEQ, Council on Environmental Quality Guidance on NEPA Analyses for Transboundary Impacts (July 1,1997), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/memorandum-transboundary-impacts-070197.pdf;* CEQ, Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act (July 28, 1999), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ceqcoop.pdf;* CEQ, Identifying Non-Federal Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act (Sept. 25, 2000), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/memo-non-federal-cooperating-agencies-09252000.pdf;* CEQ & DOT Letters on Lead and Cooperating Agency Purpose and Need (May 12, 2003), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-DOT_PurposeNeed_May-2013.pdf.*

[7] CEQ, Environmental Justice: Guidance under the National Environmental Policy Act (Dec. 10, 1997) (Environmental Justice Guidance), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf.*

[8] E.O. 12898, *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,* 59 FR 7629 (Feb. 16, 1994).

[9] CEQ, Considering Cumulative Effects Under the National Environmental Policy Act (Jan. 1997), *https://ceq.doe.gov/publications/cumulative_effects.html; see also* CEQ, Guidance on the Consideration of Past Actions in Cumulative Effects Analysis (June 24, 2005), *https://www.energy.gov/sites/default/files/nepapub/nepa_documents/RedDont/G-CEQ-PastActsCumulEffects.pdf.*

[10] CEQ, Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act (Nov. 23, 2010) (CE Guidance), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA_CE_Guidance_Nov232010.pdf;* CEQ, Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact, 76 FR 3843 (Jan. 21, 2011) (Mitigation Guidance), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf;* CEQ, National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 FR 1196 (Jan. 9, 2023) (2023 GHG Guidance), *https://ceq.doe.gov/guidance/ceq_guidance_nepa-ghg.html.*

[11] CEQ, Implementation of Executive Order 11988 on Floodplain Management and Executive Order 11990 on Protection of Wetlands (Mar. 21, 1978), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Memorandum-Implementation-of-E.O.-11988-and-E.O.-11990-032178.pdf;* CEQ & Advisory Council on Historic Preservation, NEPA and NHPA: A Handbook for Integrating NEPA and Section 106 (Mar. 2013), *https://ceq.doe.gov/docs/ceq-publications/NEPA_NHPA_Section_106_Handbook_Mar2013.pdf.*

[12] *See, e.g.,* CEQ, Final Guidance on Improving the Process for Preparing Efficient and Timely Environmental Reviews Under the National Environmental Policy Act, 77 FR 14473 (Mar. 12, 2012), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Improving_NEPA_Efficiencies_06Mar2012.pdf;* CEQ, Effective Use of Programmatic NEPA Reviews (Dec. 18, 2014) (Programmatic Guidance), *https://www.energy.gov/sites/default/files/2016/05/f31/effective_use_of_programmatic_nepa_reviews_18dec2014.pdf;* OMB & CEQ, M–15–20, Guidance Establishing Metrics for the Permitting and Environmental Review of Infrastructure Projects (Sept. 22, 2015), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2015/m-15-20.pdf;* OMB & CEQ, M–17–14, Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects (Jan. 13, 2017), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2017/m-17-14.pdf.*

[13] CEQ, *A Citizen's Guide to the National Environmental Policy Act; Having Your Voice Heard* (Jan. 2021), *https://ceq.doe.gov/get-involved/citizens_guide_to_nepa.html.*

[14] *See, e.g.,* Presidential Memorandum, *Speeding Infrastructure Development Through More Efficient and Effective Permitting and Environmental Review* (Aug. 31, 2011), *https://obamawhitehouse.archives.gov/the-press-office/2011/08/31/presidential-memorandum-speeding-infrastructure-development-through-more;* E.O. 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects,* 82 FR 40463 (Aug. 24, 2017).

reducing GHG emissions across the economy; increasing resilience to climate change-related effects; conserving land, water, and biodiversity; transitioning to a clean-energy economy; and advancing environmental justice, including delivering the benefits of Federal investments to disadvantaged communities.[15] CEQ is leading the President's efforts to secure environmental justice consistent with sections 219 through 223 of the E.O. For example, CEQ has developed the Climate and Economic Justice Screening Tool,[16] and collaborates with the Office of Management and Budget (OMB) and the National Climate Advisor on implementing the Justice40 initiative, which sets a goal that 40 percent of the overall benefits of certain Federal investments flow to disadvantaged communities.[17]

Section 205 of the E.O. also charged CEQ with developing the Federal Sustainability Plan to achieve a carbon pollution-free electricity sector and clean and zero-emission vehicle fleets. Thereafter, CEQ issued the Federal Sustainability Plan,[18] which accompanied E.O. 14057, *Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability*.[19] CEQ is leading the efforts with its agency partners to implement E.O. 14057's ambitious goals, which include reducing Federal agency GHG emissions by 65 percent and improving the climate resilience of Federal infrastructure and operations. CEQ also is collaborating with the Departments of the Interior, Agriculture, and Commerce on the implementation of the America the Beautiful Initiative, which was issued to achieve the goal of conserving at least 30 percent of our lands and waters by 2030 as set forth in E.O. 14008.[20] Additionally, E.O. 14008 requires the Chair of CEQ and the Director of OMB to ensure that Federal permitting decisions consider the effects of GHG emissions and climate change.[21]

CEQ is also instrumental to the President's efforts to institute a government-wide approach to advancing environmental justice. On April 21, 2023, the President signed E.O. 14096, *Revitalizing Our Nation's Commitment to Environmental Justice for All,* to further embed environmental justice into the work of Federal agencies and ensure that all people can benefit from the vital safeguards enshrined in the Nation's foundational environmental and civil rights laws.[22] The E.O. charges each agency to make achieving environmental justice part of its mission consistent with the agency's statutory authority,[23] and requires each agency to submit to the Chair of CEQ and make publicly available an Environmental Justice Strategic Plan setting forth the agency's goals and plans for advancing environmental justice.[24] Further, section 8 of the E.O. establishes a White House Office of Environmental Justice within CEQ.

Additionally, CEQ plays a significant role in improving interagency coordination and providing for efficient environmental reviews and permitting under the Biden-Harris Permitting Action Plan.[25] The Action Plan outlines the Administration's strategy for ensuring that Federal environmental reviews and permitting processes are effective, efficient, and transparent, guided by the best available science to promote positive environmental and community outcomes, and shaped by early and meaningful public engagement. The Action Plan contains five key elements that build on strengthened Federal approaches to environmental reviews and permitting: (1) accelerating permitting through early cross-agency coordination to appropriately scope reviews, reduce bottlenecks, and use the expertise of sector-specific teams; (2) establishing clear timeline goals and tracking key project information to improve transparency and accountability, providing increased certainty for project sponsors and the public; (3) engaging in early and meaningful outreach and communication with Tribal Nations, States, Territories, and local communities; (4) improving agency responsiveness, technical assistance, and support to navigate the environmental review and permitting process effectively and efficiently; and (5) adequately resourcing agencies and using the environmental review process to improve environmental and community outcomes.

Finally, CEQ is staffed with experts with decades of NEPA experience as well as other environmental law and policy experience. As part of CEQ's broader environmental policy role, CEQ advises the President on environmental issues facing the nation, and on the design and implementation of the President's environmental initiatives. In that role, CEQ collaborates with agencies and provides feedback on their implementation of the numerous environmental statutes and directives. CEQ's diverse array of responsibilities and expertise has long influenced the implementation of NEPA, and CEQ relied extensively on this experience in developing this rulemaking.

C. NEPA Implementation 1970–2019

Following shortly after the enactment of NEPA, President Nixon issued E.O. 11514, *Protection and Enhancement of Environmental Quality,* directing CEQ to issue guidelines for implementation of section 102(2)(C) of NEPA.[26] In response, CEQ in April 1970 issued interim guidelines, which addressed the provisions of section 102(2)(C) of the Act regarding EIS requirements.[27] CEQ revised the guidelines in 1971 and 1973 to address public involvement and introduce the concepts of EAs and draft and final EISs.[28]

In 1977, President Carter issued E.O. 11991, *Relating to Protection and Enhancement of Environmental Quality,* amending E.O. 11514 and directing CEQ to issue regulations for implementation

[15] E.O. 14008, *supra* note 3.

[16] CEQ, *Explore the Map,* Climate and Economic Justice Screening Tool, *https://screeningtool.geoplatform.gov/*.

[17] E.O. 14008, *supra* note 3, sec. 223.

[18] CEQ, *Federal Sustainability Plan* (Dec. 2021), *https://www.sustainability.gov/federalsustainabilityplan/*.

[19] E.O. 14057, *supra* note 4.

[20] E.O. 14008, *supra* note 3.

[21] *Id.* at sec. 213(a); *see also id.,* sec. 219 (directing agencies to ''make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities'').

[22] E.O. 14096, *Revitalizing Our Nation's Commitment to Environmental Justice for All,* 88 FR 25251 (Apr. 26, 2023). E.O. 14096 builds upon efforts to advance environmental justice and equity consistent with the policy advanced in documents including E.O. 13985, E.O. 14091, and E.O. 14008, and supplements the foundational efforts of E.O. 12898 to deliver environmental justice to communities across America. *See* E.O. 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,* 86 FR 7009 (Jan. 25, 2021); E.O. 14091, *Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,* 88 FR 10825 (Feb. 22, 2023); E.O. 14008, *supra* note 3; and E.O. 12898, *supra* note 8.

[23] E.O. 14096, *supra* note 22, sec. 3.

[24] *Id.* at sec. 4.

[25] The Biden-Harris Permitting Action Plan to Rebuild America's Infrastructure, Accelerate the Clean Energy Transition, Revitalize Communities, and Create Jobs (May 22, 2022), *https://www.whitehouse.gov/wp-content/uploads/2022/05/Biden-Harris-Permitting-Action-Plan.pdf*.

[26] E.O. 11514, *Protection and Enhancement of Environmental Quality,* 35 FR 4247 (Mar. 7, 1970), sec. 3(h).

[27] *See* CEQ, Statements on Proposed Federal Actions Affecting the Environment, 35 FR 7390 (May 12, 1970) (interim guidelines).

[28] CEQ, Statements on Proposed Federal Actions Affecting the Environment, 36 FR 7724 (Apr. 23, 1971) (final guidelines); CEQ, Preparation of Environmental Impact Statements, 38 FR 10856 (May 2, 1973) (proposed revisions to the guidelines); CEQ, Preparation of Environmental Impact Statements: Guidelines, 38 FR 20550 (Aug. 1, 1973) (revised guidelines).

of section 102(2)(C) of NEPA and requiring that Federal agencies comply with those regulations.[29] CEQ promulgated its NEPA regulations in 1978.[30] Issued 8 years after NEPA's enactment, the NEPA regulations reflected CEQ's interpretation of the statutory text and Congressional intent, expertise developed through issuing and revising the CEQ guidelines and advising Federal agencies on their implementation of NEPA, initial interpretations of the courts, and Federal agency experience implementing NEPA. The 1978 regulations reflected the fundamental principles of informed and science-based decision making, transparency, and public engagement that Congress established in NEPA. The regulations further required agency-level implementation, directing Federal agencies to issue and periodically update agency-specific implementing procedures to supplement CEQ's procedures and integrate the NEPA process into the agencies' specific programs and processes. Consistent with 42 U.S.C. 4332(2)(B), the regulations also required agencies to consult with CEQ in the development or update of these agency-specific procedures to ensure consistency with CEQ's regulations.

CEQ made typographical amendments to the 1978 implementing regulations in 1979[31] and amended one provision in 1986 (CEQ refers to these regulations, as amended, as the ''1978 regulations'' in this preamble).[32] Otherwise, CEQ left the regulations unchanged for over 40 years. As a result, CEQ and Federal agencies developed extensive experience implementing the 1978 regulations, and a large body of agency practice and case law developed based on them. *See, e.g., Robertson* v. *Methow Valley Citizens Council,* 490 U.S. 332, 355 (1989) (''CEQ regulations are entitled to substantial deference.''); *Wild Va.* v. *Council on Env't Quality,* 56 F.4th 281, 288 (4th Cir. 2022) (noting that prior to the 2020 rule, CEQ's NEPA regulations ''had remained virtually unchanged since 1978.'')

[29] E.O. 11991, *Relating to Protection and Enhancement of Environmental Quality,* 42 FR 26967 (May 25, 1977).

[30] CEQ, Implementation of Procedural Provisions; Final Regulations, 43 FR 55978 (Nov. 29, 1978).

[31] CEQ, Implementation of Procedural Provisions; Corrections, 44 FR 873 (Jan. 3, 1979).

[32] CEQ, National Environmental Policy Act Regulations; Incomplete or Unavailable Information, 51 FR 15618 (Apr. 25, 1986) (amending 40 CFR 1502.22).

D. 2020 Amendments to the CEQ Regulations

On August 15, 2017, President Trump issued E.O. 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects,*[33] which directed CEQ to establish and lead an interagency working group to identify and propose changes to the NEPA regulations.[34] In response, CEQ issued an advance notice of proposed rulemaking (ANPRM) on June 20, 2018,[35] and a notice of proposed rulemaking (NPRM) on January 10, 2020, proposing broad revisions to the 1978 regulations.[36] A wide range of stakeholders submitted more than 12,500 comments on the ANPRM[37] and 1.1 million comments on the proposed rule,[38] including from State and local governments, Tribes, environmental advocacy organizations, professional and industry associations, other advocacy or non-profit organizations, businesses, and private citizens. Many commenters provided detailed feedback on the legality, policy wisdom, and potential consequences of the proposed amendments. In keeping with the proposed rule, the final rule, promulgated on July 16, 2020 (2020 regulations or 2020 rule), made wholesale revisions to the regulations; it took effect on September 14, 2020.[39]

In the months that followed the issuance of the 2020 rule, five lawsuits were filed challenging the 2020 rule.[40] These cases challenge the 2020 rule on a variety of grounds, including under the Administrative Procedure Act (APA), NEPA, and the Endangered Species Act, and contend that the rule exceeded CEQ's authority and that the related rulemaking process was procedurally and substantively defective. The district courts issued temporary stays in each of these cases, except for *Wild Virginia* v. *Council on Environmental Quality,* which the district court dismissed without prejudice on June 21, 2021.[41] The Fourth Circuit affirmed that dismissal on December 22, 2022.[42]

E. CEQ's Review of the 2020 Regulations

On January 20, 2021, President Biden issued E.O. 13990, *Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis,*[43] to establish an administration policy to listen to the science; improve public health and protect our environment; ensure access to clean air and water; limit exposure to dangerous chemicals and pesticides; hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; reduce GHG emissions; bolster resilience to the impacts of climate change; restore and expand the Nation's treasures and monuments; and prioritize both environmental justice and the creation of well-paying union jobs necessary to achieve these goals.[44] The Executive Order calls for Federal agencies to review existing regulations issued between January 20, 2017, and January 20, 2021, for consistency with the policy it articulates and to take appropriate action.[45] The Executive Order also revokes E.O. 13807 and directs agencies to take steps to rescind any rules or regulations implementing it.[46] An accompanying White House fact sheet, published on January 20, 2021, specifically identified the 2020 regulations for CEQ's review for consistency with E.O. 13990's policy.[47]

[33] E.O. 13807, *supra* note 14.

[34] *Id.* at sec. 5(e)(iii).

[35] CEQ, Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 83 FR 28591 (June 20, 2018).

[36] CEQ, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 FR 1684 (Jan. 10, 2020).

[37] *See* Docket No. CEQ–2018–0001, *Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, https://www.regulations.gov/document/CEQ-2018-0001-0001.*

[38] *See* Docket No. CEQ–2019–0003, *Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, https://www.regulations.gov/document/CEQ-2019-0003-0001.*

[39] CEQ, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 FR 43304 (July 16, 2020) (2020 Final Rule).

[40] *Wild Va.* v. *Council on Env't Quality,* No. 3:20cv45 (W.D. Va. 2020); *Env't Justice Health All.* v. *Council on Env't Quality,* No. 1:20cv06143 (S.D.N.Y. 2020); *Alaska Cmty. Action on Toxics* v. *Council on Env't Quality,* No. 3:20cv5199 (N.D. Cal. 2020); *California* v. *Council on Env't Quality,* No. 3:20cv06057 (N.D. Cal. 2020); *Iowa Citizens for Cmty. Improvement* v. *Council on Env't Quality,* No. 1:20cv02715 (D.D.C. 2020). Additionally, in *Clinch Coalition* v. *U.S. Forest Serv.,* No. 2:21cv00003 (W.D. Va. 2021), plaintiffs challenged the U.S. Forest Service's NEPA implementing procedures, which established new CEs, and, relatedly, the 2020 rule's provisions on CEs.

[41] *Wild Va.* v. *Council on Env't Quality,* 544 F. Supp. 3d 620 (W.D. Va. 2021).

[42] *Wild Va.* v. *Council on Env't Quality,* 56 F.4th 281 (4th Cir. 2022).

[43] E.O. 13990, *Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis,* 86 FR 7037 (Jan. 25, 2021).

[44] *Id.* at sec. 1.

[45] *Id.* at sec. 2.

[46] *Id.* at sec. 7.

[47] The White House, Fact Sheet: List of Agency Actions for Review (Jan. 20, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/.*

Consistent with E.O. 13990 and E.O. 14008, CEQ has reviewed the 2020 regulations and engaged in a multi-phase rulemaking process to ensure that the NEPA implementing regulations provide for sound and efficient environmental review of Federal actions, including those actions integral to tackling the climate crisis, in a manner that enables meaningful public participation, provides for an expeditious process, discloses climate change-related effects, advances environmental justice, respects Tribal sovereignty, protects our Nation's resources, and promotes better and more equitable environmental and community outcomes.

On June 29, 2021, CEQ issued an interim final rule to amend the requirement in 40 CFR 1507.3(b) (2020) [48] that agencies propose changes to existing agency-specific NEPA procedures to make those procedures consistent with the 2020 regulations by September 14, 2021.[49] CEQ extended the date by 2 years to avoid agencies proposing changes to agency-specific implementing procedures on a tight deadline to conform to regulations that were undergoing extensive review and would likely change in the near future.

Next, on October 7, 2021, CEQ issued a ''Phase 1'' proposed rule to focus on a discrete set of provisions designed to restore three elements of the 1978 regulations, which CEQ finalized on April 20, 2022.[50] First, the Phase 1 rule revised 40 CFR 1502.13 (2020), with a conforming edit to 40 CFR 1508.1(z) (2020), to clarify that agencies have discretion to consider a variety of factors when assessing an application for authorization by removing a requirement that an agency base the purpose and need on the goals of an applicant and the agency's statutory authority. Second, CEQ removed language in 40 CFR 1507.3 (2020) that could be construed to limit agencies' flexibility to develop or revise procedures to implement NEPA specific to their programs and functions that may go beyond CEQ's regulatory requirements. Finally, CEQ revised the definition of ''effects'' in 40 CFR 1508.1(g) (2020) to restore the substance of the definitions of ''effects'' and ''cumulative impacts'' contained in the 1978 regulations.

On July 31, 2023, CEQ published the Phase 2 notice of proposed rulemaking (proposed rule or NPRM), initiating a broader rulemaking to revise, update, and modernize the NEPA implementing regulations.[51] Informed by CEQ's extensive experience implementing NEPA, public and agency input, and Congress's amendments to NEPA, CEQ proposed further revisions to improve the efficiency and effectiveness of environmental reviews; ensure that environmental reviews are guided by science and are consistent with the statute's text and purpose; enhance clarity and certainty for Federal agencies, project proponents, and the public; enable full and fair public participation and a process that informs the public about the potential environmental effects of agency actions; and ultimately promote better informed Federal decisions that protect and enhance the quality of the human environment, including by ensuring climate change, environmental justice, and other environmental issues are fully accounted for in agencies' decision-making processes.

Publication of the proposed rule initiated a 60–day public comment period that concluded on September 29, 2023. CEQ held four virtual public meetings on the proposed rule on August 26, 2023; August 30, 2023; September 11, 2023; and September 21, 2023, as well as two Tribal consultations on September 6, 2023, and September 12, 2023. CEQ received approximately 147,963 written comments and 86 oral comments in response to the proposed rule and considered these 148,049 comments in the development of this final rule. A majority of the comments (approximately 147,082) were campaign form letters sent in response to an organized initiative and are identical or very similar in form and content. CEQ received approximately 920 unique public comments, of which 540 were substantive comments on a variety of aspects of the rulemaking approach and contents of the proposed rule.

The majority of the unique comments expressed overall or conditional support for the proposed rule. CEQ provides a summary of the comments received on the proposed rule and responses to those comment summaries in the document, ''National Environmental Policy Act Implementing Regulations Revision Phase 2 Response to Comments'' (Phase 2 Response to Comments). Additionally, CEQ provides brief comment summaries and responses for many of the substantive comments it received as part of the summary and rationale for the final rule in section II.

As discussed in section I.B, CEQ relies on its extensive experience overseeing and implementing NEPA in the development of this rule. CEQ has over 50 years of experience advising Federal agencies on the implementation of NEPA and is staffed by NEPA practitioners who have decades of experience implementing NEPA at agencies across the Federal Government as well as from outside the government, including State governments and applicants whose activities require Federal action. CEQ collaborates daily with Federal agencies on specific NEPA reviews, provides government-wide guidance on NEPA implementation, including the recent NEPA amendments, consults with agencies on the development of agency-specific NEPA implementing procedures and determines whether the procedures conform with NEPA and the CEQ regulations, and advises the President on a vast array of environmental issues. This experience also enables CEQ to contextualize the patchwork of fact-specific judicial decisions that have evolved under NEPA. This rulemaking seeks to bring clarity and predictability to Federal agencies and outside parties whose activities require Federal action and therefore trigger NEPA review, while also facilitating better environmental and social outcomes due to informed decision making.

II. Summary of and Rationale for the Final Rule

This section summarizes the changes CEQ proposed to its NEPA implementing regulations in the notice of proposed rulemaking (NPRM or proposed rule), the public comments CEQ received on those proposed changes, a description of the revisions made through this final rule, and the rationale for those changes. CEQ's revisions fall into five general categories. First, CEQ makes revisions to the regulations to implement the amendments to NEPA made by the Fiscal Responsibility Act. Second, CEQ amends the regulations to enhance consistency and clarity. Third, CEQ revises the regulations based on decades of CEQ and agency experience implementing and complying with NEPA to improve the efficiency and

[48] In the preamble, CEQ uses the section symbol (§) to refer to the proposed or final regulations; 40 CFR 150X.X (2020) or (2022) to refer to the current CEQ regulations as set forth in 40 CFR parts 1500–1508, which this Final Rule amends; and 40 CFR 150X.X (2019) to refer to the CEQ regulations as they existed prior to the 2020 rule.

[49] CEQ, Deadline for Agencies to Propose Updates to National Environmental Policy Act Procedures, 86 FR 34154 (June 29, 2021).

[50] CEQ, National Environmental Policy Act Implementing Regulations Revisions, 86 FR 55757 (Oct. 7, 2021) (Phase 1 proposed rule); CEQ, National Environmental Policy Act Implementing Regulations Revisions, 87 FR 23453 (Apr. 20, 2022) (Phase 1 Final Rule).

[51] CEQ, National Environmental Policy Act Implementing Regulations Revision Phase 2, 88 FR 49924 (July 31, 2023) (Phase 2 proposed rule).

effectiveness of the environmental review process, foster science-based decision making, better effectuate NEPA's statutory purposes, and reflect developments in case law. Fourth, CEQ reverts to and revises for clarity certain language from the 1978 regulations, which were in effect for more than 40 years before the 2020 rule revised them, where CEQ determined the 1978 language provides clearer and more effective and predictable direction or guidance to implement NEPA. Fifth, CEQ removes certain provisions added by the 2020 rule that CEQ considers imprudent or legally unsettled, or that create uncertainty or ambiguity that could reduce efficiency or increase the risk of litigation. Outside of those revisions, CEQ retains many of the changes made in the 2020 rulemaking, including changes that codified longstanding practice or guidance or enhanced the efficiency and effectiveness of the NEPA process. For example, CEQ identified for retention the inclusion of Tribal interests throughout the regulations, the integration of mechanisms to facilitate better interagency cooperation, and the reorganization and modernization of provisions addressing certain elements of the process to make the regulations easier to understand and follow. CEQ considers it important that the regulations meet current goals and objectives, including to promote the development of NEPA documents that are concise but also include the information needed to inform decision makers and reflect public input.

In response to the Phase 1 proposed rule, CEQ received many comments on provisions not addressed in Phase 1. CEQ indicated in the Phase 1 Final Rule that it would consider such comments during the development of this Phase 2 rulemaking. CEQ has done so, and where applicable, this final rule provides a high-level summary of the important issues raised in those public comments. Where CEQ has retained provisions as finalized in the Phase 1 rulemaking, CEQ incorporates by reference the discussion of those provisions in the Phase 1 proposed and final rule, as well as the Phase 1 Response to Comments.[52] CEQ is revising and republishing the entirety of the NEPA regulations, Subpart A of Chapter V, Title 40 of the Code of Federal Regulations.[53]

A. Changes Throughout Parts 1500–1508

In the NPRM, CEQ proposed several revisions throughout parts 1500 through 1508 to provide consistency, improve clarity, and correct grammatical errors. CEQ proposed clarifying edits because unclear language can create confusion and undermine consistent implementation, thereby improving the efficiency of the NEPA process and reducing the risk of litigation.

For these reasons, CEQ proposed to change the word ''impact'' to ''effect'' throughout the regulations where this term is used as a noun because these two words are synonymous, with three exceptions. The regulations would continue to refer to a finding of no significant impact (FONSI) because that term has been widely used and recognized and making the substitution of effect for impact in that instance could create confusion rather than add clarity, and environmental impact statement because this term is used in the NEPA statute. Third, CEQ proposed to use ''cumulative impact'' in the definition of ''environmental justice'' as discussed further in section II.J.9. CEQ makes these change in the final rule as proposed.

Also, to enhance clarity, CEQ proposed to use the word ''significant'' only to modify the term ''effects'' throughout the regulations. Accordingly, where ''significant'' modifies a word other than ''effects,'' CEQ proposed to replace ''significant'' with another synonymous adjective, typically ''important'' or ''substantial,'' which have also been used in varying provisions throughout the CEQ regulations since 1978. CEQ proposed this change to avoid confusion about what ''significant'' means in these other contexts without substantively changing any of the provisions so revised.

CEQ proposed this change based on public comments and agency feedback on the Phase 1 rulemaking that use of the word ''significant'' in phrases such as ''significant issues'' or ''significant actions'' creates confusion on what the word ''significant'' means.[54] CEQ also proposed the change to align with the definition of ''significant effects'' in § 1508.1(mm), as discussed in section II.J.24.

One commenter supported the use of ''important'' in place of ''significant,'' asserting that the change will reduce unnecessary confusion and delays because use of consistent terminology will eliminate ambiguity and increase consistency and will speed up future reviews because all parties will understand what is meant by a term. A few other commenters supported the changes in terms generally, saying that the changes help make the NEPA regulations easier to understand.

A separate commenter supported the use of the term ''important'' arguing that it would broaden the scope of what agencies should consider under NEPA. The commenter described significance, in the context of NEPA, as a high bar, and agreed with CEQ that important issues should also be subject to thorough consideration in environmental reviews.

Multiple commenters disagreed with the proposed use of ''important'' in place of ''significant'' or ''unimportant'' in place of ''insignificant.'' These commenters expressed concern about the interpretation of ''important'' without a definition or additional guidance, and that the use of these adjectives could cause confusion and increase litigation risk. A few commenters requested that the final rule replace ''issues'' with ''effects'' and change ''important issues'' to ''significant effects'' asserting that the phrase ''important issues'' is subjective. One commenter stated that while CEQ described the changes as minor, these terms are well understood by courts and agencies and as such changing them will result in numerous updates of related procedures, regulations, and guidance documents that use these terms just for editorial purposes.

Another commenter expressed concern that replacing the word ''significant'' with another adjective is unnecessary, and points to CEQ's own description in the NPRM that it does not intend to ''substantively change the meaning of the provisions'' and suggesting the replacement words will be synonymous. The commenter further asserted that it will be difficult to ensure consistency of implementation if CEQ continually changes language that has no substantive effect on the regulations.

A separate commenter asserted that while they appreciated the return of the definition of ''significance,'' the use of the new term ''important'' is confusing. The commenter further stated that with the heightened focus on environmental justice, human health, and social or societal effects, it is unclear what is

[52] CEQ, Phase 1 proposed rule, *supra* note 50; CEQ, Phase 1 Final Rule, *supra* note 50; CEQ, National Environmental Policy Act Implementing Regulations Revision Phase 1 Response to Comments (Apr. 2022) (Phase 1 Response to Comments), *https://www.regulations.gov/document/CEQ-2021-0002-39427*.

[53] Consistent with guidance from the Office of **Federal Register**, republishing the provisions that are unchanged in this rulemaking provides context for the revisions. *See* Office of the Federal Register, Amendatory Instruction: Revise and Republish, *https://www.archives.gov/federal-register/write/ddh/revise-republish*.

[54] CEQ, Phase 1 Response to Comments, *supra* note 52, at 120–21.

considered important and who determines whether something is important.

CEQ implements this change from ''significant'' to one of its synonyms when it is not modifying ''effect'' in the final rule. The NEPA regulations have long required agencies to focus on the ''important'' issues, *see* 40 CFR 1500.1 (2019), and agencies have decades of experience doing just that—CEQ disagrees that use of this term in other provisions as a substitute for ''significant issues'' alters the scope of the issues to which those provisions refer. CEQ declines to add a definition for this term because its plain meaning is sufficient and notes that the phrase ''significant issues'' was not defined in the 1978 regulations.[55] CEQ's intent is that agencies focus their NEPA documents on the issues that are key for the public to comment on and the agency to take into account in the decision-making process, and only briefly explain why other, unimportant issues are not discussed. As CEQ indicated in the proposed rule, it does not intend the substitution of ''important'' and ''substantial'' for ''significant'' to substantively change the meaning of the provisions, but rather to bring greater consistency and clarity to agencies in implementing these provisions by eliminating a potential ambiguity that these phrases incorporate the definition of ''significant effects''; for example, ensuring that the phrase ''significant actions'' is not mistakenly understood to mean actions that have significant effects, which was not the meaning of the phrase in the regulations. CEQ discusses comments on specific uses of the terms in specific sections of the rule and in the Phase 2 Response to Comments.

For clarity, CEQ proposed to change ''statement'' to ''environmental impact statement'' and ''assessment'' to ''environmental assessment'' where the regulations only use the short form in the paragraph. *See, e.g.,* §§ 1502.3 and 1506.3(e)(1) through (e)(3). CEQ did not receive comments on this proposal and makes these changes throughout the rule as proposed.

CEQ also proposed to make non-substantive grammatical corrections or consistency edits throughout the regulations where CEQ considered the changes to improve readability. Finally, CEQ proposed to update the authorities for each part, update the references to NEPA as amended by the Fiscal Responsibility Act, and fix internal cross references to other sections of the regulations throughout to follow the correct **Federal Register** format. CEQ makes these changes in the final rule.

B. Revisions To Update Part 1500, Purpose and Policy

CEQ proposed substantive revisions to all sections in part 1500. These revisions include reinstating § 1500.2, ''Policy,'' as its own section separate from § 1500.1, ''Purpose'' consistent with the approach taken in the 1978 regulations. Some commenters recommended that CEQ title § 1500.1 ''Purpose and Policy'' and title § 1500.2 ''Additional Policy'' because, in their view, § 1500.2 reflects CEQ's policy judgments rather than the commands of the NEPA statute.

CEQ declines to make this change. The purpose of §§ 1500.1 and 1500.2 is to place the regulations into their broader context by restating the policies of the Act within the regulations, which will improve readability by avoiding the need for cross references to material outside the text of the regulations. Section 1500.2 reflects CEQ's interpretation of the policies of the Act, rather than CEQ's own policy priorities.

1. Purpose (§ 1500.1)

In § 1500.1, CEQ proposed to restore much of the language from the 1978 regulations with revisions to further incorporate the policies Congress established in the NEPA statute. CEQ proposed these changes to restore text regarding NEPA's purpose and goals, placing the regulations into their broader context and to restate the policies of the Act within the regulations. Some commenters expressed general support for proposed § 1500.1 stating that the revisions appropriately frame NEPA's purposes. CEQ revises § 1500.1 as discussed in this section to recognize that the procedural provisions of NEPA are intended to further the purpose and goals of the Act. One of those goals is to make informed and sound government decisions.

First, CEQ proposed to revise paragraph (a) of 40 CFR 1500.1 (2020) by subdividing it into paragraphs (a), (a)(1), and (a)(2). In paragraph (a), CEQ proposed to revise the first sentence to restore language from the 1978 regulations stating that NEPA is ''the basic national charter for protection of the environment'' and add a new sentence stating that NEPA ''establishes policy, sets goals'' and ''provides direction'' for carrying out the principles and policies Congress established in sections 101 and 102 of NEPA. 42 U.S.C. 4331, 4332. CEQ proposed to remove language from the first sentence of paragraph (a) describing NEPA as a purely procedural statute because CEQ considers that language to be an inappropriately narrow view of NEPA's purpose and ignores the fact that Congress established the NEPA process for the purpose of promoting informed decision making and improved environmental outcomes.

Some commenters objected to the proposed use of the phrase ''basic national charter for protection of the environment'' in paragraph (a), asserting it misrepresents NEPA's purpose as a procedural statute. Other commenters opposed the proposed changes to remove the language clarifying that NEPA is a procedural statute, asserting the proposed changes could give the impression that CEQ seeks to expand NEPA beyond its original mandate.

Another commenter objected to the restoration of the language in paragraph (a) asserting that describing NEPA as the ''basic national charter for the protection of the environment'' displaces the U.S. Constitution from the role of ''America's basic national charter for protection.'' CEQ declines to remove this language, which accurately describes NEPA's purpose, was included in the 1978 regulations, and remained in place until the 2020 rule. CEQ disagrees that describing NEPA as the basic national charter for the protection of the environment denigrates the role of the U.S. Constitution. Congress enacted NEPA exercising its Constitutional authority to declare a national environmental policy and describing NEPA as ''America's basic national charter for the protection of the environment'' does not imply that NEPA overshadows the U.S. Constitution. CEQ also notes that several courts have quoted this language approvingly. *See, e.g., Ctr. for Biological Diversity* v. *Bernhardt,* 982 F.3d 723, 734 (9th Cir. 2020); *Habitat Educ. Ctr., Inc.* v. *United States Forest Serv.,* 673 F.3d 518, 533 (7th Cir. 2012).

In the final rule, CEQ revises paragraph (a) as proposed, but removes the parenthetical references to sections 101 and 102 as unnecessary and incomplete because other sections of NEPA also provide direction for carrying out NEPA's policy, which are addressed throughout the regulations. While CEQ agrees that the NEPA analysis required by section 102(2)(C) and these regulations does not dictate a particular outcome, Congress did not establish NEPA to create procedure for procedure's sake, but rather, to provide for better informed Federal decision making and improved environmental

[55] *See, e.g., Significant,* Merriam-Webster, *https://www.merriam-webster.com/dictionary/significant* (defining ''significant'' as ''having or likely to have influence or effect: IMPORTANT'').

outcomes. These goals are not fulfilled if the NEPA analysis is treated merely as a check-the-box exercise. 42 U.S.C. 4332(2)(C). CEQ does not consider it necessary to repeatedly emphasize in the regulations the procedural nature of the statutory mechanism Congress chose to advance the purposes of NEPA as described in section 2 and the policy directions established in section 101 of NEPA. 42 U.S.C. 4321, 4331. Doing so may suggest that NEPA mandates a rote paperwork exercise and de-emphasizes the Act's larger goals and purposes. Instead, CEQ remains cognizant of the goals Congress intended to achieve through the NEPA process in developing CEQ's implementing regulations, and agencies should carry out NEPA's procedural requirements in a manner faithful to the purposes of the statute.

Second, in § 1500.1(a)(1), CEQ proposed to retain the second sentence of 40 CFR 1500.1(a) (2020) summarizing section 101(a) of NEPA, change ''man'' to ''people'' to remove gendered language, and delete ''of Americans'' after ''present and future generations.'' 42 U.S.C. 4331(a). CEQ proposed to add a second sentence summarizing section 101(b) to clarify that agencies should advance the purposes in section 101(b) through their NEPA reviews. 42 U.S.C. 4331(b). CEQ proposed to include this language in § 1500.1(a)(1) to help agencies understand what the regulations refer to when the regulations direct or encourage agencies to act in a manner consistent with the purposes or policies of the Act. *See, e.g.,* §§ 1500.2(a), 1500.6, 1501.1(a), 1502.1(a), and 1507.3(b).

Some commenters objected to the proposal to remove ''of Americans'' from paragraph (a)(1) contending that the removal would be inconsistent with the statute. After considering these comments, CEQ has determined not to make this change and leave the phrase ''of Americans'' at the end of the first sentence of paragraph (a)(1), because this sentence is specifically describing section 101(a) of NEPA, which includes the phrase. However, CEQ notes that this text in section 101(a) and paragraph (a)(1) does not limit NEPA's concerns solely to Americans or the United States. For example, other language in section 101 reflects NEPA's broader purpose to ''create and maintain conditions under which [humans] and nature can exist in productive harmony'' without qualification. 42 U.S.C. 4331(a). As discussed further in section II.J.13, CEQ removes ''of Americans'' from the definition of ''human environment'' in § 1508.1(r) for consistency with the statute's overall broader purpose.

A commenter recommended CEQ add a dash after ''national policy'' in the second sentence for consistency with the statute to ensure that all six of the goals are modified by the phrase ''consistent with considerations of national policy.'' CEQ agrees that the beginning of the sentence, including the phrase ''consistent with other essential considerations of national policy'' modifies all of the listed items that follow and, in the final rule, revises the sentence to subdivide it into paragraphs (a)(1)(i) through (vi) to make this clarification. Lastly in paragraph (a)(1), in the final rule, CEQ changes ''man'' to ''humans'' rather than the proposed ''people'' to remove the gendered language while also providing consistency with the term ''human'' and ''human environment'' used in the NEPA statute and throughout the regulations.

Third, CEQ proposed to begin § 1500.1(a)(2) with the third sentence of 40 CFR 1500.1(a) (2020), modify it, and add two new sentences to generally restore the language of the 1978 regulations stating that the purpose of the regulations is to convey what agencies should and must do to comply with NEPA to achieve its purpose. Specifically, CEQ proposed to revise the first sentence to state that section 102(2) of NEPA establishes the procedural requirements to carry out the policies ''and responsibilities established'' in section 101, and contains '' 'action-forcing' procedural provisions to ensure Federal agencies implement the letter and spirit of the Act.'' 42 U.S.C. 4332(2), 42 U.S.C. 4331. CEQ proposed to add a new second sentence stating the purpose of the regulations is to set forth what agencies must and should do to comply with the procedures and achieve the goals of the Act. In the third new sentence, CEQ proposed to restore the language from the 1978 regulations that the President, Federal agencies, and the courts share responsibility for enforcing the Act to achieve the policy goals of section 101. 42 U.S.C. 4331.

Fourth, CEQ proposed to strike the fourth and fifth sentences of 40 CFR 1500.1(a) (2020), added by the 2020 rule, which state that NEPA requires Federal agencies to provide a detailed statement for major Federal actions, that the purpose and function of NEPA is satisfied if agencies have considered environmental information and informed the public, and that NEPA does not mandate particular results. While the NEPA process does not mandate that agencies reach specific decisions, CEQ proposed to remove this language because CEQ considered this language to unduly minimize Congress's understanding that procedures ensuring that agencies analyze, consider, and disclose environmental effects will lead to better substantive outcomes. CEQ also considered this language inconsistent with Congress's statements of policy in the NEPA statute.

Some commenters objected specifically to the proposed addition of the phrase ''action-forcing,'' and others contended that the proposed rule would revise the regulation not merely to force action, but to require specific outcomes. Another commenter asserted that proposed paragraph (a)(2) goes too far in separating policy goals from the procedures passed by Congress to achieve them.

CEQ finalizes paragraph (a)(2) as proposed and removes the language that describes NEPA as a purely procedural statute because CEQ considers the language to reflect an inappropriately narrow view of NEPA's purpose that minimizes Congress's broader goals in enacting the statute, as specified in sections 2 and 101 of NEPA. 42 U.S.C. 4321, 4331. While NEPA does not mandate particular results in specific decision-making processes, Congress intended the procedures required under the Act to result in more informed decisions, with the goal that information about the environmental effects of those decision would facilitate better environmental outcomes. *See, e.g., Andrus* v. *Sierra Club,* 442 U.S. 347, 350–51 (1979) (''If environmental concerns are not interwoven into the fabric of agency planning, the action-forcing characteristics of [NEPA] would be lost.'').

Fifth, CEQ proposed to strike the first two sentences of 40 CFR 1500.1(b) (2020), which the 2020 rule added, because they provide an unnecessarily narrow view of the purposes of NEPA and its implementing regulations. CEQ proposed to revise the third sentence and add two new sentences to restore in paragraph (b) language from the 1978 regulations emphasizing the importance of the early identification of high-quality information that is relevant to a decision. Early identification and consideration of issues using high-quality information have long been fundamental to the NEPA process, particularly because such identification and consideration facilitates comprehensive analysis of alternatives and timely and efficient decision making, and CEQ considers it important to emphasize these considerations in this section. CEQ also proposed the changes to emphasize that the environmental information that agencies

use in the NEPA process should be high-quality, science-based, and accessible.

Multiple commenters supported the proposed provisions of § 1500.1(b). One commenter supported the provision for agencies to ''concentrate on the issues that are truly relevant to the action in question, rather than amassing needless detail,'' and to use ''high quality, science-based, and accessible'' information. One commenter recommended that CEQ revise ''Most important'' to ''Most importantly'' in § 1500.1(b). CEQ agrees that this change would improve the readability of the sentence and makes this clarifying edit in the final rule.

Other commenters opposed the change to proposed paragraph (b), asserting it would delete important regulatory text. The commenters asserted that by striking the language, CEQ has turned the section from one that says follow the rules into one that adds to the rules. Upon further consideration, CEQ has determined not to finalize the proposed revisions to the beginning of paragraph (b) because the text from the 1978 regulations could be construed as a direction to agencies rather than a statement about the purpose of the CEQ regulations. Specifically, the final rule retains ''[t]he regulations in this subchapter implement'' from the current regulations and then replaces ''section 102(2) of NEPA'' with ''the requirements of NEPA,'' because the requirements of NEPA extend to additional sections following the 2023 NEPA amendments. Additionally, CEQ includes the proposed new second sentence, with revisions. In the final rule, this provision requires rather than recommends that information be high quality for consistency with § 1506.6. CEQ does not include the proposed references to ''science-based'' and ''accessible'' to avoid potential confusion that this provision was establishing a separate obligation from § 1506.6, which addresses methodology and scientific accuracy.

Finally, CEQ proposed a new paragraph (c) to restore text from the 1978 regulations, most of which the 2020 rule deleted, emphasizing the importance of NEPA reviews for informed decision making. Some commenters recommended CEQ further amend proposed paragraph (c) to state that agencies only have to ''protect'' or ''restore and protect,'' rather than ''enhance'' the environment for consistency with sections 101 and 102 of NEPA. 42 U.S.C. 4331, 4332.

CEQ disagrees with the commenters' view of NEPA's purposes and scope. To the extent that a substantive difference exists between the terms in this context, CEQ notes that section 101(c) of NEPA recognizes ''that each person has a responsibility to contribute to the preservation *and enhancement* of the environment.'' 42 U.S.C. 4331(c) (emphasis added); *see also, e.g., Douglas Ctny.* v. *Babbitt,* 48 F.3d 1495, 1505 (9th Cir. 1995) (''The purpose of NEPA is to 'provide a mechanism to *enhance* or improve the environment and prevent further irreparable damage.' '' (emphasis added) (quoting *Pac. Legal Found.* v. *Andrus,* 657 F.2d 829, 837 (6th Cir. 1981)). Another commenter recommended that CEQ qualify the second sentence of proposed paragraph (c) by appending, ''within the agency's Congressional authorizations.'' CEQ declines to make this change. In implementing any statute, agencies must act within the scope of their legal authority; adding a specific qualification to that effect here is therefore unnecessary and could be confusing. CEQ finalizes paragraph (c) as proposed.

2. Policy (§ 1500.2)

The 2020 rule struck 40 CFR 1500.2 (2019), stating that it was duplicative of other sections, and integrated policy language into 40 CFR 1500.1 (2020).[56] CEQ proposed to restore § 1500.2 because a robust articulation of NEPA's policy principles is fundamental to the NEPA process. CEQ also proposed to restore the policy section because it is helpful to agency practitioners and the public to have a consolidated listing of policy objectives regardless of whether other sections of the regulations address those objectives. CEQ proposed to restore with some updates the language of the 1978 regulations to § 1500.2.

First, CEQ proposed to restore an introductory paragraph to require agencies ''to the fullest extent possible'' to comply with the policy set forth in paragraphs (a) through (f). One commenter asserted that the final rule should delete ''to the fullest extent possible'' because it improperly expands the regulation's authority. CEQ disagrees with the commenter's interpretation of the phrase, which does not expand, but rather qualifies, the scope of § 1500.2 and conforms with the text in section 102 of NEPA, which directs agencies to comply with that section's requirements, including the requirement to prepare an EIS, ''to the fullest extent possible.'' *See* 42 U.S.C. 4332.

Second, CEQ proposed to restore in paragraph (a) the 1978 language directing agencies to interpret and administer policies, regulations, and U.S. laws consistent with the policies of NEPA and the CEQ regulations. Some commenters recommended the final rule revise paragraph (a) to replace ''the policies set forth in the Act and in these regulations,'' with ''with other applicable laws and regulations, in addition to NEPA.'' CEQ finalizes paragraph (a) as proposed and declines to make this change because it aligns with the language of section 102(1) of NEPA. *See* 42 U.S.C. 4332(1). The purpose of § 1500.2(a) is to place the CEQ regulations into their broader context by restating NEPA's policies. Doing so improves readability by avoiding the need for cross references to material outside the text of the regulations.

Third, in paragraph (b), CEQ proposed to restore with clarifying edits the 1978 language directing agencies to implement procedures that facilitate a meaningful NEPA process, including one that is useful to decision makers and the public with environmental documents that are concise and clear, emphasize the important issues and alternatives, and are supported by evidence. CEQ did not receive comments specific to this proposed paragraph and finalizes paragraph (b) as proposed.

Fourth, in paragraph (c), CEQ proposed to direct agencies to integrate NEPA with other planning and environmental review requirements to promote efficient, concurrent processes. One commenter requested the final rule revise proposed paragraph (c) to add qualifying language to require the integration be done at the earliest reasonable time, consistent with § 1501.2(a), except where inconsistent with other statutory requirements or where inefficient. The commenter generally supported integrating the NEPA process with other processes when it is efficient, but asserted that sometimes it may be more efficient to have other processes run consecutively instead of concurrently. CEQ agrees that processes should run consecutively where it is more efficient to do so, and that agencies should not integrate processes when doing so would be inefficient. Therefore, in the final rule, CEQ adds proposed paragraph (c) but does not include ''all'' before ''such procedures,'' and adds ''where doing so promotes efficiency'' at the end of the paragraph.

Fifth, in paragraph (d) CEQ proposed to modernize language from the 1978 regulations in 40 CFR 1500.2(d) (2019) to emphasize public engagement, including ''meaningful public

[56] CEQ, 2020 Final Rule, *supra* note 39, at 43316–17.

engagement with communities with environmental justice concerns, which often include communities of color, low-income communities, indigenous communities, and Tribal communities.''

One commenter requested that CEQ clarify whether the phrase ''affect the quality of the human environment'' in paragraph (d) refers to beneficial or adverse effects and whether it covers temporary effects in addition to permanent ones. CEQ declines to amend the language in question, which CEQ is restoring from the 1978 regulations. Because NEPA directs agencies to consider all of the reasonably foreseeable effects of a proposed action—including positive, negative, temporary, and permanent effects—this phrase is appropriately broad. While the final rule defines ''significant effects'' as limited to only adverse effects, *see* § 1508.1(mm), paragraph (d) is broader because the NEPA regulations encourage and facilitate public engagement for actions that may not have significant effects, including actions that agencies analyze through an EA.

Multiple commenters supported proposed § 1500.2(d) and the emphasis on public engagement. Some commenters recommended the final rule expand the paragraph to clarify how agencies should facilitate public engagement and education. CEQ declines to expand this paragraph because the intent of § 1500.2 is to place the regulations into their broader policy context. Instead, § 1501.9 describes agencies' public engagement responsibilities in detail.

Some commenters opposed proposed paragraph (d) and the emphasis on public engagement. One commenter expressed concern that the proposed rule does not include a similar increased emphasis on State-specific involvement, requested the final rule delineate between State involvement and public involvement, and explicitly emphasize the importance of State-specific engagement, much the same way CEQ has outlined for Tribal engagement.

In the final rule, CEQ adds proposed paragraph (d) but omits the last clause of the proposal and declines to specifically address State-specific involvement in this paragraph because this paragraph is about involving the public, rather than coordinating with other government entities such as States and Tribes. While public involvement and inter-governmental coordination are both critically important components of the NEPA process, they implicate different considerations and are addressed by different portions of the NEPA regulations. CEQ does not include the proposed language describing what communities are often included as communities with environmental justice concerns because ''environmental justice'' and ''communities with environmental justice concerns'' are defined terms in § 1508.1(f) and (m) and the explanatory language is unnecessary in § 1500.2. CEQ also revises the clause in the final rule to clarify the example by adding ''such as those'' after communities so that the example refers to communities in general and communities with environmental justice concerns more specifically, because the regulations encourage meaningful engagement with all communities that are potentially affected by an action. The reference to engagement with communities with environmental justice concerns is an example and not exhaustive. Further, CEQ views an emphasis on engagement with such communities to be important because agencies have not always meaningfully engaged with them, and such communities have been disproportionately and adversely affected by certain Federal activities, and such communities often face challenges in engaging with the Federal Government. In making this change to emphasize public engagement, CEQ notes that consultation with Tribal Nations on a nation-to-nation basis is distinct from the public engagement requirements of NEPA.[57]

Sixth, in paragraph (e), CEQ proposed to restore language from the 1978 regulations regarding use of the NEPA process to identify and assess the reasonable alternatives to proposed actions that avoid or minimize adverse effects. CEQ also proposed to add examples of such alternatives, including those that will reduce climate change-related effects or address health and environmental effects that disproportionately affect communities with environmental justice concerns.

One commenter requested that the final rule further clarify paragraph (e) by adding examples of reasonable alternatives. CEQ declines to add examples to paragraph (e) because reasonable alternatives are not amenable to easy generalization or simple description as they depend on project-specific factors, such as purpose and need, and technical and economic feasibility. Therefore, examples of reasonable alternatives are ill-suited to regulatory text. Some commenters opposed the references to climate change and environmental justice in § 1500.2(e), contending that the references indicate that CEQ's regulations direct or favor particular substantive outcomes, such as the disapproval of oil and gas projects, and will therefore prejudice agencies' analysis of environmental effects; that the NEPA statute does not explicitly address these subjects; or that it will be difficult or burdensome for agencies to account for climate change when conducting environmental reviews.

CEQ adds paragraph (e) as proposed in the final rule. CEQ agrees that NEPA does not dictate a particular outcome, and disagrees that the references to climate change and environmental justice in § 1500.2(e) are contrary to this principle. Rather, Congress enacted and amended NEPA based on the understanding that agency decision makers will make better decisions if they are fully informed about each decision's reasonably foreseeable environmental effects. Paragraph (e) prompts agencies to give appropriate regard to environmental effects related to climate change and environmental justice.

Further, the references to climate change and environmental justice in paragraph (e) reflect and advance NEPA's statutory objectives, text, and policy statements, which include analyzing a reasonable range of alternatives; avoiding environmental degradation; preserving historic, cultural, and natural resources; and ''attain[ing] the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.'' 42 U.S.C. 4331(b), 4332(2)(C)(iii). The references emphasize that decision makers should integrate those subjects into the analysis of the environmental effects of a proposed action and any reasonable alternatives, as appropriate. Additionally, these changes are consistent with the goal of providing ''safe, healthful, productive, and esthetically and culturally pleasing surroundings'' across the Nation, and the goal that all people can ''enjoy a healthful environment,'' 42 U.S.C. 4331(b), (c), and highlight the importance of considering such effects in environmental documents, consistent with NEPA's requirements and agency practice.[58] The changes are also

[57] *See* E.O. 13175, *Consultation and Coordination with Indian Tribal Governments,* 65 FR 67249 (Nov. 9, 2000); Presidential Memorandum, Tribal Consultation and Strengthening Nation-to-Nation Relationships, 86 FR 7491 (Jan. 29, 2021).

[58] Consistent with section 102(2)(C) of NEPA, consideration of environmental justice and climate change-related effects has long been part of NEPA analysis. *See, e.g., Ctr. for Biological Diversity* v. *Nat'l Highway Traffic Safety Admin.,* 538 F.3d 1172

consistent with E.O. 12898 and E.O. 14096.

Finally, in paragraph (f), CEQ proposed to restore the direction from the 1978 regulations to use all practicable means, consistent with the policies of NEPA, to restore and enhance the environment and avoid or minimize any possible adverse effects of agency actions. These revisions to § 1500.2(d), (e), and (f) reflect longstanding practice among Federal agencies and align with NEPA's statutory policies, including to avoid environmental degradation, preserve historic, cultural, and natural resources, and ''attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.'' 42 U.S.C. 4331(b).

Multiple commenters expressed support for the proposed changes to paragraphs (d), (e), and (f), asserting the changes appropriately emphasize agency obligations to facilitate public participation in the decision-making process, instead of merely keeping the public informed, and to act on information they obtain in that process. These commenters asserted the proposed changes properly describe the objectives of environmental reviews under NEPA as informed decision making, robust public engagement, and protection of the environment.

One commenter requested the final rule revise paragraph (f) to add other laws and agency authorities after ''the requirements of the Act.'' CEQ finalizes paragraph (f) as proposed and declines to make this change because this paragraph aligns with section 101(b) of NEPA. 42 U.S.C. 4331(b). The purpose of §§ 1500.1 and 1500.2 is to place the regulations into their broader context by restating NEPA's policies within the regulations. Doing so improves readability by avoiding the need for cross references to material outside the text of the regulations. CEQ agrees that agencies should comply with other laws and with agency authorities, which are examples of ''other essential considerations of national policy.'' CEQ also notes that this text was in the 1978 regulation, in effect until 2020, and did not create confusion that the NEPA regulations prevented agencies from complying with other legal requirements.

Commenters recommended that CEQ add various qualifiers to § 1500.2 asserting that agencies have limited authorities and resources and must comply with other applicable laws in addition to NEPA. CEQ declines to make these changes. The introductory paragraph of § 1500.2 provides that agencies must carry out the policies set forth in the section ''to the fullest extent possible,'' which renders the suggested amendments redundant. Moreover, § 1501.3 directs agencies to consider, for a particular action, whether compliance with NEPA would clearly and fundamentally conflict with the requirements of another provision of Federal law when determining NEPA applicability to that action, which is consistent with the manner in which Congress addressed this issue in section 106 of NEPA. 42 U.S.C. 4336.

Likewise, commenters suggested that CEQ clarify particular points of NEPA practice, such as defining ''all practicable means;'' explaining how agencies should facilitate public engagement and education; adding examples of reasonable alternatives; requiring environmental documents to describe the steps that the agency has taken to avoid or minimize adverse effects; providing standards against which to quantitatively assess agencies' implementation of the NEPA regulations; requiring only that agencies minimize the ''significant'' adverse effects of a proposed action; or directing agencies to make their planning efforts consistent with State and local plans to the maximum extent possible.

CEQ declines to revise the regulations in response to these comments. The purpose of §§ 1500.1 and 1500.2 is to place the regulations into their broader context by restating the purposes and policies of the Act and addressing a variety of aspects of NEPA practice would distract from that purpose. Other provisions in the regulations implement the provisions of NEPA that effectuate these purposes and policies, and set forth specific procedures that agencies must and should follow. Accordingly, it is not necessary or appropriate for § 1500.2 to address these subjects in greater detail.

Lastly, one commenter recommended that CEQ add a new paragraph to § 1500.2 to require agencies to realize the Federal Government's trust responsibility to Tribal Nations by acting on and not merely considering Indigenous Knowledge. Another commenter made a related recommendation that § 1500.1 explicitly recognize the Federal Government's trust responsibilities to Tribes.

CEQ agrees that agencies should consider and include Indigenous Knowledge in Federal research, policies, and decision making, including as part of the environmental review process under NEPA. CEQ also recognizes that the Federal trust responsibility to Tribal Nations may shape both the procedures that agencies follow and the substantive outcomes of agencies' decision-making processes. CEQ does not, however, view it as properly within the scope of CEQ's authority to direct agencies to act on Indigenous Knowledge through the NEPA regulations, because the NEPA statute includes procedural, rather than substantive requirements, and the obligation to honor the trust responsibility, including the obligation to engage in Tribal consultation, does not arise from the NEPA statute.

3. NEPA Compliance (§ 1500.3)

CEQ proposed to revise § 1500.3 to restore some language from the 1978 regulations and remove some provisions added by the 2020 rule regarding exhaustion and remedies, which aimed to limit legal challenges and judicial remedies.[59] The process established by the 2020 rule provided that first, an agency must request in its notice of intent (NOI) comments on all relevant information, studies, and analyses on potential alternatives and effects. 40 CFR 1500.3(b)(1) (2020). Second, the agency must summarize all the information it receives in the draft EIS and specifically seek comment on it. 40 CFR 1500.3(b)(2), 1502.17, 1503.1(a)(3) (2020). Third, decision makers must certify in the record of decision (ROD) that they considered all the alternatives, information, and analyses submitted by public commenters. 40 CFR 1500.3(b)(4), 1505.2(b) (2020). And fourth, any comments not submitted within the comment period were considered forfeited as unexhausted. 40 CFR 1500.3(b)(3), 1505.2(b) (2020).

First, CEQ proposed to revise paragraph (a) to remove the phrase ''except where compliance would be inconsistent with other statutory requirements'' from the end of the first sentence because § 1500.6 addresses this issue. CEQ also proposed to remove the references to E.O. 13807, which E.O. 13990 revoked, as well as the reference to section 309 of the Clean Air Act because this provision is implemented by EPA.[60]

CEQ removes the clause ''except where compliance would be inconsistent with other statutory requirements'' in the final rule because the relationship between NEPA and agency statutory authority is addressed in § 1500.6 and the circumstances in

(9th Cir. 2008) and CEQ, Environmental Justice Guidance, *supra* note 7.

[59] CEQ, 2020 Final Rule, *supra* note 39, at 43317–18.

[60] *See* E.O. 13807, *supra* note 14; E.O. 13990, *supra* note 43.

which an agency does not need to prepare an environmental document due to a conflict with other statutes is addressed in § 1501.3. Moreover, to the extent that this phrase could be read as identifying when an agency does not need to conduct an environmental review, the NEPA amendments address that in section 106(a)(3) using different language, specifically, that an agency does not need to prepare an environmental document where ''the preparation of such document would clearly and fundamentally conflict with the requirements of another provision of law.'' 42 U.S.C. 4336(a)(3). CEQ also removes the references to E.O. 13807 and section 309 of the Clean Air Act consistent with the proposal.

Second, CEQ proposed to delete paragraphs (b) and (b)(1) through (b)(4) of 40 CFR 1500.3 (2020) addressing exhaustion. CEQ proposed to remove these provisions because they establish an inappropriately stringent exhaustion requirement for public commenters and agencies. CEQ also proposed to delete this paragraph because it is unsettled whether CEQ has the authority under NEPA to set out an exhaustion requirement that bars parties from bringing claims on the grounds that an agency's compliance with NEPA violated the APA, pursuant to 5 U.S.C. 702. As explained in the proposed rule, while the 2020 rule correctly identifies instances in which courts have ruled that parties may not raise legal claims based on issues that they themselves did not raise during the comment period,[61] other courts have sometimes ruled that a plaintiff can bring claims where another party raised an issue in comments or where the agency should have identified an issue on its own. *Pac. Coast Fed'n of Fishermen's Ass'ns* v. *U.S. Dep't of Interior,* 929 F. Supp. 2d 1039, 1045–46 (E.D. Cal. 2013); *Wyo. Lodging and Rest. Ass'n* v. *U.S. Dep't of Interior,* 398 F. Supp. 2d 1197, 1210 (D. Wyo. 2005); *see Pub. Citizen,* 541 U.S. at 765 (noting that ''[T]he agency bears the primary responsibility to ensure that it complies with NEPA . . . and an EA's or an EIS' flaws might be so obvious that there is no need for a commentator to point them out specifically in order to preserve its ability to challenge a proposed action'').

[61] CEQ, 2020 Final Rule, *supra* note 39, at 43317–18 (citing *Dep't of Transp.* v. *Pub. Citizen,* 541 U.S. 752, 764–65 (2004); *Karst Env't. Educ. & Prot., Inc.* v. *Fed. Highway Admin.,* 559 F. App'x 421, 426–27 (6th Cir. 2014); *Friends of the Norbeck* v. *U.S. Forest Serv.,* 661 F.3d 969, 974 (8th Cir. 2011); *Exxon Mobil Corp.* v. *U.S. EPA,* 217 F.3d 1246, 1249 (9th Cir. 2000); and *Nat'l Ass'n of Mfrs.* v. *U.S. Dep't of the Interior,* 134 F.3d 1095, 1111 (D.C. Cir. 1998)).

Because the fundamental question raised by these cases is the availability of a cause of action under the APA and not a question of interpreting NEPA, CEQ proposed to delete the exhaustion provision because CEQ considers interpreting and applying the APA more appropriate for the courts.

CEQ also proposed to remove the exhaustion requirement because it is at odds with longstanding agency practice. While courts have ruled that agencies are not required to consider comments that are not received until after comment periods end, *see, e.g., Pub. Citizen,* 541 U.S. at 764–65 (finding that where a party does not raise an objection in their comments on an EA, the party forfeits any objection to the EA on that ground), agencies have discretion to do so and have sometimes chosen to exercise this discretion, particularly where a comment provides helpful information to inform the agency's decision. As explained in the proposed rule, the exhaustion requirement could encourage agencies to disregard important information presented to the agency shortly after a comment period closes, and such a formalistic approach would not advance NEPA's goal of informed decision making.

Many commenters supported CEQ's proposal to remove the exhaustion provisions asserting that the provisions were unlawful, created additional compliance burdens, did not improve the efficiency of the NEPA process, and did not reduce litigation risk; and that removal is consistent with the NEPA statute, which does not provide for an exhaustion requirement. One commenter that supported removal, asserted that because NEPA does not impose a statutory exhaustion requirement, the determination of whether a particular plaintiff may go forward with a particular claim is a matter for the judiciary. CEQ agrees with this commenter's view. Where appropriate in light of the statutes they administer, individual agencies may address exhaustion through their agency-specific rules of procedure, and courts will continue to consider exhaustion as a normal part of judicial review.

Commenters that opposed removing the exhaustion requirements argued they are necessary to curb ''frivolous litigation claims;'' assist agencies and the public by providing helpful information on filing timely comments and incentivizing them to raise concerns during the NEPA process; and communicate the need for prompt and active participation in the NEPA review process. While CEQ agrees with these commenters' assertions that the regulations should promote early engagement and public participation and the timely identification of concerns during the NEPA process, CEQ disagrees that the exhaustion provisions are the mechanism to achieve these goals. CEQ considers other provisions in the regulations, including §§ 1501.9 and 1502.4, and part 1503, to be the better means of achieving these goals without incurring the risk of including provisions in the regulations that are legally uncertain.

For these reasons, CEQ removes the exhaustion provisions from the regulations and strikes paragraphs (b) and (b)(1) through (b)(4) of 40 CFR 1500.3 (2020) consistent with the proposal. Removal of these exhaustion provisions does not relieve parties interested in participating in, commenting on, or ultimately challenging a NEPA analysis of the obligation to ''structure their participation so that it is meaningful.'' *Vt. Yankee Nuclear Power Corp.* v. *Nat. Res. Def. Council, Inc.,* 435 U.S. 519, 553 (1978). As CEQ's regulations have made clear since 1978, parties must provide comments that are as specific as possible to enable agencies to consider and address information during the decision-making processes. *See* 40 CFR 1503.3(a) (2019).

Further, nothing in this revision limits the positions the Federal Government may take regarding whether, based on the facts of a particular case, a particular issue has been forfeited by a party's failure to raise it before the agency, and removing this provision does not suggest that a party should not be held to have forfeited an issue by failing to raise it. By deleting the exhaustion requirements, CEQ does not take the position that plaintiffs may raise new and previously unraised issues in litigation. Rather, CEQ considers this to be a question of general administrative law best addressed by the courts based on the facts of a particular case.

Third, CEQ proposed to redesignate paragraph (c), ''Review of NEPA compliance,'' of 40 CFR 1500.3 (2020) as paragraph (b) and add a clause, ''except with respect to claims brought by project sponsors related to deadlines under section 107(g)(3) of NEPA'' to the end of the first sentence stating that judicial review of NEPA compliance does not occur before an agency issues a ROD or takes a final agency action. CEQ did not receive specific comments on this proposal and adds to redesignated paragraph (b) the exception clause to acknowledge the ability of project sponsors to petition a

court when an agency allegedly fails to meet a deadline consistent with section 107(g)(3) of NEPA. 42 U.S.C. 4336(a)(g)(3).

Fourth, CEQ proposed to move the last sentence of paragraph (d) of 40 CFR 1500.3 (2020) regarding harmless error for minor, non-substantive errors, a concept that has been in place since the 1978 regulations, to redesignated paragraph (b). CEQ also proposed to delete the second sentence of paragraph (c) of 40 CFR 1500.3 (2020) stating that noncompliance with NEPA and the CEQ regulations should be resolved as expeditiously as possible. While CEQ agrees with expeditious resolution of issues, CEQ proposed to delete this sentence reasoning that CEQ cannot compel members of the public or courts to resolve NEPA disputes expeditiously.

One commenter opposed the proposed deletion of the second sentence of paragraph (c) of 40 CFR 1500.3 (2020) and disagreed with CEQ's rationale, asserting that it is proper for CEQ to express its interest in agencies resolving NEPA compliance issues as soon as practicable. The commenter further argued that doing so is in the interest of Federal agencies, project proponents, and the public, and that unresolved NEPA disputes can lead to costly litigation that prolongs the NEPA process, wastes taxpayer and project proponent resources, and deprives communities of infrastructure improvements.

CEQ agrees that efficiency is an important goal, and that resolving claims of NEPA noncompliance can result in costly and time-consuming litigation. Upon further consideration, CEQ retains the second sentence of paragraph (c) of 40 CFR 1500.3(2020) in the final rule as the third sentence of § 1500.3(b), but revises the text from ''as expeditiously as possible'' to ''as expeditiously as appropriate.'' While it is true that CEQ cannot compel members of the public or courts to resolve disputes expeditiously, as noted in CEQ's justification for proposing to delete this provision, CEQ considers this sentence to appropriately express CEQ's intention, rather than purporting to inappropriately bind those parties to litigation or dictate what timeline is appropriate for any particular case. Further, CEQ notes that the regulations promote public engagement, appropriate analysis, and informed decision making to facilitate NEPA compliance and avoid such disputes from the outset. CEQ moves the last sentence of 40 CFR 1500.3(d) (2020) to § 1500.3(b) as proposed.

Fifth, CEQ proposed to strike the last sentence of paragraph (c) of 40 CFR 1500.3 (2020) allowing agencies to include bonding and other security requirements in their procedures consistent with their organic statutes and as part of implementing the exhaustion requirements because this relates to litigation over an agency action and not the NEPA process. CEQ explained in the proposed rule that it is unsettled whether NEPA provides agencies with authority to promulgate procedures that require plaintiffs to post bonds in litigation brought under the APA, and that CEQ does not consider it appropriate to address this issue in the NEPA implementing procedures.

Multiple commenters urged CEQ not to remove this sentence or encouraged CEQ to revise the regulations to require parties to post such a bond when petitioning a court to enjoin a NEPA decision during the pendency of litigation. Conversely, many commenters supported the proposed elimination of the bonding provision, which the commenters said discourages public engagement, appropriate analysis, and informed decision making and inequitably burdens disadvantaged communities.

CEQ removes the bonding provision in the final rule by striking the last sentence of 40 CFR 1500.3(c) (2020). NEPA does not authorize CEQ to require posting of bonds or other financial securities prior to a party challenging an agency decision. Agencies may have various authorities independent of NEPA to require bonds or other securities as a condition of filing an administrative appeal or obtaining injunctive relief; this rule does not modify those authorities. CEQ continues to consider it unsettled whether NEPA provides agencies with authority to promulgate procedures that require plaintiffs to post bonds in litigation brought under the APA, commenters did not identify any specific statutory authorities, and even if such authority exists, CEQ does not view such a requirement as appropriate for inclusion in the NEPA regulations. Agency authority to require bonds or other securities as a condition of an administrative appeal or injunctive relief may exist independent of NEPA, and to the extent that such authority does exist, it likely varies by agency. The rule does not modify any existing authority.

CEQ proposed to strike paragraph (d) of 40 CFR 1500.3 (2020) regarding remedies, with the exception of the last sentence, which CEQ proposed to move to proposed paragraph (c) as discussed earlier in this section. CEQ proposed to remove this provision because it is questionable whether CEQ has the authority to direct courts about what remedies are available in litigation brought under the APA, and in any case, CEQ considers the 2020 rule's addition of this paragraph to be inappropriate.

CEQ strikes 40 CFR 1500.3(d) (2020) in the final rule. CEQ considers courts to be in the best position to determine the appropriate remedies when a plaintiff successfully challenges an agency's NEPA compliance. *See, e.g., N. Cheyenne Tribe* v. *Norton,* 503 F.3d 836, 842 (9th Cir. 2007) (rejecting successful NEPA plaintiffs' contention that CEQ regulations mandated a particular remedy and holding that ''a NEPA violation is subject to traditional standards in equity for injunctive relief'').

Finally, CEQ proposed to redesignate paragraph (e) of 40 CFR 1500.3 (2020) on Severability, as proposed paragraph (c), without change. CEQ makes this change in the final rule because CEQ intends these regulations to be severable. This final rule amends existing regulations, and the NEPA regulations can be functionally implemented if each revision in this final rule occurred on its own or in combination with any other subset of revisions. As a result, if a court were to invalidate any particular provision of this final rule, allowing the remainder of the rule to remain in effect would still result in a functional NEPA review process. This approach to severability is the same as the approach that CEQ took when it promulgated the 2020 regulations, because those amendments similarly could be layered onto the 1978 regulations individually without disrupting the overarching NEPA review process.

4. Concise and Informative Environmental Documents (§ 1500.4)

CEQ proposed to revise § 1500.4, which briefly describes and cross references certain other provisions of the CEQ regulations, to emphasize the important values served by concise and informative NEPA documents beyond merely reducing paperwork, such as promoting informed and efficient decision making and facilitating meaningful public participation and transparency. CEQ proposed these changes to encourage the preparation of documents that can be easily read and understood by decision makers and the public, which in turn promotes informed and efficient decision making and public participation.

First, CEQ proposed to retitle § 1500.4 from ''Reducing paperwork'' to ''Concise and informative environmental documents'' and revise the introductory text to clarify that the

listed paragraphs provide examples of the regulatory mechanisms that agencies can use to prepare concise and informative environmental documents. Multiple commenters supported the proposed changes in § 1500.4, opining the changes properly direct agencies to streamline the process of preparing environmental documents and make those documents analytical, concise, and informative. One commenter recommended that CEQ add ''for example'' and ''as appropriate'' to the introductory paragraph.

CEQ revises the title and introductory text of § 1500.4 in the final rule as proposed. Concise and informational documents make the NEPA process more accessible and transparent to the public, allowing the public an opportunity to contribute to the NEPA process. The changes in § 1500.4 align the regulations with the intent of NEPA to allow the public to provide input and enhance transparency, while providing agencies flexibility on how to achieve concise and informative documents. CEQ declines to add ''for example'' and ''as appropriate'' to the introductory paragraph. Those qualifiers are unnecessary because CEQ proposed and is adding ''*e.g.,*'' throughout § 1500.4, where appropriate, to clarify that the cross-references are non-exclusive examples of strategies that agencies must use in preparing analytical, concise, and informative environmental documents.

CEQ proposed to strike paragraphs (a) and (b) of 40 CFR 1500.4 (2020) because they are redundant with § 1500.5(a) and (b) and are more appropriately addressed in that section, which addresses an efficient process. CEQ also proposed to strike paragraph (d) of 40 CFR 1500.4 (2020) because this provision would be addressed in the revised introductory text.

A few commenters objected to the deletion of 40 CFR 1500.4(a) and (b) (2020), which pertain to using CEs and FONSIs, respectively. The commenters asserted that the use of CEs and FONSIs is critical to ensuring ''analytical, concise, and informative'' environmental documents, and that the inclusion of such language encourages concision in the evaluation process. While recognizing the paragraphs are redundant with § 1500.5(a) and (b), they asserted that § 1500.5(a) and (b) address improving efficiency in the process, while § 1500.4 addresses concise environmental documents. The commenters further asserted that the two sections are separate in substance and in form, and each should therefore include independent language addressing any inefficiencies.

CEQ strikes paragraphs (a), (b), and (d) of 40 CFR 1500.4 (2020) consistent with the proposal. While CEQ agrees that, where appropriate, applying CEs and preparing EAs and FONSIs typically result in shorter evaluation timelines, this section addresses the preparation of documents, including CE determinations, EAs, and FONSIs, rather than addressing the use of different types of environmental documents.

CEQ proposed to redesignate paragraphs (c) and (e) through (q) of 40 CFR 1500.4 (2020) as § 1500.4 (a) and (b) through (n), respectively. CEQ proposed to add ''*e.g.,*'' to the cross references listed in proposed paragraphs (b), (c), and (e) to clarify that they are non-exclusive examples of how agencies can briefly discuss unimportant issues, write in plain language, and reduce emphasis on background material. CEQ also proposed to update the regulatory section cross references for consistency with the proposed changes in the rule. CEQ makes these changes in the final rule as proposed.

In proposed paragraphs (c) and (e), CEQ proposed to expand the reference from EISs to all environmental documents, as the concepts discussed are more broadly applicable. Additionally, in paragraph (e), CEQ proposed to insert ''most'' before ''useful'' to clarify that the environmental documents should not contain portions that are useless.

In proposed paragraph (f), CEQ proposed to replace ''significant'' with ''important'' and insert ''unimportant'' to modify ''issues'' consistent with the proposal to only use ''significant'' to modify ''effects.'' CEQ also proposed to clarify in paragraph (f) that scoping may apply to EAs. Additionally, CEQ proposed to expand paragraph (h), regarding programmatic review and tiering, to include EAs to align with the proposed changes to § 1501.11. CEQ makes these changes to paragraphs (c), (e), (f), and (h) in the final rule as proposed.

While CEQ did not propose any changes to paragraph (*l*) regarding use of errata sheets, in the final rule, CEQ moves the clause ''when changes are minor'' from the end to the beginning of the paragraph to make the language clearer that agencies use errata sheets only when changes between the draft EIS and final EIS are minor. Finally, in paragraph (m), CEQ proposed to insert ''Federal'' before ''agency'' consistent with § 1506.3, which allows adoption of NEPA documents prepared by other Federal agencies.

One commenter objected to paragraph (m), contending that directing agencies to eliminate duplication by preparing environmental documents jointly with relevant State, Tribal, and local agencies would threaten the autonomy of Tribes by obligating them to coordinate with Federal agencies in preparing environmental documents. CEQ disagrees with this commenter's interpretation of paragraph (m). Paragraph (m) refers agencies to § 1506.2, which makes clear that agencies should only prepare joint environmental documents by mutual consent. CEQ makes the changes as proposed in the final rule.

Commenters recommended including additional strategies in § 1500.4, including minimizing unnecessary repetition in describing and assessing alternatives, limiting discussion of effects to those that are reasonably foreseeable, and resolving disagreements in the review process expeditiously. CEQ declines to add additional paragraphs. Section 1500.4 lists regulatory provisions that agencies must use in preparing concise and informative environmental documents; these provisions already direct agencies to minimize unnecessary repetition, evaluate the reasonably foreseeable effects of proposed actions, and resolve disagreements expeditiously.

5. Efficient Process (§ 1500.5)

CEQ proposed minor changes to § 1500.5 to provide clarity and flexibility regarding mechanisms by which agencies can apply the CEQ regulations to improve efficiency in the environmental review process. CEQ proposed these changes to acknowledge that unanticipated events and circumstances beyond agency control may delay the environmental review process, and to recognize that, while these approaches may improve efficiency for many NEPA reviews, they could be inefficient for others. To that end, CEQ proposed to retitle § 1500.5 from ''Reducing delay'' to ''Efficient process'' and revise the introductory text to replace ''reduce delay'' with ''improve efficiency of the NEPA processes'' consistent with the new title.

Some commenters recommended against these changes asserting that they give the impression that it is unimportant for agencies to reduce delays in the permitting process. CEQ revises the title and introductory text as proposed. The purpose of the changes is not to discount the importance of reducing delays in the environmental review process, but to emphasize that agencies should make their review processes broadly efficient and not merely fast—recognizing that efficiency also requires effectiveness and quality of

work. CEQ agrees that reducing delays is important but considers the text to give the wrong impression that there are always delays in the NEPA process.

CEQ proposed to add EAs to paragraph (a) to make the provision consistent with the definition of ''categorical exclusion;'' phrase paragraph (d) in active voice; change ''real issues'' to ''important issues that required detailed analysis'' in paragraph (f) for consistency with § 1502.4; change ''time limits'' to ''deadlines'' in paragraph (g) for consistency with § 1501.10; and expand the scope of paragraph (h) from EISs to environmental documents to make clear that, regardless of the level of NEPA review, agencies should prepare environmental documents early in the process. CEQ proposed these revisions to recognize the importance of timely information for decision making and encourage agencies to implement the 12 listed mechanisms to achieve timely and efficient NEPA processes. CEQ did not receive any comments specific to these proposed changes and makes them in the final rule. Additionally, CEQ revises § 1500.5(a) to change ''using'' to ''establishing'' and adds a cross reference to § 1507.3(c)(8) because the language in this provision is addressing the development of CEs, not their application to proposed actions.

One commenter recommended the final rule revise paragraph (d)—requiring interagency cooperation during preparation of an EA or EIS rather than waiting to submit comments on a completed document—to require the lead agency to involve other relevant agencies in the determination of whether to review a proposed action by applying a CE, preparing an EA, or preparing an EIS.

CEQ revises paragraph (d) to incorporate some of the text proposed by the commenter. Specifically, CEQ adds ''including with affected Federal, State, Tribal, and local agencies'' to highlight the efficiency benefits of interagency cooperation with those non-Federal entities, and also adds the words ''request or'' before the ''submit comments'' to highlight the importance of both the lead agency and other agencies to interagency cooperation.

6. Agency Authority (§ 1500.6)

CEQ proposed revisions to § 1500.6 to clarify that agencies have an independent responsibility to ensure compliance with NEPA and a duty to harmonize NEPA with their other statutory requirements and authorities to the maximum extent possible. CEQ proposed to revise the second and third sentences in § 1500.6 and strike the fourth sentence.

While CEQ did not propose changes to the first sentence, which requires an agency to view its policies and missions in the light of NEPA's environmental objectives to the extent consistent with its existing authority, one commenter recommended that CEQ revise the sentence to restore phrasing from the 1978 regulations. In particular, the commenter recommended the final rule delete the last clause, ''to the extent consistent with its existing authority'' because it is ''internally inconsistent and contrary to the plain language of NEPA Section 105.'' 42 U.S.C. 4335. Another commenter recommended the final rule delete the first sentence and disagreed with the description in the proposed rule that ''an irreconcilable conflict exists only if the agency's authorizing statute grants it no discretion to comply with NEPA while also satisfying the statutory mandate,'' asserting that if a statute delegates authority, it does so expressly and there is no presumption that an agency's authorizing statute delegates the agency authority to comply with NEPA.

CEQ declines to revise the first sentence. This provision generally directs agencies to interpret the provisions of NEPA, including section 2's statement of purpose, section 101's statement of policy, and sections 102 through 111's procedural provisions as a supplement to their existing authorities, and agencies can only do so to the extent consistent with those authorities. *See* 42 U.S.C. 4321 *et seq.* This provision does not address the more specific issue of when an agency is excused from completing an environmental document because of contrary statutory authority. That issue is addressed in § 1501.3(a)(2), which incorporates section 106(a) of NEPA's directive that agencies are not required to prepare an environmental document where ''the preparation of such document would clearly and fundamentally conflict with the requirements of another provision of law.'' 42 U.S.C. 4336(a)(3). NEPA applies to all Federal agencies and includes a specific statutory directive that ''the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in [NEPA].'' 42 U.S.C. 4332(1). While there may be situations in which compliance with another Federal law precludes an agency from complying with NEPA, agencies have an obligation to harmonize NEPA with their other statutes where possible to do so.

CEQ proposed to revise the second sentence of § 1500.6 to remove the qualification added in the 2020 rule that agencies must ensure full compliance with the Act ''as interpreted by'' the CEQ regulations so the provision would instead state that agencies must review and revise their procedures to ensure compliance with NEPA and the CEQ regulations. CEQ proposed this change because the phrase ''as interpreted by'' could be read to indicate that agencies have no freestanding requirement to comply with NEPA itself, which would be untrue. CEQ also considered the change necessary for consistency with § 1507.3(b), which CEQ revised in its Phase 1 rulemaking to make clear that, while agency procedures must be consistent with the CEQ regulations, agencies have discretion and flexibility to develop procedures beyond the CEQ regulatory requirements, enabling agencies to address their specific programs, statutory mandates, and the contexts in which they operate. CEQ proposed to make conforming edits in §§ 1502.2(d) and 1502.9(b) to remove this phrase.

Several commenters expressed support for CEQ's proposal to restore language emphasizing each Federal agency's independent obligation and ability to implement NEPA. The commenters asserted that removing this language would make it clear that agencies have an obligation to comply with NEPA by following CEQ's regulations and also reviewing and revising, as necessary, their own agency policies, procedures, and activities. The commenter further asserted this independent obligation to comply with NEPA, combined with revisions to § 1507.3 in the Phase 1 rule, provides Federal agencies with flexibility to craft regulations tailored to their agency's work, even if they go beyond the requirements of the CEQ NEPA regulations.

Another commenter expressed support for this proposed change and agreed with CEQ's statement that the current text could be read to mistakenly indicate that agencies have no freestanding requirement to comply with NEPA. The commenter suggested that the final rule add to the beginning of the second sentence, to state that ''[a]gencies shall comply with the purposes and provisions of the Act and with the requirements under this Part, to the fullest extent possible.'' The commenter asserted that regardless of what an agency's policies, procedures, and regulations say, it is critical that the agency comply with both NEPA and the CEQ regulations, unless an agency activity, decision, or action is exempted

by law or compliance with NEPA is impossible.

In the final rule, CEQ revises the second sentence of § 1500.6 as proposed to replace ''as interpreted by'' with ''and'' and makes conforming changes to §§ 1502.2(d) and 1502.9(b). CEQ declines to add the clause suggested by the commenter because compliance with NEPA and the regulations is already addressed in the last sentence of this section as well as §§ 1507.1 and 1507.2.

In the third sentence, CEQ proposed to remove the cross-reference to § 1501.1 for consistency with the proposed revisions to § 1501.1 and add the text, consistent with language from the 1978 regulations, explaining that the phrase ''to the fullest extent possible'' means that each agency must comply with section 102 of NEPA unless an agency activity, decision, or action is exempted by law or compliance with NEPA is impossible. 42 U.S.C. 4332.

A couple of commenters suggested revisions to the last sentence of § 1500.6. They asserted that the proposed revisions would create confusion by creating a distinction between complying with section 102 of NEPA and complying with all of NEPA, and that this was incorrect given the recent NEPA amendments and the proposed implementation of those amendments in these regulations. 42 U.S.C. 4321 *et seq.* The commenters recommended the final rule replace ''that section unless'' with ''the Act and the regulations of this subchapter.''

CEQ agrees with the commenter that the statement in section 102 is not limited to that section and replaces the phrase ''that section'' with ''the Act'' for consistency with the statute. Section 102(2) authorizes and directs that, to the fullest extent possible the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in NEPA. 42 U.S.C. 4332(2). CEQ does not include a reference to the regulations as these are not specifically identified in section 102, and § 1507.1 addresses the requirement to comply with the NEPA regulations.

The commenters also recommended the final rule replace ''compliance with NEPA is impossible'' with ''compliance is impracticable.'' The commenters recommended this change because section 101 refers to the Federal Government taking all ''practicable means'' to advance NEPA's goals, implicitly sparing the need to pursue ''impracticable'' steps. 42 U.S.C. 4331.

CEQ declines to make this change and revises the last sentence as proposed to strike ''consistent with § 1501.1 of this chapter'' and replace it with ''unless an agency activity, decision, or action is exempted from NEPA by law or compliance with NEPA is impossible.'' Compliance with NEPA is only impossible within the meaning of this subsection when the conflict between another statute and the requirements of NEPA are clear, unavoidable, and irreconcilable. Absent exemption by Congress or a court, an irreconcilable conflict exists if the agency's authorizing statute does not provide the agency any discretion to comply with NEPA while also satisfying its statutory mandate. While NEPA requires agencies ''to use all practicable means'' to achieve the Act's environmental goals, *see* 42 U.S.C. 4331, the Act does not limit its procedural requirements in the same fashion. Instead, it directs agencies to fulfill the obligations in section 102 of NEPA, which establishes NEPA's procedural obligations, ''to the fullest extent possible,'' 42 U.S.C. 4332, which the Supreme Court has interpreted to require compliance except for ''where a clear and unavoidable conflict in statutory authority exists.'' *See Flint Ridge Dev. Co,* 426 U.S. at 788. Therefore, revising proposed paragraph (a)(3) to replace ''impossible'' with ''impracticable'' would be inconsistent with the statute and deviate from the established legal standard implementing it.

Finally, CEQ proposed to strike the last sentence of 40 CFR 1500.6 (2020) stating that the CEQ regulations do not limit an agency's other authorities or legal responsibilities. In the 2020 rule, CEQ stated that it added this sentence to acknowledge the possibility of different statutory authorities with different requirements and for consistency with E.O. 11514, as amended by section 2(g) of E.O. 11991.[62] CEQ reconsidered its position and proposed to delete the sentence as superfluous and unnecessarily vague. CEQ proposed that the revised last sentence of § 1500.6—agencies must comply with NEPA in carrying out an activity, decision, or action unless exempted by law (including where courts have held that a statute is functionally equivalent) or compliance with NEPA is impossible—accurately reflects the directive that Federal agencies comply with the CEQ regulations ''except where such compliance would be inconsistent with statutory requirements.'' [63] CEQ removes this sentence from 40 CFR 1500.6 (2020) in the final rule.

C. Revisions To Update Part 1501, NEPA and Agency Planning

CEQ proposed substantive revisions to all sections in part 1501 except § 1501.2, ''Apply NEPA early in the process,'' to which CEQ proposed minor edits for readability that are non-substantive. CEQ received a few comments on § 1501.2 requesting additional revisions but declines to make additional changes in response to the comments, which are discussed in the Phase 2 Response to Comments.

1. Purpose (§ 1501.1)

CEQ proposed to revise § 1501.1 to address the purpose and goals of part 1501, consistent with the approach in the 1978 regulations, and move the text in paragraph (a) of 40 CFR 1501.1 (2020) regarding NEPA thresholds to § 1501.3(a). CEQ discusses the revisions to that paragraph in section II.C.2 of this rule. Multiple commenters expressed general support for the overall changes to § 1501.1.

First, consistent with the approach in the 1978 regulations, CEQ proposed to retitle § 1501.1 to ''Purpose,'' and add an introductory paragraph to indicate that this section would address the purposes of part 1501. CEQ did not receive any specific comments on these proposed changes and makes them in the final rule consistent with the proposal.

Second, in paragraph (a), CEQ proposed to highlight the importance of integrating NEPA early in agency planning processes by restoring some of the language from the 1978 regulations, while also including language that emphasizes that early integration of NEPA promotes an efficient process and can reduce delay. CEQ proposed these revisions for consistency with section 102(2)(C) of NEPA and the objective to build into agency decision making, beginning at the earliest point, an appropriate consideration of the environmental aspects of a proposed action. 42 U.S.C. 4332(2)(C). CEQ did not receive any specific comments on proposed paragraph (a) and includes it in the final rule as proposed.

Third, CEQ proposed in paragraph (b) to emphasize early engagement in the environmental review process to elevate the importance of early coordination and engagement throughout the NEPA process to identify and address potential issues early in the decision-making process, thereby helping to reduce the overall time required to approve a project and improving outcomes. Multiple commenters expressed support

[62] E.O. 11514, *supra* note 26; E.O 11991, *supra* note 29.

[63] CEQ, 2020 Final Rule, *supra* note 39, at 43319.

for proposed paragraph (b) and the emphasis on early engagement in the environmental review process. One commenter suggested additional language to clarify that engagement should occur both prior to and during preparation of environmental documents. CEQ agrees that public engagement should continue throughout the NEPA process. However, this section outlines the purposes of part 1501, and while § 1501.1(b) emphasizes that engagement should start early in the NEPA process, the full breadth of appropriate engagement in the NEPA process is more appropriately discussed in § 1501.9. Therefore, CEQ includes paragraph (b), which is consistent with other changes throughout the regulations emphasizing the importance of engagement, as proposed, in the final rule.

Fourth, CEQ proposed to add a new paragraph (c) to restore text from the 1978 regulations regarding expeditious resolution of interagency disputes. One commenter suggested appending ''and in the best interest of the public'' to the end of paragraph (c) and expressed concern that the proposed language, particularly the reference to ''fair,'' implies agencies have an interest of their own. The commenter recommended the regulations clarify that interagency disputes should be resolved in a manner that advances the public interest and not just the interests of the agencies.

CEQ adds paragraph (c), as proposed, to the final rule. While CEQ considers expeditious resolution of interagency disputes to be in the best interest of the public, the purpose of part 1501 is to facilitate the resolution of such disputes in an efficient fashion that accommodates the perspectives, expertise, and relevant statutory authority of the agencies involved in the dispute.

Fifth, CEQ proposed to add paragraph (d) to restore the direction to identify the scope of the proposed action and important environmental issues consistent with § 1501.3, which can enhance efficiency. One commenter requested clarity on what ''important environmental issues'' means, while another commenter asserted that all issues that acutely and negatively impact the environment deserve full study. One commenter also requested the final rule add language to clarify that agencies should remove unimportant issues from study or analysis, not just deemphasize them.

CEQ adds paragraph (d), as proposed, to the final rule. CEQ declines to make the commenter's recommended changes in paragraph (d). Agencies must consider all issues during the environmental review process, but the level of analysis should be commensurate with the importance of the effect, with some issues requiring less analysis. This approach is consistent with the approach of the 1978 regulations that agencies have decades of experience implementing, which indicated that agencies should ''concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.'' 40 CFR 1500.1(b) (2019).

Sixth, CEQ proposed to add paragraph (e) to highlight the importance of schedules consistent with § 1501.10, which includes provisions requiring agencies to develop a schedule for all environmental reviews and authorizations, as well as §§ 1501.7 and 1501.8, which promote interagency coordination including with respect to schedules. CEQ did not receive any specific comments on proposed paragraph (e) and includes it in the final rule as proposed.

Seventh, as discussed further in section II.C.2, CEQ proposed to combine the threshold considerations provision with the process to determine the appropriate level of NEPA review in § 1501.3 by moving paragraphs (a)(1), (a)(2), (a)(4), and (a)(5) of 40 CFR 1501.1 (2020) to § 1501.3(a)(1), (2), (4), and (4)(ii), respectively, and striking paragraphs (a)(3) and (a)(6).

CEQ proposed to delete the factor listed in 40 CFR 1501.1(a)(3) (2020), inconsistency with Congressional intent expressed in another statute, because upon further consideration, CEQ considers this factor to have inadequately accounted for agencies' responsibility to harmonize NEPA with other statutes, as discussed further in section II.C.2. As discussed in section II.B.5, the regulations provide that an agency should determine if a statute or court decision exempts an action from NEPA or if compliance with NEPA and another statute would be impossible; if not, the agency must comply with NEPA. To the extent the factor suggested that agencies should seek to go beyond these two questions to determine Congress's intent regarding NEPA compliance in enacting another statute, the factor is incorrect.

One commenter objected to CEQ's removal of the factor at 40 CFR 1501.1(a)(3) (2020) directing agencies to consider ''[w]hether compliance with NEPA would be inconsistent with Congressional intent expressed in another statute.'' The commenter asserted the proposed rule does not provide sufficient guidance to Federal agencies to determine whether an action is consistent with Congressional intent. In the final rule, CEQ strikes 40 CFR 1501.1(a)(3) (2020) as proposed because CEQ considers this factor to have inadequately accounted for agencies' responsibility to harmonize NEPA with other statutes. Section 1501.3(a)(2) of the final rule requires agencies to consider ''[w]hether compliance with NEPA would clearly and fundamentally conflict with the requirements of another provision of Federal law.'' As discussed further in section II.C.2, § 1501.3(a)(2) incorporates the language of section 106(a)(3) of NEPA, 42 U.S.C. 4336(a)(3), and aligns with the statutory mandate in section 102 of NEPA, 42 U.S.C. 4332, that agencies comply with NEPA ''to the fullest extent possible.'' Therefore, CEQ is removing this factor because it provides an inadequately rigorous standard for exempting agency actions from NEPA and is redundant with § 1501.3(a)(2).

CEQ proposed to strike the factor in 40 CFR 1501.1(a)(6) (2020) regarding functional equivalence to restore the status quo as it existed in the longstanding 1978 regulations. The NPRM explained that certain Environmental Protection Agency (EPA) actions are explicitly exempted from NEPA's environmental review requirements, *see, e.g.,* 15 U.S.C. 793(c)(1) (exempting EPA actions under the Clean Air Act); 33 U.S.C. 1371(c)(1) (exempting most EPA actions under the Clean Water Act), and courts have found EPA's procedures under certain other environmental statutes it administers and certain procedures under the Endangered Species Act (ESA) to be functionally equivalent to or otherwise exempt from NEPA. *See, e.g., Env't Def. Fund, Inc.* v. *EPA,* 489 F.2d 1247, 1256–57 (D.C. Cir. 1973) (exempting agency actions under the Federal Insecticide, Fungicide, and Rodenticide Act); *W. Neb. Res. Council* v. *U.S. Env't Prot. Agency,* 943 F.2d 867, 871–72 (8th Cir. 1991) (noting exemptions under the Safe Drinking Water Act); *Douglas County* v. *Babbitt,* 48 F.3d 1495, 1503 (9th Cir. 1995) (holding that Endangered Species Act procedures for designating a critical habitat replace the NEPA requirements). Nevertheless, CEQ considered this language added to the 2020 rule to go beyond the scope of the NEPA statute and case law because the language could be construed to expand functional equivalence beyond the narrow contexts in which it has been recognized.

Some commenters opposed the proposed removal of the factor on functional equivalence from 40 CFR 1501.1(a)(6) (2020) as well as in other provisions of the regulations, including the removal of 40 CFR 1500.1(a), 1506.9,

1507.3(c)(5), and 1507.3(d)(6) (2020). One commenter asserted that removing it would extend duplicative activity among agencies. Other opponents underscored that courts have held on several occasions that statutes that include their own environmental review processes can make compliance with NEPA redundant. These commenters asserted that CEQ's removal of regulatory language recognizing those decisions will encourage duplication and inefficiency. One commenter asserted that language in the rulemaking that encourages agencies ''to establish mechanisms in their agency NEPA procedures to align processes and requirements from other environmental laws with the NEPA process'' would turn the functional equivalence doctrine on its head, by requiring a specific statute to give way to a general statute rather than *vice versa.*

By contrast, supporters of these changes asserted that the language in question had no justification in law, and that Congress had considered incorporating language related to functional equivalence into NEPA as part of the development of the Fiscal Responsibility Act but had ultimately chosen not to do so.

CEQ strikes the factor in 40 CFR 1501.1(a)(6) (2020) from the final rule. As several commenters acknowledged, courts decided some of the cases addressing functional equivalence before CEQ issued the 1978 regulations, which encouraged agencies to combine environmental documents with ''any other agency document[s] to reduce duplication and paperwork,'' 40 CFR 1506.4 (2019),[64] and to ''adapt[] [their] implementing procedures authorized by § 1507.3 to the requirements of other applicable laws.'' 40 CFR 1507.1 (2019). CEQ acknowledges the continuing validity of the judicial decisions finding EPA's procedures under certain environmental statutes it administers and certain procedures under the ESA are functionally equivalent to NEPA. CEQ considers these circumstances to fall within the scope of the activities and decisions addressed in § 1501.3(a)(1) as ''exempted from NEPA by law.'' CEQ considers it unhelpful to separately discuss functional equivalence in the regulations to avoid suggesting that other agencies and activities or decisions are also exempted from NEPA. CEQ disagrees with commenters who contended that the functional equivalence decisions give agencies license to create new NEPA exemptions.[65] Rather, the appropriate approach is for agencies to align their NEPA procedures with their statutory requirements—an approach that does not require a more specific statute to give way to a more general one, as asserted by a commenter, but rather allows agencies to comply with both statutes at once.

Eighth, CEQ proposed to remove the language in paragraph (b) of 40 CFR 1501.1 (2020) allowing agencies to make threshold determinations individually or in their NEPA procedures because CEQ proposed to move the consideration of thresholds into § 1501.3 to consolidate the steps agencies should take to determine whether NEPA applies and, if so, what level of NEPA review is appropriate. CEQ also proposed to strike this language because it is redundant to language in § 1507.3(d)(1), which provides that agency NEPA procedures may identify activities or decisions that are not subject to NEPA.

Ninth, CEQ proposed to remove as unnecessary paragraph (b)(1) of 40 CFR 1501.1 (2020) because agencies have discretion to consult with CEQ and have done so for decades on a wide variety of matters, including on determining NEPA applicability, without such specific language in the CEQ regulations.

Finally, CEQ proposed to eliminate paragraph (b)(2) of 40 CFR 1501.1 (2020) directing agencies to consult with another agency when they jointly administer a statute if they are making a threshold applicability determination. CEQ proposed to delete this paragraph because while CEQ agrees that consultation is a good practice in such circumstances, it does not consider such a requirement necessary for these regulations because consultation is best determined by the agencies involved.

One commenter expressed appreciation for the consolidation of threshold considerations from paragraph (b) but asserted that the final rule should retain an acknowledgement that the threshold considerations are a non-exhaustive list and that agencies should identify considerations on a case-by-case basis. CEQ considers the language in §§ 1501.3(a) and 1507.3(d)(1) to address the commenter's concern and removes paragraphs (b), (b)(1), and (b)(2) of 40 CFR 1501.1 (2020) in the final rule.

2. Determine the Appropriate Level of NEPA Review (§ 1501.3)

CEQ proposed substantive revisions to § 1501.3 to provide a more robust and consolidated description of the process agencies should use to determine the appropriate level of NEPA review, including addressing the threshold question of whether NEPA applies. CEQ also proposed clarifying edits, including adding paragraph headings to paragraphs (a) through (d). CEQ proposed these revisions to clarify the steps for assessing the appropriate level of NEPA review to facilitate a more efficient and predictable review process.

First, as noted in section II.C.1, CEQ proposed to move paragraph (a) of 40 CFR 1501.1 (2020) to a new § 1501.3(a), title it ''Applicability,'' and add a sentence requiring agencies to determine whether NEPA applies to a proposed activity or decision as a threshold matter. CEQ proposed this move because the inquiry into whether NEPA applies is a component of determining the level of NEPA review. CEQ proposed to consolidate the steps in this process into one regulatory section to improve the clarity of the regulations. CEQ also noted that this consolidated provision is consistent with the approach in section 106 of NEPA, which addresses threshold determinations on whether to prepare an EA/FONSI or EIS. 42 U.S.C. 4336. In moving the text, CEQ proposed to strike ''or is otherwise fulfilled'' after ''[i]n assessing whether NEPA applies'' because, as discussed in section II.C.1, CEQ proposed to remove the functional equivalence factor from the regulation.

Second, CEQ proposed to move the threshold determination factors agencies should consider when determining whether NEPA applies from paragraphs (a)(1) and (a)(2) of 40 CFR 1501.1 (2020), to proposed paragraphs (a)(1) and (2), respectively. CEQ proposed to align the text in paragraph (a)(1) with the language proposed in § 1500.6 by deleting ''expressly'' and replacing ''exempt from NEPA under another statute'' with ''exempted from NEPA by law.'' CEQ proposed to align the text in paragraph (a)(2) with the language in section 106(a)(3) of NEPA, changing ''another statute'' to ''another provision of law'' for consistency with the statutory text. 42 U.S.C. 4336(a)(3).

One commenter requested that the final rule revise paragraph (a)(2) to clarify that in the event of a clear and fundamental conflict with another law, an agency should consider ''whether NEPA or that provision prevails under legal rules for resolving such conflicts between Federal laws.'' In requesting

[64] *See* CEQ, Phase 2 proposed rule, *supra* note 51, at 49956.

[65] *See also* CEQ, Phase 2 proposed rule, *supra* note 51, at 49959 (''CEQ has concerns about . . . language added by the 2020 rule [in 40 CFR 1507.3(c)(5)] to substitute other reviews as functionally equivalent for NEPA compliance, and therefore proposes to remove it.'').

this revision, the commenter described that if a situation arises in which NEPA clearly and fundamentally conflicts with a provision of State, Tribal, or local law, the agency has no further assessment to make before determining that NEPA prevails. However, if a situation arises in which NEPA clearly and fundamentally conflicts with another provision of a Federal law or a U.S. treaty with a foreign power, the commenter asserted the agency must make further assessments before it can determine whether NEPA or the other provision prevails.

In the final rule, CEQ moves paragraph (a) of 40 CFR 1501.1 (2020) to a new § 1501.3(a), ''Applicability,'' and makes the changes to paragraph (a) as proposed. CEQ also moves paragraphs (a)(1) and (a)(2) of 40 CFR 1501.1 (2020), to § 1501.3(a)(1) and (2), respectively, except that CEQ adds the word ''Federal'' to the phrase ''another provision of law.'' CEQ interprets section 106(a)(3), 42 U.S.C. 4336(a)(3), in light of the bedrock legal principle established by the Supremacy Clause of the Constitution that State, Tribal, or local laws do not override Federal law, the corollary that the Federal Government is not subject to State regulation in the absence of clear and unambiguous Congressional authorization, *see EPA* v. *California ex rel. State Water Resources Control Bd.,* 426 U.S. 200, 211 (1976), and decades of case law that predated the NEPA amendments and informed CEQ's 2020 rule considering whether NEPA conflicts with another Federal law. *See, e.g., Flint Ridge Development Co.* v. *Scenic Rivers Ass'n of Oklahoma,* 426 U.S. 776, 788 (1976). To improve the clarity of the NEPA regulations, CEQ adds the word ''Federal'' to the sentence to avoid any potential confusion that non-Federal legal requirements can override NEPA. CEQ disagrees that an agency must apply principles of statutory interpretation to determine whether NEPA applies where its application would present a clear and fundamental conflict with the requirements of another provision of Federal law, because section 106(a) of NEPA provides that in such circumstances ''an agency is not required to prepare an environmental document with respect to a proposed agency action.'' 42 U.S.C. 4336(a).

Third, CEQ proposed a new factor in paragraph (a)(3) to address circumstances where statutory provisions applicable to a proposed activity or decision make compliance with NEPA impossible. CEQ explained in the proposed rule that this factor is consistent with case law, principles of statutory construction, and the statutory requirement of section 102 of NEPA that agencies interpret and administer ''the policies, regulations, and public laws of the United States'' in accordance with NEPA's policies. 42 U.S.C. 4332(1).

One commenter recommended the final rule change ''impossible'' to ''impracticable'' while another commenter suggested that the final rule remove paragraph (a)(3) because it is duplicative of paragraph (a)(2). CEQ has considered the comments and agrees that proposed paragraph (a)(3) is duplicative of proposed paragraph (a)(2) and could therefore cause confusion. Therefore, CEQ does not include proposed paragraph (a)(3) in the final rule.

Fourth, consistent with section 106(a)(1) and (4) of NEPA, 42 U.S.C. 4336(a)(1) and (4), CEQ proposed to move the threshold determination factor regarding whether the activity or decision is a major Federal action from paragraph (a)(4) of 40 CFR 1501.1 (2020) and the factor regarding whether the activity or decision is non-discretionary from paragraph (a)(5) of 40 CFR 1501.1 (2020), to proposed § 1501.3(a)(4) and (a)(4)(ii), respectively. CEQ proposed to add a new paragraph (a)(4)(i) to add the factor regarding whether the proposed activity or decision is a final agency action under the APA. CEQ proposed to include whether an activity or decision is a final agency action or non-discretionary as subfactors of whether an activity or decision is a major Federal action in § 1501.3(a)(4) because CEQ also proposed these as exclusions from the definition of ''major Federal action.'' The proposed rule explained that when agencies assess whether an activity or decision is a major Federal action, agencies determine whether they have discretion to consider environmental effects consistent with the definition of ''major Federal action'' in § 1508.1.

One commenter recommended the final rule exclude proposed paragraph (a)(4) because the question of whether NEPA applies precedes the determination of whether the proposed action is a major Federal action, and there is no need to consider whether an action is a major Federal action if NEPA does not apply to the action. Other commenters recommended proposed paragraphs (a)(4), (a)(4)(i), and (a)(4)(ii) be separated from paragraph (a) in order to clearly distinguish the factors for threshold applicability determination from the definition of ''major Federal action.''

In the final rule, CEQ moves paragraph (a)(4) of 40 CFR 1501.1(2020) regarding major Federal action to § 1501.3(a)(3) and adds a cross reference to the definition § 1508.1(w). CEQ makes this revision to enhance the clarity of the regulation and for consistency with section 106(a) of NEPA. 42 U.S.C. 4336(a). CEQ disagrees with the commenter that determining whether an action constitutes a major Federal action is not a component of determining NEPA applicability or that treating this determination separately will improve efficiency. Agencies have the flexibility to consider the factors in paragraph (a) in any order and, therefore, the regulation does not require an agency to evaluate whether an action is a major Federal action if NEPA does not apply to it for other reasons.

In the final rule CEQ adds proposed paragraph (a)(4)(i) regarding final agency action to § 1501.3(a)(4) to make this a stand-alone factor, rather than a component of determining whether an action is a major Federal action, for consistency with section 106(a) of NEPA and improved clarity. 42 U.S.C. 4336(a). The final rule also adds the word ''not'' to paragraph (a)(4), so that it reads ''[w]hether the proposed activity or decision is not a final agency action'' for consistency with section 106(a)(1) of NEPA and parallelism with the other factors, which identify circumstances in which NEPA does not apply. 42 U.S.C. 4336(a)(1). CEQ notes that this factor requires the agency to evaluate whether the proposed action would be a final agency action if ultimately taken by the agency. CEQ does not include a cross reference to the definition of ''major Federal action'' as proposed because the final rule does not include this as an exclusion from the definition.

Lastly within paragraph (a), CEQ moves paragraph (a)(5) of 40 CFR 1501.1 (2020) on non-discretionary actions to § 1501.3(a)(5) to make this a stand-alone factor, rather than a sub-factor of major Federal action, for consistency with section 106(a)(4) of NEPA. 42 U.S.C. 4336(a)(4). While non-discretionary actions are excluded from the definition of ''major Federal action'' in section 111(10) of NEPA and § 1508.1(w), Congress determined that it was important to highlight this category as a component of determining NEPA applicability, and CEQ considers it appropriate for the regulations to do so as well. 42 U.S.C. 4336e(10). CEQ does not include a cross reference to the definition of ''major Federal action'' as proposed because the language in the statutory exclusion from the definition of ''major Federal action'' is different from this exclusion.

CEQ notes that where some components of an action are non-discretionary, but others are

discretionary, an agency can exclude considerations of the non-discretionary components from its NEPA analysis. That circumstance more logically presents an issue of the appropriate scope of the analysis, rather than of NEPA applicability, so, as discussed below, CEQ has included a reference to it in paragraph (b). For example, if a statute mandated an agency to make an affirmative decision once a set of criteria are met, but the agency has flexibility in how to meet those criteria, the agency exercises discretion on aspects of its decision and an analysis of alternatives and effects would inform the agency's exercise of discretion. Similarly, if a statute directs an agency to take an action, but the agency has discretion in how it takes that action, the agency can still comply with NEPA while carrying out its statutory mandate.

Fifth, CEQ proposed to move, with clarifying edits and additions, paragraph (e) and its subparagraphs of 40 CFR 1501.9 (2020), ''Determination of scope,'' to a new § 1501.3(b), ''Scope of action and analysis,'' to provide the next step in determining the appropriate level of NEPA review—the scope of the proposed action and its potential effects. In addition, CEQ proposed moving into § 1501.3(b) one sentence from paragraph (a) of 40 CFR 1502.4 (2020) directing agencies to evaluate in a single NEPA review proposals sufficiently closely related to be considered a single action, and the text from paragraph (e)(1) of 40 CFR 1501.9 (2020) regarding connected actions, which are closely related Federal activities or decisions that agencies should consider in a single NEPA document. CEQ proposed to move paragraphs (e)(1)(i) through (e)(1)(iii) of 40 CFR 1501.9 (2020) providing the types of connected actions into § 1501.3(b)(1) through (b)(3), respectively.

CEQ proposed these changes because this longstanding principle from the 1978 regulations—that agencies should not improperly segment their actions—is relevant not only when agencies are preparing EISs, but also when agencies determine whether to prepare an EA or apply a CE. *See, e.g., Fath* v. *Texas DOT,* 924 F.3d 132, 137 (5th Cir. 2018) (''Agencies generally should not segment, or divide artificially a major Federal action into smaller components to escape the application of NEPA to some of its segments.'') (quotations omitted). CEQ proposed to consolidate this text into § 1501.3(b) because the determination of the scope of the action, including any connected actions, necessarily informs the appropriate level of NEPA review. Because including this provision in § 1501.3 would make it applicable to environmental reviews other than EISs, CEQ proposed to strike the sentence that accompanied the text in 40 CFR 1502.4(a) (2020) directing the lead agency to determine the scope and significant issues for analysis in the EIS as part of the scoping process. CEQ proposed in § 1501.3(b)(1) to make a conforming change of ''environmental impact statements'' to ''NEPA review.''

Multiple commenters provided feedback on the first sentence of proposed § 1501.3(b) suggesting the final rule include additional language to limit it to an action that is under Federal agency control, and that NEPA reviews should not be used as a ''Federal handle'' to subject an entire project to Federal review where the Federal action comprises only one portion of the project. CEQ declines these edits because the sentence in question appropriately directs agencies to consider the scope of the proposed action and its potential effects consistent with longstanding agency practice.

In the final rule, CEQ moves paragraphs (e) and (e)(1) of 40 CFR 1501.9 (2020), to § 1501.3(b), and moves paragraph (e)(1)(i) through (e)(1)(iii) of 40 CFR 1501.9 (2020) to § 1501.3(b)(1) through (b)(3), respectively. CEQ adds the first sentence of proposed § 1501.3(b) as proposed with an additional phrase ''whether aspects of the action are non-discretionary'' at the end of the first sentence for consistency with agency practice and case law recognizing that where some aspects of an agency's action are non-discretionary, the agency can properly exclude them from the scope of its analysis. Adding this reference to this sentence clarifies that while NEPA does not apply to an action that is wholly non-discretionary, agencies should approach circumstances in which aspects of an action are non-discretionary, but others are discretionary, as a component of determining scope.

Another commenter suggested use of ''potential effects'' be replaced with ''reasonably foreseeable effects'' to emphasize that agencies are not required to consider effects that are not reasonably foreseeable. CEQ agrees that an agency only needs to consider reasonably foreseeable effects in determining the scope of analysis but declines to make this change as the word ''effects'' is a defined term in the regulations meaning reasonably foreseeable effects. Upon further consideration, CEQ deletes the word ''potential'' before the word ''effects'' to avoid any confusion that agencies must consider effects other than reasonably foreseeable effects.

Some commenters requested additional clarity on the meaning of scope and how determination of scope under paragraph (b) relates to public engagement and the scoping process under § 1502.4. CEQ adds a new second sentence to paragraph (b) to require agencies to use, as appropriate, the public engagement and scoping mechanisms in §§ 1501.9 and 1502.4 to inform consideration of the scope of the proposed action and determination of the level of NEPA review. CEQ adds this language, consistent with other changes made in §§ 1501.9 and 1502.4 to better explain the connection between scope, scoping, and public engagement.

One commenter requested clarity on the relationship between the second and third sentences of proposed § 1501.3(b), specifically suggesting deletion of the second sentence and revisions to the third sentence to provide a clearer standard for connected actions. Another commenter requested the final rule exclude ''Federal'' in the proposed sentence. CEQ declines the suggested edits. These sentences are based on longstanding provisions from 40 CFR 1502.4 and 1501.9(e)(1) (2020) and 40 CFR 1508.25(a)(1) (2019), and agencies have decades of experience applying them, including experience identifying those components of a project that have independent utility and therefore can be analyzed separately without running afoul of the prohibition on segmentation. The two regulatory requirements of the proposed second and third sentences—prohibiting agencies from breaking up a single ''action'' into separate reviews and requiring them to review together closely related ''connected actions''—are related but distinct requirements, which is why CEQ included them in a single paragraph but in different sentences. CEQ also disagrees that connected actions should be broadened to include non-Federal actions. Non-Federal actions have long been excluded from connected actions because the purpose of the doctrine is to prevent the Federal Government from segmenting Federal actions into separate projects and thereby failing to consider the scope and impact of the Federal activity. *See Sierra Club* v. *U.S. Army Corps of Engineers*, 803 F.3d 31 (D.C. Cir. 2015). Including non-Federal actions as connected actions would be inconsistent with the purpose of the concept and unsettle an aspect of the NEPA implementation that has been stable for decades.

One commenter suggested that CEQ add language to § 1501.3(b) stating that

to avoid segmentation, projects that are separate and distinct must have a logical end point; substantial independent utility; do not foreclose the opportunity to consider alternatives; and do not irretrievably commit Federal funds for closely related projects during the same time period, place, and type. CEQ declines to adopt the language suggested by the commenter. CEQ recognizes that some courts and agencies have included similar language in decisions and agency NEPA procedures (*see, e.g., Del. Riverkeeper Network* v. *FERC,* 753 F.3d 1304, 1315 (D.C. Cir. 2014) (quoting *Taxpayers Watchdog, Inc.* v. *Stanley,* 819 F.2d 294, 298 (D.C. Cir. 1987))); 23 CFR 771.111(f)) (2018), but considers providing additional details on segmentation more appropriately addressed in agency procedures that can be tailored to specific agency programs and actions.

In moving the text from 40 CFR 1501.9(e) (2020) to § 1501.3(b), CEQ proposed to strike paragraphs (e)(2) and (e)(3) of 40 CFR 1501.9 (2020) relating to alternatives and impacts, respectively. CEQ proposed to delete these paragraphs because both the 2020 regulations and the proposed rule separately address the analyses of alternatives and effects regarding EISs (§§ 1502.14, 1502.15) and EAs (§ 1501.5(c)(2)(ii) and (c)(2)(iii)). CEQ considers it to be premature in the process, unnecessary, and unhelpful to address alternatives as part of determining the level of NEPA review.

One commenter requested the final rule provide a better explanation regarding the deletion of 40 CFR 1501.9(e)(2) and (e)(3) (2020) and requested that CEQ provide more direction and guidance on consideration of alternatives and impacts. The commenter stated that this text has been in the regulations since 1978 and requested clearer justification for the changes. CEQ agrees that the effects of a proposed action are relevant to determining the scope of the action and analysis, which is why the first sentence of § 1501.3(b) references effects. However, CEQ does not consider alternatives to be relevant to identifying the scope of action and analysis under paragraph (b), which is intended to inform an agency's determination under paragraph (c) of the appropriate level of review.

In the final rule, CEQ adds the second sentence from proposed paragraph (d)(2)(vi), in which CEQ proposed to include an intensity factor from the 1978 regulations related to the relationship of actions, to be the fourth sentence of § 1501.3(b). CEQ revises the language for clarity to specify that agencies ''shall not term an action temporary that is not temporary in fact or segment an action into smaller component parts to avoid significant effects.'' CEQ has made this change in the final rule because the text in proposed paragraph (d)(2)(vi) directs agencies not to segment actions, which is more appropriately addressed in the paragraph on scope than in the paragraph on intensity.

Sixth, CEQ proposed to redesignate paragraph (a) of 40 CFR 1501.3 (2020) as paragraph (c), title it ''Levels of NEPA review,'' incorporate the language of section 106(b)(3) of NEPA, 42 U.S.C. 4336(b)(3), addressing the sources of information agencies may rely on when determining the appropriate level of NEPA review, and redesignate paragraphs (a)(1) through (a)(3) describing three levels of review—CEs, EAs, and EISs—as paragraphs (c)(1) through (c)(3), respectively without change.

CEQ received multiple comments on the incorporation of section 106(b)(3) of NEPA into proposed paragraph (c). 42 U.S.C. 4336(b)(3). Some commenters supported this incorporation, while others urged CEQ to limit the standard established in section 106(b)(3) to the determination of whether to prepare an EA or an EIS. CEQ disagrees with these commenters and adds the proposed language in the final rule because CEQ considers it appropriate to direct agencies to make use of any reliable data source in considering whether to apply a CE to an action and notes that a decision based on unreliable data would likely be inconsistent with the principles of reasoned decision making. CEQ also considers the approach to reliable data and producing new research in section 106(b)(3) to be consistent with longstanding practice and case law and appropriate to apply broadly to an agency's determination of the appropriate level of NEPA review, including a determination that no such review is required. 42 U.S.C. 4336(b)(3). Moreover, because section 106(b)(3)(B) provides that an agency ''is not required to undertake new scientific or technical research'' outside of the identified circumstances, making this language inapplicable to CE determinations would mean that agencies have a broader (but undefined) obligation to undertake new scientific or technical research for those determinations. 42 U.S.C. 4336(b)(3). Such a result would undermine the efficiency of CEs and create confusion for agencies.

Multiple commenters requested additional guidance from CEQ on how to apply the standard, what is considered a reliable data source, what costs or delays make obtaining new information unreasonable, and how long information will continue to be considered reliable. CEQ considers those questions to raise detailed or fact-specific issues that may be better suited to address in guidance or by agencies in considering specific NEPA reviews. CEQ notes that agencies have extensive experience in assessing the reliability of information in the NEPA process, and the regulations provide additional direction in §§ 1502.21 and 1506.6. CEQ will consider whether additional guidance is necessary to assist agencies in applying the standard.

CEQ makes these revisions as proposed in the final rule with one clarifying change to paragraph (c)(1) to replace ''[n]ormally does not have significant effects and is'' with ''[i]s appropriately.'' As phrased, this provision could be read to conflict with the process provided for in § 1501.4(b) for an agency to determine that a proposed action can be categorically excluded notwithstanding the existence of extraordinary circumstances. This change also provides for a parallel structure with paragraphs (c)(2) and (c)(3).

Seventh, CEQ proposed to redesignate paragraph (b) of 40 CFR 1501.3 (2020) as § 1501.3(d), title it ''Significance determination—context and intensity,'' and address factors agencies must consider in determining significance by restoring with some modifications the consideration of ''context'' and ''intensity'' from the 1978 regulations, which appeared in the definition of ''significantly.'' *See* 40 CFR 1508.27 (2019). The proposed rule explained that because this text provides direction on how agencies determine the significance of an effect, rather than a definition, addressing significance determinations in § 1501.3 is more appropriate than § 1508.1.

Eighth, CEQ proposed to modify the introductory language in paragraph (d) by replacing the requirement that agencies ''analyze the potentially affected environment and degree of the effects'' with a requirement for agencies to consider the context of an action and the intensity of the effects when considering whether the proposed action's effects are significant. CEQ proposed to strike the second sentence of 40 CFR 1501.3(b) (2020) requiring agencies to consider connected actions because this concept would be included in proposed paragraph (c).

Multiple commenters expressed support for the overall restoration of the context and intensity factors, as well as the proposed expansion of the factors, asserting that doing so aligns with

longstanding case law and adds certainty to the process. A few commenters generally opposed the reintroduction and expansion of the factors, asserting they would expand the scope of NEPA review rather than encourage streamlining and that the expansion of the factors is inconsistent with the statutory amendments to NEPA. A few commenters requested that proposed paragraph (d) clarify that agencies may consider mitigation in making a significance determination.

In the final rule, consistent with the proposal, CEQ redesignates paragraph (b) of 40 CFR 1501.3 (2020) as § 1501.3(d), titles it ''Significance determination—context and intensity,'' revises the first sentence of paragraph (d) with additional modifications to the proposal, and strikes the second sentence of 40 CFR 1501.3(b) (2020). CEQ adds and revises the factors as discussed further in this section. CEQ disagrees that the factors will expand the scope of NEPA review. Rather, these factors, including the additional factors, will assist agencies in determining the appropriate level of NEPA review for their proposed actions by focusing their review on the critical factors in determining significance.

As discussed further in this section, CEQ moves language regarding beneficial and adverse effects as well as the language regarding segmentation to the end of paragraph (d) in response to commenters' recommendations because this language is more generally applicable and not specific to context or intensity. Finally, CEQ declines to address the role of mitigation in this paragraph. CEQ has clarified in § 1501.6 that if an agency determines that a proposed action would not have a significant effect because of the implementation of mitigation, then the agency must document its finding in a mitigated FONSI. Therefore, addressing mitigation and its relation to significance is unnecessary in this paragraph.

Ninth, CEQ proposed to strike 40 CFR 1501.3(b)(1) (2020), replace it with proposed paragraph (d)(1), and restore the requirement for agencies to analyze the significance of an action in several contexts consistent with the 1978 regulations. CEQ also proposed to add examples of contexts that may be relevant. In the first sentence, CEQ proposed to encourage agencies to consider the characteristics of the relevant geographic area, such as proximity to unique or sensitive resources or vulnerable communities. The proposed rule indicated that such resources may include historic or cultural resources, Tribal sacred sites, and various types of ecologically sensitive areas. CEQ explained that this revision relates to the intensity factor in proposed paragraph (d)(2)(iii), which CEQ proposed to restore from the 1978 regulations. CEQ proposed to include it as a context factor as well since it relates to the setting of the proposed action and to encourage agencies to consider proximity to communities with environmental justice concerns.

CEQ also proposed to add a third sentence to paragraph (d)(1) encouraging agencies to consider the potential global, national, regional, and local contexts, which may be relevant depending on the scope of the action, consistent with the 2020 and 1978 regulations. Additionally, CEQ proposed to move and revise text providing that the consideration of short- and long-term effects is relevant to the context of a proposed action from 40 CFR 1501.3(b)(2)(i) (2020) to the end of the third proposed sentence in paragraph (d)(1) to encourage agencies to consider the duration of the potential effects whether they are anticipated to be short- or long-term.

Multiple commenters expressed support for the proposed restoration of the consideration of context in determining significance, asserting that doing so is consistent with case law and would promote compliance with NEPA's mandate to consider all significant effects. A few commenters requested the regulations define or add clarity on the terms ''unique or sensitive resources,'' ''vulnerable communities,'' and ''relevant geographic area.'' Some commenters supported the use of these terms while others expressed concern that without clear definitions there could be project delays or increased litigation risk.

In the final rule CEQ strikes 40 CFR 1501.3(b)(1) (2020) and replaces it in § 1501.3(d)(1) with the text in proposed paragraph (d)(1) with a few modifications. CEQ notes that paragraph (d)(1) requires agencies to analyze the significance of an action in several contexts, as evidenced by use of the term ''shall'' in the first sentence, while the second and third sentences use ''should'' to clarify that the determination the appropriate contextual factors will depend on the particular proposed action. In the final rule, CEQ uses the term ''communities with environmental justice concerns'' instead of ''vulnerable communities'' because CEQ has added this as a defined term in § 1508.1, and it is consistent with use of this term elsewhere in the rule. CEQ excludes the word ''relevant'' before ''geographic area'' in the final rule text as an unnecessary modifier since the encouragement is to consider the geographic area of the proposed action, which will necessarily depend on the context and scope of the proposed action. Moreover, agencies have decades of experience implementing a similar provision in the 1978 regulations, which did not include the word ''relevant'' before ''geographic area,'' and the addition of ''relevant'' could have the unintended consequence of indicating to agencies that this provision requires a substantially different analysis. CEQ declines to define ''geographic area'' and ''unique or sensitive resources'' as these phrases have been used in the regulations since 1978, and agencies have extensive experience interpreting them in the context of particular proposed actions. Further, CEQ is unaware of any misunderstanding about the meaning of these phrases and is concerned that adding a new regulatory definition could be disruptive for agencies.

Some commenters expressed support for the language encouraging agencies to consider the potential global, national, regional, and local contexts. Other commenters opposed the inclusion of all four contexts, and in particular the inclusion of ''global,'' stating that requiring agencies to consider all four would expand the complexity and scope of NEPA reviews and lead to inappropriate determinations that certain projects require an EIS, strain agency resources, cause delays and increase litigation risk, and allow subjectivity to be introduced to the decision. Other commenters requested more clarity on the types of actions that require consideration of potential global, national, regional, and local contexts, with another commenter requesting that the language be modified to provide flexibility to consider appropriate geographic contexts based on the site-specific action rather than always require evaluation of all four contexts.

In the final rule, CEQ includes the language on global, national, regional, and local contexts as proposed in § 1501.3(d)(1). The 2020 rule described ''context'' as related to the potentially affected environment in determining significance, stating that this reframing relates more closely to physical, ecological, and socio-economic aspects of the environment.[66] CEQ has reconsidered this approach and now finds it to be unhelpful and potentially limiting. While CEQ agrees that the contexts relevant to an agency's assessment of significance will be those that are potentially affected, identifying

[66] CEQ, 2020 Final Rule, *supra* note 39, at 43322.

the global, national, regional, and local contexts reminds agencies that they should consider whether proposed actions have reasonably foreseeable effects across these various contexts. Describing context in this manner is also consistent with the decades of experience agencies had implementing the 1978 regulations and is consistent with the concepts of indirect and cumulative effects. CEQ has also reconsidered the statement in the 2020 rule that the affected environment, is ''usually'' only the local area, 40 CFR 1501.3(b)(1) (2020) (''For instance, in the case of a site-specific action, significance would *usually* depend only upon the effects in the local area.'') (emphasis added), because many Federal actions have reasonably foreseeable effects that extend regionally, nationally, or globally.

CEQ notes that § 1501.3(d)(1) does not require agencies to evaluate all four contexts—global, national, regional, and local—for every proposed action. Rather, agencies should determine the appropriate contexts to consider based on the scope of the action and its anticipated reasonably foreseeable effects.

CEQ disagrees with commenters' assertion that this language will lead agencies to expand the evaluation of effects beyond those that are reasonably foreseeable. This provision provides guidance to agencies on how to determine whether an effect is significant, and the word ''effect'' is a defined term in the regulations that is always limited to reasonably foreseeable effects. This text recognizes that the global, national, regional, or local context may bear on assessing the significance of reasonably foreseeable effects. For example, in determining the significance of an effect on highly migratory marine species that travels thousands of miles each year from waters around Antarctica to the Arctic Ocean, the agency may need to consider the global context in which the species migrates, including other stressors that occur at other points of the migration route. Conversely, dam operations in a transboundary watershed may have consequences on aquatic ecosystems that are appropriately considered at the regional or watershed level and that may need to consider management and stressors extending across national boundaries. The regional nature of the resource effects, however, may not necessitate an analysis of global context. A decision to fund a project to construct a building to provide additional office space for a Federal agency on previously developed land may have consequences limited to the local area around the new building, and may not necessitate an analysis of global, State, or regional context.

Tenth, CEQ proposed to strike 40 CFR 1501.3(b)(2) (2020), replace it with proposed paragraph (d)(2), and reinstate ''intensity'' as a consideration in determining significance, which CEQ reframed in the 2020 rule as the ''degree'' of the action's effects. Specifically, CEQ proposed to strike the sentence in 40 CFR 1501.3(b)(2) (2020) encouraging agencies to consider the list of factors in assessing the degree of effects and replace it with a requirement to analyze the intensity of effects in light of the list of factors as applicable to the proposed action and in relation to one another. CEQ proposed to reinstate consideration of intensity because the concept of intensity and the intensity factors have long provided agencies with guidance in how the intensity of an action's effects may inform the significance determination. Further, CEQ noted it had reconsidered its position in the 2020 rule that removal of intensity as a consideration was based in part on the proposition that effects are not required to be intense or severe to be considered significant.[67] CEQ does not consider ''intense'' to be a synonym for ''significant;'' rather, it points to factors to inform the determination of significance that are part of longstanding agency practice.

Multiple commenters expressed general support for the restoration of the intensity factors in the proposed rule or identified support for specific factors, whereas others expressed general opposition or opposition to particular factors. One commenter suggested that the final rule replace the phrases ''potential'' and ''degree to which the proposed action may adversely affect'' in proposed paragraphs (d)(2)(ii), (iii), (v), (viii), and (x) with ''the degree of any reasonably foreseeable adverse effect of the proposed action on.'' The commenter also suggested the final rule revise paragraph (d)(2)(ix) to ''the degree of any reasonably foreseeable and disproportionate adverse effects from the proposed action on communities with environmental justice concerns.'' The commenter asserted these changes would focus the consideration on reasonably foreseeable effects, consistent with the statute, while ''may adversely affect'' could be read to mean agencies should consider speculative scenarios and effects that are not reasonably foreseeable. Other commenters made similar suggestions, requesting the regulations consistently refer to ''reasonably foreseeable effects.'' Relatedly, a commenter recommended the regulations consistently refer to ''the proposed action,'' rather than ''the action'' in the factors. Some commenters opposed the inclusion of ''adverse'' in front of multiple factors.

CEQ declines to make these changes in the final rule. The intensity factors inform an agency's determination of whether an effect is significant, and the word ''effect'' is a defined term that means reasonably foreseeable effects. Therefore, paragraph (d)(2) applies only to reasonably foreseeable effects and repeating the phrase ''reasonably foreseeable'' throughout this paragraph is unnecessary. CEQ retains ''adverse'' in the final rule consistent with the definition of ''significant effects'' and the language in § 1501.3(d), which clarify that only adverse effects can be significant.

Eleventh, CEQ proposed to clarify in proposed paragraph (d)(2)(i) that agencies should focus on adverse effects in determinations of significance, consistent with NEPA's policies and goals as set forth in section 101 of the statute. 42 U.S.C. 4331. CEQ proposed to redesignate paragraph (b)(2)(ii) of 40 CFR 1501.3 (2020) as paragraph (d)(2)(i) regarding beneficial and adverse effects and revise it to state that ''[e]ffects may be beneficial or adverse'' but ''only actions with significant adverse effects require an [EIS].''

CEQ proposed to add a third sentence to this paragraph to indicate that a significant adverse effect may exist even if the agency considers that on balance the effects of the action will be beneficial. The proposed rule explained that this provision is intended to be distinct from weighing beneficial effects against adverse effects to determine that an action's effects on the whole are not significant. Rather, an action with only beneficial effects and no significant adverse effects does not require an EIS, consistent with CEQ's proposed revisions to § 1501.3(d)(2), regarding the meaning of intensity.

CEQ proposed to strike paragraph (b)(2)(i) of 40 CFR 1501.3 (2020) but incorporate the text into a fourth sentence in paragraph (d)(2)(i) to clarify that agencies should consider the duration of effects and include an example of such consideration—an action with short-term adverse effects but long-term beneficial effects. The proposed rule explained that while significant adverse effects may exist even if the agency considers that on balance the effects of the action will be beneficial, the agency should consider any related short- and long-term effects in the same effect category together in evaluating intensity.

[67] CEQ, 2020 Final Rule, *supra* note 39, at 43322.

Multiple commenters supported proposed paragraph (d)(2)(i), expressing support for the qualification that only actions with significant adverse effects require an EIS because it will reduce expenditure of agency resources on unnecessary EISs, streamline the NEPA process, and promote a holistic review of projects. One commenter cited *Friends of Fiery Gizzard* v. *Farmers Home Admin.,* 61 F.3d 501 (6th Cir. 1995) to support CEQ's proposed approach.

Multiple commenters also opposed the proposal to only require an EIS for actions with significant adverse effects. Some commenters asserted that proposed (d)(2)(i) and the reference to adverse effects in other proposed intensity factors would illegally limit the scope of NEPA because the statutory requirement to prepare an EIS does not distinguish between adverse and beneficial effects. A few commenters cited case law that they argued contravenes the proposed change. *Hiram Clarke Civil Club* v. *Lynn,* 476 F.2d 421 (5th Cir. 1973); *Environmental Defense Fund* v. *Marsh,* 651 F.2d 983 (5th Cir. 1981). One commenter also asserted the proposal poses a risk that agencies will not assess significant adverse effects or evaluate less damaging alternatives, and that the proposed provision could be interpreted to give agencies discretion to opt out of preparing an EIS based on unsupported claims that the project will be beneficial or based on the project's stated intent. One commenter further asserted that almost no environmentally significant project completely avoids all potentially significant adverse effects and also expressed concern about the lack of an EIS limiting the opportunity for the public to provide comment where they might raise other potentially adverse effects. A few commenters expressed concern that the proposed language favors a certain type of project over another without statutory or factual support for doing so.

Some commenters interpreted the language in the last two sentences of proposed paragraph (d)(2)(i) to read that CEQ supported a ''netting'' approach to EISs, whereby if an action has significant adverse effects but had net beneficial effects then the agency would not have to prepare an EIS. Some commenters supported this interpretation while others opposed it. A few commenters requested CEQ clarify that the significance determination through the application of context and intensity factors across timescales or duration applies to each individual ''effect category'' that is implicated by the proposed action. The commenters state that without this clarification, decision makers could conflate categories of effects by considering an action's effects as a whole thereby dismissing significant adverse effects within an individual category on a given timescale if the decision maker determines the action is beneficial overall. Another commenter requested the regulations clarify that an EIS is not required where the beneficial effects of a proposed action outweigh its adverse effects.

In the final rule, CEQ addresses the concept that only adverse effects are significant by moving the last sentence of proposed paragraph (d)(2)(i) to paragraph (d) and revising it because this concept is a more general consideration and not specific to intensity. CEQ also includes a definition of ''significant effect'' in § 1508.1 to provide further clarity.

Specifically, CEQ strikes 40 CFR 1501.3(b)(2)(i) and (ii) (2020) because § 1501.3(d) addresses consideration of the duration of effects and whether a particular category of effect is adverse or beneficial coupled with the definition of ''significant effects'' in § 1508.1(mm). CEQ includes the first clause of the last sentence of proposed paragraph (d)(2)(i), encouraging agencies to consider the duration of effects, as the second sentence of § 1501.3(d) and adds an introductory clause to the sentence: ''[i]n assessing context and intensity.'' CEQ also makes ''effects'' singular to emphasize that this analysis is done on an effect-by-effect basis and does not allow agencies to weigh a beneficial effect of one kind against an adverse effect of another kind or evaluate whether an action is beneficial or adverse in net to determine significance. For example, an agency cannot compare and determine significance by weighing adverse water effects against beneficial air effects, or adverse effects to one species against beneficial effects to another species. Then, CEQ includes and modifies the second clause of the last sentence of proposed paragraph (d)(2)(i), providing that an action may have short-term adverse effects but long-term beneficial effects, as the third sentence in § 1501.3(d) to explain that agencies may consider the extent to which an effect is adverse at some points in time and beneficial at others. CEQ also includes an illustrative example of a proposed action for habitat restoration where an agency may consider both any short-term harm to a species during implementation of the action and any benefit to the same species once the action is complete. As another example, an action that will enhance recharge of a groundwater aquifer once completed could have an adverse effect on groundwater recharge in the short term. In evaluating the significance of the action's effect on groundwater recharge, the agency should consider both the short-term harm and long-term benefit. In some circumstances, an effect may be significant due to the harm during one period of time regardless of the benefit at another. For example, if implementation of a habitat restoration action may extirpate a species from the area, then an agency could not reasonably rely on long-term habitat improvements resulting from the action to determine that the overall effect to the species is not significant. The approach to considering duration contemplated by this language is similar to the familiar analysis agencies engage in with respect to compensatory mitigation, in which they may conclude that benefits from the implementation of mitigation measures reduce the anticipated adverse effects of a proposed action below the level of significance.

In place of the third sentence of proposed paragraph (d)(2)(i), CEQ adds a new third sentence at the end of paragraph (d) that prohibits agencies from offsetting an action's adverse effects with other beneficial effects to determine significance. This sentence also includes a parenthetical example that agencies may not offset an action's adverse effect on one species with a beneficial effect on another species. The CEQ regulations have never allowed agencies to use a net benefit analysis across environmental effects to inform the level of NEPA review. Because the final rule clarifies that only adverse effects may be significant, CEQ considers it especially important to emphasize this prohibition in the regulatory text to ensure agencies identify the appropriate level of review for their proposed actions. Finally, CEQ does not include the second sentence of proposed paragraph (d)(2)(i) stating that only actions with significant adverse effects require an EIS because this is made clear through the limitation in the definition of ''significant effects'' in § 1508.1(mm) to adverse effects.

The Fifth and Sixth Circuit cases cited by the commenters illustrate the split among courts on whether actions with only significant beneficial effects and no significant adverse effects trigger an EIS. *See also Humane Soc'y of U.S.* v. *Locke,* 626 F.3d 1040, 1056 n.9 (9th Cir. 2010) and *Drakes Bay Oyster Co.* v. *Jewell,* 747 F.3d 1073, 1090 n.11 (2014) discussing the split in courts in dicta. CEQ considers the Congressional declaration of purpose in section 2 of NEPA and the Congressional declaration of national

environmental policy in section 101 of NEPA to indicate that Congress intended for ''significant effects'' to be those that are damaging, which is what CEQ interprets the phrase ''adverse effects'' to mean. 42 U.S.C. 4321, 4331. The recent amendments to NEPA bolster this interpretation because section 102(2)(C)(iii) directs analysis of ''negative environmental impacts of the no action alternative'' and section 108(1) refers to the significance of adverse effects related to programmatic environmental documents. 42 U.S.C. 4332(2)(C)(iii), 4336b(l). CEQ notes too that the definition of ''significant effects'' and § 1501.3(d) do not eliminate the requirement for agencies to identify and discuss all reasonably foreseeable environmental effects whether adverse or beneficial when preparing an EIS.

Twelfth, CEQ proposed to redesignate paragraph (b)(2)(iii) of 40 CFR 1501.3 (2020) as paragraph (d)(2)(ii) and make a clarifying edit to the factor relating to effects on health and safety by adding language indicating that the relevant consideration is ''the degree to which'' the proposed action may ''adversely'' affect public health and safety. Commenters suggested that the final rule add ''welfare'' and ''public well-being'' to this factor. CEQ declines these additions because public health and safety have a more precise meaning than ''welfare'' and ''well-being'' and therefore, will be more readily applied by agencies. Further, this factor has remained unchanged since 1978, so agencies have a long history of examining these in the consideration of significant effects on the human environment. In the final rule, CEQ redesignates paragraph (b)(2)(iii) of 40 CFR 1501.3 (2020) as § 1501.3(d)(2)(i) and revises it as proposed but omits ''proposed'' before ''action'' for consistency with the language of the factors.

Thirteenth, CEQ proposed to add a new paragraph (d)(2)(iii) to add a new intensity factor to consider the degree to which the proposed action may adversely affect unique characteristics of the geographic area such as historic or cultural resources, park lands, Tribal sacred sites, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas. CEQ proposed this factor to reinstate a factor from the 1978 regulations, with clarifying edits, which agencies have considered for decades. As noted earlier in this section, CEQ proposed to use the wording from the 1978 factor on unique characteristics in paragraph (d)(1) on context because they relate to the setting of an action. The proposed rule indicated that consideration of this factor is consistent with both the definition of ''effects'' and the policies and goals of NEPA. 42 U.S.C. 4331.

Some commenters expressed support for the restoration of the factor in proposed paragraph (d)(2)(iii) and the proposed modifications to the 1978 regulatory text. One commenter recommended removing ''historic or cultural resources'' because it is redundant and imprecise. Two commenters asked that the final rule define ''park lands,'' ''prime farmlands,'' and ''ecologically critical areas'' for clarity. A few commenters requested that the final rule broaden the reference to Tribal sacred sites to include culturally significant sites, including sites of Native Hawaiians, Alaskan Natives, and indigenous peoples in the United States and its Territories. Other commenters requested use of ''and other indigenous communities'' to include non-federally recognized Tribes.

CEQ adds proposed new paragraph (d)(2)(iii) at § 1501.3(d)(2)(ii) in the final rule, revising ''park lands'' to ''parks'' to modernize the language that was included in the 1978 regulations and omitting ''proposed'' before ''action'' for consistency with the language of the factors. CEQ declines to remove the word ''prime'' before ''farmlands,'' which would substantially expand this factor beyond historical practice and including all farmland within this factor would be inconsistent with directing agencies to consider the ''unique characteristics of the geographic area.'' CEQ declines to make the other changes suggested by the commenters. However, CEQ notes that in addition to ''Tribal sacred sites,'' the list of intensity factors includes several other factors that may be relevant to Tribal and Indigenous cultural sites, including ''historic or cultural resources'' and ''resources listed or eligible for listing in the National Register of Historic Places.'' The list also directs agencies to consider ''[w]hether the action may violate relevant Federal, State, Tribal, or local laws,'' as well as ''[t]he degree to which the action may have disproportionate and adverse effects on communities with environmental justice concerns'' and ''[t]he degree to which the action may adversely affect rights of Tribal Nations that have been reserved through treaties, statutes, or Executive orders.'' Finally, CEQ notes that the list is not intended to be an exhaustive list of all potential factors, and agencies can consider other factors in their determination of significance as appropriate for the proposed action.

Fourteenth, CEQ proposed to redesignate paragraph (b)(2)(iv) of 40 CFR 1501.3 (2020) as paragraph (d)(2)(iv) and revise ''effects that would'' to ''actions that may'' violate ''relevant'' Federal, State, Tribal, or local laws. CEQ proposed to add ''other requirements'' after law as well as ''inconsistencies'' with ''policies designed for protection of the environment'' because agencies should not necessarily limit their inquiry to statutory requirements. CEQ explained that it may be appropriate for agencies to give relatively more weight to whether the action threatens to violate a law imposed for environmental protection as opposed to a policy, but formally adopted policies designed for the protection of clean air, clean water, or species conservation, for example, may nonetheless be relevant in evaluating intensity.

Some commenters recommended the final rule strengthen this factor to identify examples of relevant environmental protection laws and policies to ensure Federal agencies do not overlook actions taken by States to address climate change or environmental justice. Another commenter suggested CEQ provide guidance encouraging agencies to coordinate with coastal programs to achieve consistency with all relevant State and Territory plans, policies, and initiatives to protect coastal uses and resources.

In the final rule, CEQ redesignates paragraph (b)(2)(iv) of 40 CFR 1501.3 (2020) as § 1501.3(d)(2)(iii) and revises it as proposed. CEQ declines to make the commenters' suggested edits as they are unnecessarily specific for this rule and encompassed in the proposed text. However, this does not preclude an agency from identifying more specific examples in its agency NEPA procedures if the agency determines it would be helpful for assessing significance for its proposed actions.

Fifteenth, CEQ proposed to add a new paragraph (d)(2)(v) to consider the degree to which effects are highly uncertain. The 1978 regulations included factors for ''controversial'' effects and those that are ''highly uncertain or involve unique or unknown risks.'' CEQ proposed to restore a modified version of this concept that makes clear that the uncertainty of an effect is the appropriate consideration, and not whether an action is controversial. The proposed rule explained that while a legitimate disagreement on technical grounds may relate to uncertainty, this approach would make clear that public controversy over an activity or effect is not a factor for determining significance.

A few commenters expressed support for proposed paragraph (d)(2)(v). A couple of commenters suggested the

final rule include the phrase ''high degree of uncertainty'' to better conform with NEPA practice under the 1978 regulations. Another commenter requested clarity on what is meant by ''highly uncertain.'' A few commenters recommended the regulations restore ''highly controversial'' from the 1978 regulations because it was well-developed in case law and doing so would provide clarity to agencies on how to assess the degree to which effects were ''highly controversial.''

CEQ adds proposed new paragraph (d)(2)(v) at § 1501.3(d)(2)(iv) in the final rule. CEQ declines to use the term ''highly controversial.'' While some may be familiar with the terminology, it could mistakenly give the impression that it refers to public controversy. CEQ also declines to use ''high degree of uncertainty,'' which means the same thing as ''highly uncertain,'' because the phrase ''highly uncertain'' has been included in the NEPA regulations since 1978 and making this substitution would require restructuring the sentence in a manner that would reduce parallelism and readability without otherwise improving the clarity or improving meaning. *See* 40 CFR 1508.27(b)(5) (2019).

Sixteenth, CEQ proposed to add a new paragraph (d)(2)(vi) to consider the degree to which the action may relate to other actions with adverse effects. CEQ proposed this paragraph to reinstate a factor from the 1978 regulations and for consistency with the longstanding NEPA principle that agencies cannot segment actions to avoid significance. *See, e.g., Sierra Club* v. *Marsh,* 769 F.2d 868 (1st Cir. 1985); *Kern* v. *U.S. Bureau of Land Mgmt.,* 284 F.3d 1062 (9th Cir. 2002).

Some commenters supported the restoration of this factor, but suggested removal of the term ''adverse.'' Other commenters indicated that CEQ did not explain why it proposed to use ''in the aggregate'' instead of the 1978 regulations' phrasing ''cumulatively significant impact on the environment'' and asserted that this would be a confusing change. One commenter expressed support for the second sentence in the factor specifying that an agency cannot segment or term an action temporary that is not in fact temporary.

Another commenter opposed the restoration of this intensity factor, asserted it would confuse the NEPA process and imply that an EIS can be required solely based on the effects of other actions when the action under consideration does not have significant adverse effects itself. Another commenter also expressed concern about the factor and stated that if CEQ's goal is to ensure that the potential for repetition or recurrence of an impact is considered, the regulations should state this more clearly.

Upon further consideration, CEQ is not restoring this text from the 1978 regulations to the final rule. The inclusion of cumulative effects as a component of effects already addresses the interrelationship between the effects of an action under consideration. Moreover, rather than identifying a factor for an agency to consider in assessing significance, this language more directly relates to the prohibition on an agency segmenting an action, which the final rule addresses in § 1501.3(b) related to the scope of an action and effects.

Seventeenth, CEQ proposed to add a new paragraph (d)(2)(vii) to add a factor relating to actions that would affect historic resources listed or eligible for listing in the National Register of Historic Places. CEQ proposed this factor to generally reinstate a factor from the 1978 regulations, which agencies have decades of experience considering. The proposed rule explained that consideration of this factor furthers the policies and goals of NEPA, including to ''preserve important historic, cultural, and natural aspects of our national heritage.'' 42 U.S.C. 4331.

A couple of commenters expressed support for proposed paragraph (d)(2)(vii), while another commenter requested the final rule broaden the factor by inserting ''or State or Tribal equivalents to registers of historic places'' to the end of the factor. CEQ adds proposed new paragraph (d)(2)(vii) at § 1501.3(d)(2)(v) in the final rule. CEQ declines the commenter's recommended addition because the revised provision is consistent with decades of agency practice. CEQ notes that the list of intensity factors is not exhaustive.

Eighteenth, CEQ proposed to add a new paragraph (d)(2)(viii) to add the degree to which the action may adversely affect an endangered or threatened species or its habitat, including critical habitat under the Endangered Species Act. 16 U.S.C. 1532(5). CEQ proposed to reinstate and expand an intensity factor from the 1978 regulations, which only addressed critical habitat. CEQ proposed this addition to clarify that agencies should consider effects to the habitat of endangered or threatened species even if it has not been designated as critical habitat.

Some commenters expressed support for the expansion of the factor to include impacts to habitat regardless of whether they have been designated as critical. A few commenters disagreed with the proposed expansion of this intensity factor and suggested that the final rule restore the 1978 language that ''limited'' this factor to review of critical habitat. Multiple commenters requested the final rule exclude this factor, asserting that CEQ failed to justify the proposed expansion to require agencies to consider the effect of an action on habitat that have not been designated as critical habitats under the Endangered Species Act. Commenters stated that it was unclear why this would be an intensity factor when agencies already must engage in ESA section 7 consultation. One commenter expressed concern the proposed expansion would expand the scope of the significance determination, resulting in project delays and siting issues. Other commenters specifically recommended removing ''habitat, including'' because the language expands habitat considerations beyond what is protected by Federal law.

CEQ adds proposed new paragraph (d)(2)(viii) in § 1501.3(d)(2)(vi) of the final rule, as proposed, because critical habitat is a regulatory category under the Endangered Species Act designation process and does not necessarily align with the geographic range of the species or the habitat a species is using. Major Federal actions can have significant effects on endangered or threatened species habitat regardless of whether critical habitat has been designated. Moreover, the section 7 consultation process considers effects to listed species generally, including where habitat that has not been designated as critical habitat is used by a species and therefore, damage to that habitat may affect the species. As a result, revising the factor in this manner helps to align environmental review under NEPA and the section 7 consultation process.

Nineteenth, CEQ proposed to add a new paragraph (d)(2)(ix) to include consideration of the degree to which the action may have disproportionate and adverse effects on communities with environmental justice concerns. CEQ proposed this factor because evidence continues to accumulate that communities with environmental justice concerns often experience disproportionate environmental burdens such as pollution or urban heat stress, and often experience disproportionate health and other socio-economic burdens that make them more susceptible to adverse effects.

Multiple commenters expressed support for the proposed addition of environmental justice as an intensity factor. One commenter requested clarity on what is meant by ''the degree to

which an action may have a disproportionate effect.'' Another commenter recommended the final rule revise the factor to read ''the degree of any reasonably foreseeable and adverse effects from the proposed action on communities with environmental justice concerns'' to focus on reasonably foreseeable effects.

CEQ adds the factor in proposed paragraph (d)(2)(ix) related to communities with environmental justice concerns in § 1501.3(d)(2)(vii) in the final rule with modifications. Specifically, the final rule revises the factor to revise the phrase ''have disproportionate and adverse effects'' to ''adversely affect'' to enhance the consistency of this factor with the other intensity factors. CEQ notes that the intensity factors inform an agency's determination of whether an effect is significant, and the word ''effect'' is defined to mean reasonably foreseeable effect.

Finally, CEQ proposed to add a new proposed paragraph (d)(2)(x) to include effects upon rights of Tribal Nations that have been reserved through treaties, statutes, or Executive orders. CEQ proposed this factor because Tribes' ability to exercise these rights often depends on the conditions of the resources that support the rights, and agencies should consider these reserved rights when determining whether effects to such resources are significant. CEQ specifically sought comments from Tribes on this proposed addition.

Multiple commenters, including Tribal government agencies and Tribal leaders, supported the addition of proposed paragraph (d)(2)(x), but also urged CEQ to specifically address effects on Tribal sovereignty, reservations, religious and cultural practices and cultural heritage, current cultural practices, and habitat on which resources crucial to the exercise of Tribal Nations' reserved rights depend. A few commenters recommended the factor include broader references when discussing ''rights'' to ensure inclusion of the rights of indigenous peoples not denominated as Tribes. A few commenters opposed the proposed addition, asserting that it prejudges which effects would be significant.

CEQ adds proposed new paragraph (d)(2)(x) in § 1501.3(d)(2)(viii) of the final rule, as proposed. The provision identifies an important factor that agencies should consider in determining whether an effect is significant and will help agencies consider rights that have been reserved through treaties, statutes, or Executive orders during the NEPA process, without prejudging which categories of environmental effects will be most important in any given analysis. Regarding the additional considerations that commenters suggest that CEQ incorporate into these provisions, CEQ notes that paragraphs (d)(2)(ii), (iii), (v), and (vii) capture many of them in whole or in part. Because the list of considerations in paragraph (d)(2) is not exhaustive, CEQ declines to specify these additional terms. Regarding the recommendation to add a reference to rights of indigenous peoples in this factor, CEQ does not make this revision because this factor addresses the unique and distinctive rights of Tribal Nations that have a nation-to-nation relationship with the United States.

3. Categorical Exclusions (§ 1501.4)

CEQ proposed revisions to § 1501.4 regarding CEs to clarify this provision, and provide agencies new flexibility to establish CEs using additional mechanisms outside of their NEPA procedures to promote more efficient and transparent development of CEs that may be tailored to specific environmental contexts or project types.

Many commenters expressed general support for the proposed changes to § 1501.4. Some of these commenters suggested that the final rule go further to encourage the use of CEs. Other commenters advocated for additional provisions in the section, such as requiring agencies to notify the public of the proposed use of a CE and make all documentation on the use of a CE for a specific action available to the public. CEQ addresses the specific comments throughout this section and in the Phase 2 Response to Comments.

CEQ intends the changes in the final rule to promote agency use of CEs whenever appropriate for a proposed action. The mechanisms in § 1501.4 as well as § 1507.3 will provide agencies with additional flexibility in establishing CEs while ensuring that CEs are appropriately substantiated and bounded to ensure they apply to actions that normally do not have significant effects. CEQ declines to require agencies to provide public notice in advance of using a CE. While agencies may choose to do this where they deem appropriate, an across-the-board requirement would burden agency resources and undermine the efficiency of the CE process. Similarly, requiring agencies to publish documentation of every CE determination would be overly burdensome. Consistent with § 1507.3(c)(8)(i), agencies must identify in their NEPA procedures which of their CEs require documentation. Agencies also can identify processes or specific CEs in their agency procedures for which they will make determinations publicly available where they determine this is appropriate. CEQ encourages agencies to notify the public and make documentation publicly available for CEs when they expect public interest in the determination.

CEQ proposed changes throughout § 1501.4. First, CEQ proposed to revise the first sentence in paragraph (a) to strike the clause requiring agencies to identify CEs in their agency NEPA procedures and replace it with a clause requiring agencies to establish CEs consistent with § 1507.3(c)(8), which requires agencies to establish CEs in their NEPA procedures. CEQ proposed this revision because it would more fully and accurately reflect the purposes of and requirements for CEs. Because paragraph (c) provides mechanisms for agencies to establish CEs outside of their NEPA procedures, CEQ makes this change to § 1501.4(a) in the final rule but adds ''or paragraph (c)'' so that the first sentence refers to the various mechanisms for establishing CEs. As is reflected in the regulations, CEQ views CEs to be important tools to promote efficiency in the NEPA process where agencies have long exercised their expertise to identify and substantiate categories of actions that normally do not have a significant effect on the human environment.

Second, in the description of CEs in the first sentence of paragraph (a), CEQ proposed to add the clause ''individually or in the aggregate'' to modify the clause ''categories of actions that normally do not have a significant effect on the human environment.'' CEQ proposed to add this language to clarify that when establishing a CE, an agency must determine that the application of the CE to a single action and the repeated collective application to multiple actions would not have significant effects on the human environment. CEQ proposed this clarification to recognize that agencies often use CEs multiple times over many years and for consistency with the reference to a ''category of actions'' in the definition of ''categorical exclusion'' provided by section 111(1) of NEPA, which highlights the manner in which CEs consider an aggregation of individual actions. 42 U.S.C. 4336e(1).

CEQ intended the proposed change to have a meaning similar to the 1978 regulations' definition ''categorical exclusion'' as categories of actions that do not ''individually or cumulatively'' have significant effects, which the 2020 rule removed stating that the removal was consistent with its removal of the term ''cumulative impacts'' from the regulations. The Phase 1 rulemaking reinstated cumulative effects to the

definition of ''effects,'' [68] so the 2020 rule's justification for removing the phrase no longer has a basis. However, CEQ proposed to use the phrase ''in the aggregate'' rather than ''cumulatively'' to avoid potential confusion. Cumulative effects refer to the incremental effects of an agency action added to the effects of other past, present, and reasonably foreseeable actions. In the context of establishing CEs, agencies consider both the effects of a single action as well as the aggregation of effects from anticipated multiple actions covered by the CE such that the aggregate sum of actions covered by the CE does not normally have a significant effect on the human environment. As part of this analysis, agencies consider the effects—direct, indirect, and cumulative—of the individual and aggregated actions.

Because the definition of ''effects'' includes cumulative effects, CEQ proposed the phrase ''in the aggregate'' to more clearly define what agencies must consider in establishing a CE—the full scope of direct, indirect, and cumulative effects of the category of action covered by the CE. Agencies have flexibility on how to evaluate whether the aggregate actions covered by a CE will not ordinarily have significant effects and may consider the manner in which the agency's extraordinary circumstances may apply to avoid multiple actions taken in reliance on the CE having reasonably foreseeable significant effects in the aggregate.

Commenters both supported and opposed the addition of the phrase ''individually or in the aggregate'' in proposed § 1501.4(a) and § 1507.3(c)(8)(ii). Commenters who supported the inclusion of the text asserted that it restores an important clarification regarding the proper scope of CEs from the 1978 regulations and that it gives meaning to the statutory definition of ''categorical exclusion'' in section 111(1) of NEPA. 42 U.S.C. 4336e(1). Commenters opposed to this phrase asserted it is undefined, lacks foundation in the statute, is burdensome on agencies, and will require agencies to consider effects beyond those that are reasonably foreseeable.

CEQ disagrees that the phrase ''individually or in the aggregate'' lacks foundation in the statute because use of the phrase ''does not significantly affect'' in section 111(1) of NEPA indicates it is the ''*category* of actions'' that the agency has determined normally would not result in significant effects to the environment, not an individual action to which the CE would apply. *See* 42 U.S.C. 4336e(1) (emphasis added). CEQ also disagrees that this phrase will add burden to agencies because CEQ considers this a clarifying edit consistent with the longstanding definition of ''categorical exclusion'' and agency practice. Finally, CEQ notes that all effects analyses are bounded by reasonable foreseeability, including in the establishment of CEs.

Some commenters also requested the regulations clarify the relationship between the phrase ''individually or in the aggregate'' and the definition of cumulative effects. CEQ views these terms as related. The term ''effects'' as used in the definition of ''categorical exclusion'' and throughout the regulations includes cumulative effects, which, in turn, refers to the effects of the action being analyzed in an environmental document when added to the effects of other past, present, and reasonably foreseeable actions. The use of ''in the aggregate'' in this paragraph refers to the fact that in substantiating a CE to determine that a category of actions normally does not have significant effects, the agency must consider both the effects—including cumulative effects as well as direct and indirect—of an individual action within that category and of the aggregate of the actions that the agency can reasonably foresee will be taken and covered by the CE. Because the regulations use the phrase ''in the aggregate'' consistent with the ordinary meaning of the phrase, CEQ does not consider it necessary to add additional explanatory text.

A few commenters requested the regulations clarify that an agency should ensure that actions covered by a CE will not have a significant effect ''individually or in the aggregate'' at the time the agency establishes and substantiates the CE. Conversely, another commenter asserted considering the aggregate effects of a CE is inappropriate when an agency establishes a CE, asserting that an agency should consider any aggregate effects when applying the CE to a proposed action. CEQ declines to address substantiation of CEs in § 1501.4 as this issue is addressed in § 1507.3(c)(8)(ii). Further, CEQ disagrees that agencies would need to analyze aggregate effects each time the agency applies a CE, except to the extent the agency's extraordinary circumstances review requires such an analysis. Requiring such an analysis each time an agency applies a CE, independent of any analysis required as part of the agency's extraordinary circumstances review, would undermine the efficiency of CEs. Instead, agencies must consider whether a category of actions normally does not have a significant effect individually or in the aggregate at the time that the agency establishes a CE.

Some commenters opposed the use of the term ''normally'' in the description of a CE in paragraph (a), which CEQ discusses in section II.J.2. CEQ retains this term for the reasons discussed in the 2020 rule, section II.J.2, and the Phase 2 Response to Comments.

Third, CEQ proposed to revise the end of the first sentence of paragraph (a) to add the qualifier, ''unless extraordinary circumstances exist that make application of the categorical exclusion inappropriate'' with a cross reference to paragraph (b). As discussed in section II.J.11, CEQ proposed to add a definition of ''extraordinary circumstances.'' CEQ stated in the proposed rule, that these provisions are consistent with longstanding practice and recognize that, as the definition provided by section 111(1) of NEPA indicates, CEs are a mechanism to identify categories of actions that normally do not have significant environmental effects. *See* 42 U.S.C. 4336e(1). Extraordinary circumstances serve to identify individual actions whose effects exceed those normally associated with that category of action and therefore, may not be within the scope of the CE. CEQ did not receive comments on this specific proposed change and makes this addition to paragraph (a) in the final rule.

Fourth, CEQ proposed to add a new sentence at the end of paragraph (a) to clarify that agencies may establish CEs individually or jointly with other agencies. The proposed rule noted that where agencies establish CEs jointly, they may use a shared substantiation document and list the CE in both agencies' NEPA procedures or identify them through another joint document as provided for by § 1501.4(c). CEQ proposed this addition to clarify that agencies may use this mechanism to establish CEs transparently and with appropriate public process. The proposed rule noted that agencies may save administrative time and resources by establishing a CE jointly for activities that they routinely work on together and where having a CE would create efficiency in project implementation.

Multiple commenters supported the inclusion of this clarification in paragraph (a), stating that joint establishment of CEs by agencies can help improve efficiency, reduce redundancy, and improve cohesion between agencies. On the other hand, one commenter opposed the proposed addition asserting that joint CEs will not

[68] CEQ, Phase 1 Final Rule, *supra* note 50, at 23469.

help communities participate fully in the NEPA process. CEQ adds the proposed language in § 1501.4(a) in the final rule. The NEPA regulations have never prohibited agencies from establishing CEs jointly, and the proposed change in paragraph (a) provides clarity to agencies and the public that this is an acceptable practice. The requirement to substantiate CEs as described in § 1507.3(c)(8), including public review and comment, apply to establishment of joint CEs in the same manner as CEs established by an individual agency.

Fifth, CEQ proposed edits to paragraph (b)(1) addressing what agencies do when there are extraordinary circumstances for a particular action. CEQ proposed to change ''present'' to ''exist'' and clarify the standard for when an agency may apply a CE to a proposed action notwithstanding the extraordinary circumstances. CEQ proposed to make explicit that an agency must conduct an analysis to satisfy the requirements of the paragraph. Next, CEQ proposed to change the description of the determination that agencies must make from ''there are circumstances that lessen the impacts'' to ''the proposed action does not in fact have the potential to result in significant effects notwithstanding the extraordinary circumstance.'' Then CEQ proposed to change ''or other conditions sufficient to avoid significant effects'' to ''or the agency modifies the action to address the extraordinary circumstance.'' CEQ proposed this standard for consistency with agency practice and case law. Additionally, CEQ proposed this change because the language in paragraph (b)(1) of 40 CFR 1501.4 (2020) could be construed to mean that agencies may mitigate on a case-by-case basis extraordinary circumstances that would otherwise have the potential for significant effects and thereby apply a CE with no opportunity for public review or engagement on such actions. While the 2020 Response to Comments sought to distinguish ''circumstances that lessen the impacts'' from required mitigation to address significant effects,[69] based on CEQ's discussions with agency representatives and stakeholders, the potential for confusion remained. CEQ proposed the revised text to make clear that if an extraordinary circumstance exists, an agency must make an affirmative determination that there is no potential for significant effects in order to apply a CE. If the agency cannot make this determination, the agency must either modify its proposed action in a way that will address the extraordinary circumstance, or prepare an EA or EIS.

Sixth, CEQ proposed to add a sentence to paragraph (b)(1) to require agencies to document their determinations in those instances where an agency applies a CE notwithstanding extraordinary circumstances. While not required, CEQ proposed to encourage agencies to publish such documentation to provide transparency to the public of an agency determination that there is no potential for significant effects. CEQ proposed this sentence in response to feedback from the public requesting such transparency.

Multiple commenters generally supported proposed § 1501.4(b), which sets out the process for applying a CE to a proposed action, and its subparagraphs addressing consideration of extraordinary circumstances. Several commenters opposed the proposed requirement in paragraph (b)(1) to prepare a separate analysis as part of the extraordinary circumstances review, asserting it will decrease efficiency, disincentivize use of CEs, and strain already limited agency resources.

Multiple commenters opposed allowing an agency to apply a CE when extraordinary circumstances exist and expressed concerns that this provision would allow the use of mitigated CEs. Some of these commenters recommended the final rule remove paragraph (b)(1); further specify what extraordinary circumstances agencies must consider, such as the presence of endangered, threatened, or rare or sensitive species; or include ''other protective measures.'' Some commenters urged the final rule to require, rather than encourage, publication of the CE determinations in paragraph (b)(1). Other commenters urged CEQ not to make publication a requirement because it would be burdensome on agencies. One commenter who supported proposed paragraph (b)(1) also suggested the regulations clarify that the standard to apply a CE to a proposed action also includes mitigation commitments to address extraordinary circumstances.

CEQ revises paragraph (b)(1) as proposed with two additional clarifying edits. In applying CEs, the evaluation of extraordinary circumstances is critical to ensure that a proposed action to which a CE may apply would not cause significant effects. However, mere presence of an extraordinary circumstance does not mean that the proposed action has the potential to result in significant effects. To ensure both the efficient and the appropriate use of CEs, CEQ revises paragraph (b)(1) to enable agencies to analyze and document that analysis to ensure application of the CE is valid. CEQ disagrees that requiring agencies to document this analysis is inefficient because this provision does not require an agency to prepare documentation of every extraordinary circumstance review. Rather, the provision requires documentation only when the agency identifies the presence of extraordinary circumstances but nevertheless determines that application of the CE is appropriate. Documentation in such instances is appropriate so that the agency can demonstrate that it adequately assessed the extraordinary circumstances and determined that the action will nonetheless not have the potential to result in significant effects. CEQ declines to require agencies to publish this documentation because it could burden agency resources and undermine the efficiency of the CE process.

CEQ has considered the comments on this paragraph related to mitigated CEs and modifies the text in the final rule to clarify what it means for an agency to modify its action. Specifically, CEQ replaces the phrase ''address the extraordinary circumstance'' with the phrase ''avoid the potential to result in significant effects.'' This change clarifies that while an agency may rely on measures that avoid potential significant effects, it may not rely on measures to compensate for potential significant effects as the basis for relying on a CE when extraordinary circumstances are present, and the agency has determined that the proposed action has the potential to result in significant effects. While CEQ has determined that reliance on compensatory mitigation in this provision is inappropriate, it notes that other provisions of the regulations, such as the allowance for mitigated FONSIs in § 1501.6, promote the use of compensatory mitigation to promote efficient environmental reviews and quality decision making. CEQ also revises the introductory clause of the last sentence from ''In such cases'' to ''in these cases'' to make it clear that the documentation requirement applies to both situations—(1) when the agency conducts an analysis and determines that the proposed action does not in fact have the potential to result in significant effects notwithstanding the extraordinary circumstance or (2) the agency modifies the action to avoid the potential to result in significant effects.

[69] CEQ, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act Final Rule Response to Comments 130 (June 30, 2020) (2020 Response to Comments), *https://www.regulations.gov/document/CEQ-2019-0003-720629.*

Seventh, CEQ proposed to add a new paragraph (c) to provide agencies more flexibility to establish CEs outside of their NEPA procedures. CEQ proposed this provision to allow agencies to establish CEs through a land use plan, a decision document supported by a programmatic EIS or EA, or other equivalent planning or programmatic decisions. Once established, the proposal would allow agencies to apply CEs to future actions addressed in the program or plan, including site-specific or project-level actions. CEQ proposed this provision because it anticipated that expanding the mechanisms through which agencies may establish CEs will encourage agencies to conduct programmatic and planning reviews, increase the speed with which agencies can establish CEs while ensuring public participation and adequate substantiation, promote the development of CEs that are tailored to specific contexts, geographies, or project-types, and allow decision makers to consider the cumulative effects of related actions on a geographic area over a longer time frame than agencies generally consider in a review of a single action.

Proposed paragraph (c) would not require agencies to establish CEs through this new mechanism, but rather would provide new options for agencies to consider. CEQ also noted in the proposed rule that this mechanism does not preclude agencies from conducting and relying on programmatic analyses in making project-level decisions consistent with § 1501.11 in the absence of establishing a CE. Additionally, the proposed rule noted that it does not require agencies to conduct a NEPA analysis to establish CEs generally, consistent with § 1507.3(c)(8).

Numerous commenters expressed support for proposed paragraph (c), asserting it will improve flexibility and efficiency. Some commenters opposed the proposed provision, expressing concern about public engagement. One commenter requested CEQ exclude ''other equivalent planning or programmatic decision'' from paragraph (c) asserting that CEQ should limit the provision to documents prepared pursuant to NEPA to ensure public transparency and early public involvement. Another commenter recommended the final rule include an example in paragraph (c) to illustrate the appropriateness of creating a CE for restoration actions in a planning document, referencing § 1500.3(d)(2)(i) for proposed Federal actions with short-term, non-significant, adverse effects and long-term beneficial effects, such as restoration projects.

CEQ adds paragraph (c) with additional text to clarify that the phrase ''other equivalent planning or programmatic decision'' requires that such decision be supported by an environmental document prepared under NEPA. CEQ anticipates that this alternative approach will provide agencies with more flexibility on how to identify categories of actions that normally will not have significant effects and establish a CE for those categories. An environmental document such as a programmatic EIS prepared for land use plans or other planning and programmatic decisions can provide the analysis necessary to substantiate a new CE established by the associated decision document that makes sense in the context of the overall program decision or land use plan. For example, a land management agency could consider establishing a CE for zero or minimal impact resilience-related activities through a land use plan and the associated EIS. Enabling an agency to establish a CE through this mechanism will reduce duplication of effort by obviating the need for the agency to revise its NEPA procedures consistent with § 1507.3 after completing a programmatic EIS. Agencies also may find it efficient to establish a CE through a land use planning process rather than undertaking a separate process to establish the CE via agency procedures after completion of the land use planning process.

Eighth, CEQ proposed to add paragraphs (c)(1) through (c)(6) to set forth the requirements for the establishment of CEs through the mechanism proposed in paragraph (c). In paragraphs (c)(1) and (c)(2), CEQ proposed to require agencies to provide CEQ an opportunity to review and comment and provide opportunities for public comment. The proposed rule noted that agencies may satisfy the requirement for notification and comment under paragraph (c)(2) by incorporating the proposed CEs into any interagency and public review process that involves notice and comment opportunities applicable to the relevant programmatic or planning document.

One commenter requested that paragraph (c)(1) include a requirement for CEQ to provide review and comment to agencies within 30 days of the receipt of the draft plan, programmatic environmental document, or equivalent decision document, consistent with the timeframe included in § 1507.3(b)(2). Another commenter asserted that requiring agencies to coordinate with CEQ defeats the purpose of having an alternative mechanism for establishing CEs outside of an agency's NEPA procedures.

Some commenters asserted that bundling new CEs with other large actions could make it hard for the public to track and result in a lack of public participation and potential for abuse. CEQ disagrees that the alternative process for establishing CEs will curtail meaningful public engagement on proposed CEs and notes that paragraph (c)(2) would require notification and an opportunity for public comment. Further, programmatic environmental documents are subject to the public and governmental engagement requirements in § 1501.9.

The final rule adds paragraphs (c)(1) and (c)(2) as proposed. CEQ declines to include a timeline in the final rule but notes that it will strive to provide comments as quickly and efficiently as possible. CEQ disagrees that requiring agencies to consult with CEQ defeats the purpose of this alternative mechanism. Consultation with CEQ facilitates consistency and coordination across the government, which can lead to greater efficiency. CEQ also can help ensure that agencies are adequately substantiating CEs through this new mechanism.

In paragraphs (c)(3) and (c)(4), CEQ proposed to include the same requirements for agencies to substantiate CEs and provide for extraordinary circumstances when they establish CEs under this section as when they establish CEs through their agency NEPA procedures pursuant to § 1507.3. Specifically, paragraph (c)(3) would require agencies to substantiate their determinations that the category of actions covered by a CE normally will not result in significant effects, individually or in the aggregate. Paragraph (c)(4) would require agencies to identify extraordinary circumstances.

CEQ did not receive comments specific to paragraphs (c)(3) and (c)(4) and adds them to the final rule as proposed. CEQ notes that agencies have flexibility in how they identify the list of new extraordinary circumstances. For example, agencies could rely on their list set forth in their NEPA procedures. Or, the agency could identify a list specific to the CEs established under paragraph (c). Agencies also could do a combination of both. CEQ also notes that while agencies would need to satisfy the requirements in paragraphs (c)(3) and (c)(4) in a manner consistent with the establishment of CEs under § 1507.3, agencies could document their compliance with these requirements in the relevant programmatic or planning documents.

In paragraph (c)(5), CEQ proposed to direct agencies to establish a process for determining that a CE applies to a specific action in the absence of extraordinary circumstances or determine the CE still applies notwithstanding the presence of extraordinary circumstances. Finally, in paragraph (c)(6), CEQ proposed to direct agencies to maintain a list of all such CEs on their websites, similar to the requirement for agencies to publish CEs established in their agency NEPA procedures consistent with §§ 1507.3(b)(2) and 1507.4(a).

One commenter asserted that requiring agencies to publish a list of all CEs established pursuant paragraph (c) on an agency's website defeats the purpose of having an alternative mechanism for establishing CEs outside of an agency's NEPA procedures. CEQ adds paragraphs (c)(6) as proposed. CEQ disagrees that providing transparency on a website is burdensome or will affect the efficiency of the alternative process for establishing CEs. Agency websites should clearly link the CEs established pursuant to § 1504.1(c) to their underlying programmatic or planning documents. Additionally, where they determine it is efficient and helpful to do so, agencies may incorporate CEs established through these mechanisms into their agency NEPA procedures during a subsequent revision. Irrespective of whether agencies do this, CEQ encourages agencies to list all agency CEs in one location, regardless of how the agency established the CE, so that the public can easily access the full list of an agency's CEs.

Ninth, CEQ proposed new paragraphs (d) and (d)(1) through (d)(4) to identify a list of examples of features agencies may want to consider including when establishing CEs, regardless of what mechanism they use to do so. In paragraph (d)(1), CEQ proposed to specifically allow for CEs that cover specific geographic areas or areas that share common characteristics, such as a specific habitat type for a given species. CEQ did not receive any comments specific to this proposal and adds paragraphs (d) and (d)(1) to the final rule.

To promote experimentation and evaluation, CEQ proposed in paragraph (d)(2) to indicate that agencies may establish CEs for limited durations. CEQ did not receive any comments specific to this proposal and adds paragraph (d)(2) to the final rule. Agencies may establish CEs for limited durations when doing so will enable them to narrow the scope of analysis necessary to substantiate that a class of activities normally will not have a significant environmental effect where uncertainty exists about changes to the environment that may occur later in time that could affect the analysis or where an agency anticipates that the frequency of actions covered by a CE may increase in the future. As with all CEs, agencies should review their continued validity periodically, consistent with the CE review timeframe in § 1507.3(c)(9). Once the limited duration threshold is met, agencies may either consider the CE expired, conduct additional analysis to create a permanent CE, or reissue the CE for a new period if they can adequately substantiate the reissued CE.

CEQ proposed in paragraph (d)(3) to provide that a CE may include mitigation measures to address potential significant effects. The proposed rule explained that a CE that includes mitigation is different than an agency modifying an action to avoid an extraordinary circumstance that would otherwise require preparation of an EA or EIS.

Numerous commenters interpreted proposed paragraph (d)(3) to allow ''mitigated CEs,'' and commenters expressed both support and opposition for the proposed provision. Supportive commenters asserted that mitigated CEs can provide efficiencies to agencies. Commenters opposed to the provision expressed concern that this would allow agencies to provide compensatory mitigation for impacts of CEs and asserted the provision violates a bedrock principle of NEPA that an agency may not weigh beneficial effects against adverse effects to determine that an action's effects on a whole are not significant. Some commenters objected to the proposal that mitigation included as part of a CE must be legally binding, enforceable, and subject to monitoring.

CEQ includes paragraph (d)(3) as proposed. This provision provides for a CE that includes mitigation measures integrated into the category of action itself, which agencies would adopt through a public comment process, and does not enable mitigation that is identified after the fact or on a case-by-case basis. Where an agency establishes a CE for a category of activities that include mitigation measures, agencies would implement the activities covered by the CE as well as the mitigation incorporated into those activities as described in the text of CE. This provision would enable agencies to incorporate mitigation as part of the category of action covered by a CE. The potential to integrate compensatory mitigation into a CE does not authorize weighing beneficial and adverse effects, just as agencies may not weigh beneficial effects against adverse effects to determine significance of a proposed action. Rather, a CE may incorporate compensatory mitigation requirements as part of the action to ensure that an environmental effect is not significant. For example, in appropriate circumstances an agency might conclude that a category of activity that results in degradation of five acres of habitat will not ordinarily have significant effects where five acres of equivalent habitat are effectively restored or conserved elsewhere within that same geographic location. As another example, a CE might cover a category of activities that result in releasing a certain volume of sediment into a waterway if measures were taken to reduce sediment into the waterway from other sources. In establishing a CE that incorporates a mitigation measure, the agency would need to determine that implementation of the mitigation measure will mean that the category of activities will not normally have a significant effect. Where an agency establishes a CE with a mitigation requirement, the agency would need to include such mitigation in their proposed actions in order for the CE to apply.

In paragraph (d)(4), CEQ proposed to provide that agencies can include criteria for when a CE might expire such that, if such criteria occur, the agency could no longer apply that CE. For example, an agency could establish a CE for certain activities up to a threshold, such as a specified number of acres or occurrences. Once the applications of the CE met the threshold, the agency could no longer use the CE. Similarly, an agency might set an expiration date or threshold where the agency can substantiate that a category of activities will not have a significant effect up to a certain number of applications of the CE, but beyond that point there is uncertainty or analytic difficulty determining whether application of the CE would have significant effects. Adopting CEs of this type may significantly reduce the difficulty substantiating a CE and therefore, may promote more efficient and appropriate establishment of CEs in certain circumstances.

Some commenters requested that the criteria to cause a CE to expire be mandatory while another commenter asserted the expiration criteria would undermine the use of the CEs. CEQ includes paragraph (d)(4) as proposed in the final rule and notes that this provision is merely an example of a type of feature that can be incorporated into a CE. In establishing the CE, agencies

would determine whether the criteria were mandatory.

Finally, CEQ proposed to add paragraph (e) to implement the process for adoption and use of another agency's CE consistent with section 109 of NEPA. 42 U.S.C. 4336c. As discussed in section II.I.3, CEQ proposed to strike the provision that would allow an agency to establish a process in its agency NEPA procedures to apply a CE listed in another agency's NEPA procedures in 40 CFR 1507.3(f)(5) (2020) and replace it with this provision.

Numerous commenters generally opposed the concept of adopting and using another agency's CE. A few commenters asserted that such an allowance could be ''disastrous'' because it allows agencies to skip full assessment of the potential environmental and socioeconomic impacts of the proposed action required by NEPA, and it limits public engagement.

CEQ includes paragraph (e) in the final rule because it implements the provisions of section 109 of NEPA, which allows agencies to adopt and apply the CEs of other agencies. 42 U.S.C. 4336c. CEQ notes that the statutory provision only allows for agency adoption and use of CEs established administratively by the agency, including those that Congress directs agencies to establish administratively, but does not permit adoption of CEs directly created by statute, for which an agency has not evaluated whether the category of activities that fall within the CE will not normally have significant effects. While CEQ encourages agencies to include legislative CEs established by statute in their NEPA procedures to provide transparency, they are not ''established'' by the agency, but rather by Congress. Therefore, this provision does not apply to legislative CEs.

In paragraph (e)(1), CEQ proposed to require the adopting agency to identify the proposed action or category of proposed actions that falls within the CE. CEQ did not receive comments on this proposed paragraph and adds it to the final rule as proposed.

In paragraph (e)(2), CEQ proposed to require the adopting agency to consult with the agency that established the CE, consistent with the requirement of section 109(2) of NEPA that an agency consult with ''the agency that established the categorical exclusion.'' 42 U.S.C. 4336c(2). While some commenters opposed the consultation requirements included in paragraph (e)(2), it is consistent with section 109(2) of NEPA. Therefore, CEQ adds paragraph (e)(2) in the final rule with revisions to clarify that ''the application'' refers to ''the proposed action or category of proposed actions to which the agency intends to apply'' the adopted CE. Consultation with the agency that established the CE ensures that the CE is appropriate for the proposed action or categories of action that the adopting agency is contemplating as well as to ensure the adopting agency follows any process contemplated in the establishing agency's procedures. Agencies structure their CEs in a variety of manners, and it is essential that the adopting agency comport with the establishing agency's process necessary for appropriate application of the CE. For example, some agencies structure their CEs to have a list of conditions or factors to consider in order to apply the CE. Other agencies require documentation for certain CEs. These conditions would apply to the adopting agency as well. In contrast, procedures internal to the establishing agency and unrelated to proper application of the CE, such as protocols for seeking legal review or briefing agency leadership, would not.

CEQ proposed in paragraph (e)(3) to require the adopting agency to evaluate the proposed action for extraordinary circumstances and to incorporate the process for documenting use of the CE when extraordinary circumstances are present but application of the CE is still appropriate consistent with § 1504.1(b)(1). One commenter requested additional clarity on which agency's extraordinary circumstances the adopting agency needs to consider while another commenter asserted both agencies' extraordinary circumstances should apply. Another commenter asserted that section 109 of NEPA does not require the extraordinary circumstances review included in paragraph (e)(3), and suggested the final rule include this in paragraph (e)(1). The commenter further asserted that the cross-reference to § 1501.4(b) in paragraph (e)(3) presents problems of action-specific application.

In the final rule, CEQ swaps proposed paragraphs (e)(3) and (e)(4) to better reflect the order in which these activities occur. CEQ includes proposed paragraph (e)(3) at § 1501.4(e)(4), adds an introductory clause, ''[i]n applying the adopted categorical exclusion to a proposed action,'' and removes reference to a ''category of proposed actions'' since consideration of extraordinary circumstances would come at the stage of application and evaluation of a particular action, not at the adoption stage, because the purpose of assessing for extraordinary circumstances is to determine whether a particular action normally covered by a CE requires preparation of an EA or EIS.

CEQ declines to specify which agency's extraordinary circumstances apply in this paragraph and instead adds language to § 1501.4(e)(3) (proposed paragraph (e)(4)) to require agencies to explain the process the agency will use to evaluate for extraordinary circumstances. When the agencies consult regarding the appropriateness of the CE consistent with paragraph (e)(2), the agencies should discuss how the adopting agency will review for extraordinary circumstances (*e.g.,* whether the adopting agency will apply the establishing agency's extraordinary circumstances exclusively or both agencies' provisions), taking into account how each agency's NEPA procedures define and require consideration of extraordinary circumstances. The adopting agency should then explain how it will address extraordinary circumstances in its notification under § 1501.4(e)(4). CEQ expects that agencies will follow the extraordinary circumstances process set forth in the NEPA procedures containing the CE, but may determine it is appropriate to also consider the extraordinary circumstances process in their own procedures because, for example, their extraordinary circumstances address agency-specific considerations.

In proposed paragraph (e)(4), CEQ proposed to require the adopting agency to provide public notice of the CE it plans to use for its proposed action or category of proposed actions. Some commenters asserted the procedural requirements under paragraph (e)(4) are unnecessary and could make the process more difficult. One commenter requested the regulations clarify that public notice is not intended for each individual project using the other agency's CE, but rather when one agency decides to use another agency's CE. Some commenters requested the final rule require agencies to accept public comment on the notice. Conversely, a few commenters expressed concern that the requirement to provide notice contemplates the potential for pre-adoption public comment and necessitates formal comment. These latter commenters requested CEQ clarify that formal public comment and agency response are not required for the notice.

In the final rule, CEQ adds proposed paragraph (e)(4) at § 1501.4(e)(3) because section 109(3) of NEPA requires public notice of CE adoption. 42 U.S.C. 4336c(3). In the final rule text, CEQ uses ''public notification'' instead of ''public

notice'' for consistency with use of ''notification'' throughout the rule. CEQ changes ''use'' to ''is adopting'' to clarify that this notice is about adoption of the CE for a proposed action or category of actions, not the application of the adopted CE to a particular proposed action. CEQ replaces ''for'' with ''including a brief description of'' before ''the proposed action or category of proposed actions'' and adds the clause ''to which the agency intends to apply the adopted categorical exclusion'' to further clarify the purpose of the notice. Then, as discussed earlier in this section, the final rule requires that the notice specify the process for consideration of extraordinary circumstances. CEQ notes that several agencies have already successfully adopted other agencies' CEs and provided such notice since the NEPA amendments were enacted.[70] CEQ declines to add a requirement to this paragraph to require agencies to seek comment on the adoption. While CEQ encourages agencies to do so in appropriate cases, such as when there is community interest in the action, the statute does not require agencies to seek public comment on the adoption and use of another agency's CE. Finally, CEQ adds a requirement to include a brief description of the consultation process required by § 1501.4(c)(2) to demonstrate that this process occurred.

Lastly, in paragraph (e)(5), CEQ proposed to require the adopting agency to publish the documentation of the application of the CE. Some commenters opposed this proposed requirement, asserting it is not required by NEPA and differs from the section 109(4) requirement to document adoption of the CE, and that the requirement will only delay projects that clearly qualify for use of a CE. 42 U.S.C. 4336c(4). Other commenters supported the documentation requirement and requested that paragraph (e)(5) require agencies to publish decision documents.

CEQ adds § 1501.4(e)(5) in the final rule with the addition of ''adopted'' to modify ''categorical exclusion'' for clarity and consistency with § 1501.4(c)(3) and (c)(4). Paragraph (e)(5) implements sections 109(3) and 109(4) of NEPA and reflects CEQ's understanding that section 109(4) of NEPA describes a step that is distinct from and occurs later than the step described in section 109(3). *See* 42 U.S.C. 4336c(3), (4). Section 109(3) requires agencies to ''identify to the public the categorical exclusion that the agency plans to use for its proposed actions,'' while section 109(4) requires an agency to ''document adoption of the categorical exclusion.'' CEQ reads these provisions together to be consistent with requiring both notice of the adopting agency's adoption, which would describe the agency's intended use, as well as actual application of the adopted CE to proposed actions. It also furthers the purposes of NEPA to inform the public. Additionally, providing transparency about how agencies are using the adopted CEs will help allay commenters' concerns about this provision because they will be made aware of what CEs agencies are adopting and how they are using them. Therefore, agencies must prepare such documentation each time they apply the CE to a proposed action. Paragraph (e)(5) requires agencies to publish this determination that the application of the CE is appropriate for the proposed action, and that there are no extraordinary circumstances requiring preparation of an EA or EIS, including the analysis required by § 1501.4(b)(1) if the agency determines that there is no potential for significant effects notwithstanding those extraordinary circumstances. CEQ notes that use of the defined term ''publish'' in § 1501.4(e)(5) provides agencies with discretion to determine the appropriate manner in which to publish the documentation and that § 1501.4(e)(5) does not require agencies to publish any pre-decisional or deliberative materials the agencies may use to support a determination of the applicability of the adopted CE.

When an agency is adopting one or more CEs that it plans to use for one or more categories of actions, it may publish a single notice of the adoption under § 1501.4(e)(3), consistent with section 109(3) of NEPA. *See* 42 U.S.C. 4336c(3). However, when the agency then applies the adopted CE to a specific action, it must document that particular use of the CE to satisfy section 109(4) of NEPA, as reflected in § 1501.4(e)(4) and (5). *See* 42 U.S.C. 4336c(4). Finally, agencies must publish the documentation to provide transparency to the public consistent with section 109(3) and (4) of NEPA.

If an adopting agency anticipates long-term use of an adopted CE, CEQ encourages agencies to establish the CE either in their own procedures or through the process set forth in § 1501.4(c). Section 1501.4(e) can serve as an important bridge when agencies are implementing new programs where they have not yet established relevant CEs or when existing programs begin to undertake new categories of actions but where other agencies have experience with similar actions and have established a CE for those actions. In these circumstances, the agency can immediately begin to implement the new programs or activities after adoption of another agency's CE for similar actions without the need to first develop its own CE to cover them.

CEQ notes that section 109 of NEPA does not provide that an agency can modify the CE it is adopting. 42 U.S.C. 4336c. Therefore, agencies must adopt a CE as established and cannot modify the text of the adopted CE. However, in the public notification required by § 1501.4(e)(3), agencies must describe the action or category of actions to which they intend to apply the adopted CE and the action or category of actions for which the CE is adopted may be narrower in scope than the CE might otherwise encompass. If an agency later seeks to apply the adopted CE to a different category of actions than those identified in the prior adoption notice, the agency must further consult with the establishing agency and provide new public notification consistent with § 1501.4(e). If the agency publishes a consolidated list of CEs on its website, as CEQ recommends, the adopting agency should include identification of the action or category of actions for which it has adopted the CE with the list. If an adopting agency would prefer to narrow or otherwise modify the text of the adopted CE, it should instead substantiate and establish a new CE in its agency NEPA procedures.

4. Environmental Assessments (§ 1501.5)

CEQ proposed to revise § 1501.5 to make it consistent with section 106(b)(2) of NEPA, which addresses when an agency must prepare an EA, and section 107(e)(2) of NEPA, which address EA page limits. 42 U.S.C. 4336(b)(2), 4336a(e)(2). CEQ also proposed to revise § 1501.5 to provide greater clarity to agencies on the requirements that apply to the preparation of EAs and codify agency practice. CEQ proposed edits to address what agencies must discuss in an EA, how agencies should consider public comments they receive on draft EAs, what page limits apply to EAs, and what other requirements in the CEQ regulations agencies should apply to EAs.

First, regarding the contents of an EA, CEQ proposed to split paragraph (c)(2) of 40 CFR 1501.5 (2020), requiring an EA to briefly discuss the purpose and need for the proposed action, alternatives, and effects, into paragraphs

[70] *See, e.g.,* U.S. Dep't of Com., Adoption of Energy Categorical Exclusions under the National Environmental Policy Act, 88 FR 64884 (Sept. 20, 2023); U.S. Dep't of Transp., Notice of Adoption of Electric Vehicle Charging Stations Categorical Exclusion under the National Environmental Policy Act, 88 FR 64972 (Sept. 20, 2023).

(c)(2)(i) through (iii) to improve readability and provide a clearly defined list of requirements for EAs. CEQ proposed this formatting change to make it easier for the public and agencies to ascertain whether an EA includes the necessary contents. For example, when an agency develops an EA for a proposal involving unresolved conflicts concerning alternative uses of available resources, section 102(2)(H) of NEPA requires an analysis of alternatives, which will generally require analysis of one or more reasonable alternatives, in addition to a proposed action and no action alternative. *See* 42 U.S.C. 4332(2)(H). CEQ did not receive specific comments on these proposed changes and makes them in the final rule.

Second, CEQ proposed to move the requirement for EAs to list the agencies and persons consulted in the development of the EA from paragraph (c)(2) of 40 CFR 1501.5 (2020) into its own paragraph at § 1501.5(c)(3). CEQ also proposed to clarify the term ''agencies'' in this paragraph by specifying that the EA should list the Federal agencies and State, Tribal, and local governments and agencies consulted. CEQ did not receive specific comments on these proposed changes and makes them in the final rule to improve readability and improve clarity.

Third, CEQ proposed to add a new paragraph at § 1501.5(c)(4) to require each EA to include a unique identification number that can be used for tracking purposes, which the agency would then carry forward to all other documents related to the environmental review of the action, including the FONSI. As discussed in section II.D.4, CEQ proposed a comparable provision for EISs in § 1502.4(e)(10). CEQ included this proposal because identification numbers can help the public and agencies track the progress of an EA for a specific action as it moves through the NEPA process and may allow for more efficient and effective use of technology such as databases.

Many commenters expressed support for the addition of these requirements. Commenters agreed with CEQ's proposal that having a consistent reference point to facilitate public and agency engagement would increase transparency and accessibility and improve the public's ability to track agency reviews and decision making. Other supportive commenters indicated that the use of unique identification numbers would or should promote the use of technology, such as databases by Federal agencies, for tracking purposes and some commenters encouraged CEQ to require agencies to use technology and databases. Commenters also suggested that the final rule provide additional information such as standardizing the number format or specifying which documents require the numbering. Commenters that raised concern about the requirement suggested that without a requirement for electronic tracking systems, the requirement is premature and burdensome.

In this final rule, CEQ is retaining the proposed text and, in response to comments, adding a clause to also require use of the identification numbers in any agency databases or tracking systems. Identification numbers can help both the public and the agencies track the progress of an action as it moves through the NEPA process from initiation to final decision. The use of identification numbers will increase transparency and accountability to the public when a proposed action is tiered from an existing analysis or when an agency adopts another agency's NEPA analysis to support its own decision making. In addition to the Permitting Dashboard, many agencies already have internal or external databases and tracking systems for their environmental review documents.[71] While the proposed requirement would likely result in agencies using these tracking numbers in their systems, CEQ considers it important to add text to the final rule to emphasize their use as agencies continue to develop new ways to provide transparency and improve efficiency in their processes.

CEQ agrees with commenters that additional information will be needed for agencies to implement this provision. For example, there is the question whether to have a government-wide system assign the unique identification number, to use a standardized numbering format, or whether agencies will develop their own format. However, CEQ considers these questions best answered through instructions to agencies, which CEQ can revise or reissue as needed, especially given the speed at which technology advances and changes. CEQ intends to develop such instructions following issuance of this final rule.

Fourth, to reflect current agency practice and provide the public with a clearer understanding about potential public participation opportunities with respect to EAs, CEQ proposed to add a new paragraph (e) that would provide that if an agency chooses to publish a draft EA, it must invite public comment on the draft and consider those comments when preparing a final EA.

Numerous commenters expressed support for this proposed change. Some commenters recommend the final rule go further to require public comment on all EAs, with at least one commenter suggesting a 30-day minimum comment period. Another commenter requested the regulations require agencies to respond to comments on an EA and publish the comments on a website, similar to the requirements for EISs.

Some commenters opposed the proposed change, asserting that it creates the perception that publication of a draft EA for public comment should be the default practice when in fact, agencies have discretion not to do this. They also requested CEQ explicitly state in the rule and preamble that there is no obligation for agencies to publish a draft EA for comment. Other commenters emphasized discretion, stating that because agencies already have discretion to prepare a draft EA, they should have discretion on whether to invite public comment on it. The commenters also expressed concern that proposed § 1501.5(e) removes agency discretion on how to manage EAs and could prolong the development of EAs. Some commenters asserted the language on draft EAs contradicts case law, hinders the efficiency of the EA process, and could disincentivize agencies from publishing draft EAs.

CEQ considered these comments and includes paragraph (e) as proposed. CEQ considers this approach to strike the right balance between agency discretion and ensuring that agencies consider public comments when they choose to prepare both a draft and final EA. As the proposed rule articulated, this provision reflects the fact that one of the primary purposes for which agencies choose to prepare draft EAs is to facilitate public participation. Codifying this practice enhances the public's understanding of the NEPA process and meaningful public engagement and does not restrict agency discretion over whether to choose to prepare a draft EA for public comment.

CEQ declines to mandate that all EAs be made available for comment because agencies appropriately have flexibility to determine what level of engagement is appropriate for an EA given the specific circumstances of a proposed action, consistent with § 1501.5(f). However, in developing EAs, agencies must involve the public, State, Tribal, and local governments, relevant agencies, and any applicants, to the extent practicable, in accordance with § 1501.5(f). CEQ also declines to require agencies to respond to comments and

[71] *See, e.g.,* U.S. Forest Serv. Schedule of Proposed Actions, *https://www.fs.usda.gov/sopa/index.php.*

publish public comments on a website. Doing so would unduly limit the discretion of agencies to tailor the public engagement process for EAs to the specific circumstances of a proposed action, which could include responding to comments or publishing them on a website though the regulations do not require it. Adding such requirements instead of leaving it to agency discretion could disincentivize agencies from publishing draft EAs due to concerns about the burden of responding to voluminous comments.

Fifth, CEQ proposed to redesignate paragraphs (e) and (f) of 40 CFR 1501.5 (2020) as § 1501.5(f) and (g) respectively. CEQ makes these changes in the final rule.

Sixth, CEQ proposed to revise paragraph (g) addressing page limits to dispense with the requirement for senior agency official approval to exceed 75 pages, not including any citations or appendices, for consistency with section 107(e)(2) of NEPA. 42 U.S.C. 4336a(e)(2). CEQ did not receive any comments on this proposed change and makes this change in the final rule.

Seventh, CEQ proposed to add paragraph (h) to clarify that agencies may reevaluate or supplement an EA if a major Federal action remains to occur and the agency considers it appropriate to do so. Proposed paragraph (h) also provided that agencies may reevaluate an EA or otherwise document a finding that changes to the proposed action or new circumstances or information relevant to environmental concerns are not substantial, or the underlying assumptions of the analysis remain valid. CEQ proposed to add this language to clarify that an agency may apply the provisions at § 1502.9 regarding supplemental EISs to a supplemental EA to improve efficiency and effectiveness.

A few commenters expressed that supplemental EAs should consider whether the effects analysis still supports a FONSI rather than merely addressing underlying assumptions. Some commenters interpreted the supplementation and reevaluation language to allow an agency to change its finding after it issued the FONSI.

In the final rule, CEQ includes § 1501.5(h) to address supplementation and reevaluation, but revises it from the proposal to address concerns raised by the commenters about potential confusion. The final rule divides supplementation and revaluation into subparagraphs and incorporates the same supplementation standard as § 1502.9. Paragraph (h)(1) provides that agencies ''should'' supplement EAs rather than ''may'' as proposed. CEQ uses ''should'' in the final rule because there may be instances where an agency determines that supplementation is appropriate because the changes to the proposed action or new information indicate the potential for significant effects, and in such instances, agencies should supplement their analysis if an action remains to occur and is therefore incomplete or ongoing. As discussed in section II.D.8, CEQ replaces ''remains to occur'' with ''incomplete or ongoing'' to more clearly describe the standard for supplementation, and CEQ uses this same phrasing in § 1501.5(h)(1).

In § 1501.5(h)(1)(i) and (ii), the final rule includes the same criteria for supplementation as in § 1502.9(d)(i) and (ii) with an additional clause at the end of (h)(ii) to clarify the meaning in the case of EAs. CEQ includes ''to determine whether to prepare a finding of no significant impact or an environmental impact statement'' at the end of paragraph (h)(ii) to clarify what ''that bear on the analysis'' means in the context of an EA. After considering the comments, CEQ determined that it should not create a different supplementation standard for EAs from EISs since the purpose of supplementation is to address circumstances where the analysis upon which the agency based its decision has changed and there is potential for new significant effects. Aligning the standards for EISs and EAs will also reduce the complexity of the NEPA regulations and the environmental review process.

To further align this provision with § 1502.9, CEQ adds in § 1501.5(h)(2) the same text in § 1502.9 to state that agencies may prepare supplements when the agency determines the purposes of NEPA will be furthered in doing so. CEQ includes this paragraph for consistency with EISs and to make clear that agencies have such discretion.

Two commenters requested CEQ revise paragraph (h) to clarify that new circumstances or information in the absence of remaining discretionary approval involving a major Federal action do not trigger a requirement to reevaluate or supplement an EA. The commenters stated the proposed text could be interpreted to suggest that agencies are obligated to reevaluate an EA whenever new circumstances or information arise. While the proposed qualifier that ''an action remains to occur,'' would address the commenters' concerns, as noted in this section, the final rule clarifies that ''remains to occur'' means when an action is incomplete or ongoing, which is consistent with § 1502.9 as well as longstanding case law that makes clear that there must be an incomplete or ongoing action in order for reevaluation or supplementation to be necessary.

Some commenters expressed that paragraph (h) would result in the public and project sponsor not having certainty on the whole of the administrative record. These commenters requested the regulations require an agency to rescind the FONSI until a new one is reached; another commenter similarly requested CEQ add a paragraph on rescission of FONSIs. CEQ declines to require agencies to rescind a FONSI while a reevaluation or supplemental EA is ongoing because these processes are intended to inform whether a FONSI remains valid. If an agency prepares a supplemental EA, it will determine whether it is necessary to revise or issue a new FONSI or whether the existing FONSI remains valid based on the outcome of the supplemental analysis.

In the final rule, CEQ addresses reevaluation in its own paragraph, consistent with § 1502.9, by adding § 1501.5(i) to provide that an agency may use a reevaluation to document its consideration of changes to the proposed action or new information and its determination that supplementation is not required. For example, a reevaluation can be a short memo describing a change in project design that briefly explains why that change does not change the analysis conducted in the EA in a manner that warrants supplementation.

Finally, CEQ proposed to clarify which provisions applicable to EISs agencies should or may apply to EAs. CEQ proposed to replace paragraph (g) of 40 CFR 1501.5 (2020), listing the provisions for incomplete or unavailable information, methodology and scientific accuracy, and environmental review and consultation requirements, with proposed new paragraphs (i) and (j). CEQ proposed in paragraph (i) to clarify that agencies generally should apply the provisions of § 1502.21 regarding incomplete or unavailable information and § 1502.23 regarding scientific accuracy. CEQ proposed to revise these from ''may apply'' to ''should apply'' because CEQ considers it important to disclose where information is incomplete or unavailable and ensure scientific accuracy for all levels of NEPA review, not just EISs.

CEQ proposed in paragraph (j) that agencies may apply the other provisions of parts 1502 and 1503 as appropriate to improve efficiency and effectiveness of EAs. The proposed list included example provisions where this might be the case—scoping (§ 1502.4), cost-benefit analysis (§ 1502.22), environmental review and consultation

requirements (§ 1502.24), and response to comments (§ 1503.4).

Various commenters asked for clarity regarding proposed §§ 1501.5(i) and (j), expressing confusion on the difference between ''generally should apply'' and ''may apply.'' Some commenters requested the final rule require application of §§ 1502.4, 1502.21, 1502.22, 1502.23, 1502.24, and 1503.4 to EAs.

In the final rule, CEQ adds proposed paragraph (i) at § 1501.5(j) but only references § 1502.21 regarding incomplete and unavailable information because CEQ has moved 40 CFR 1502.23 (2020), which is applicable to environmental documents, including EAs, to § 1506.6 as discussed in sections II.D.18 and II.H.4. CEQ retains ''generally should'' in the final rule. While CEQ encourages agencies to follow § 1502.21, CEQ retains the ''generally'' qualifier to acknowledge that there may be some circumstances where the section does not or should not apply. Additionally, because EAs can include significant effects that an agency mitigates to reach a FONSI, it is important that agencies apply § 1502.21 in such cases. CEQ also adds proposed paragraph (j) at § 1501.5(k), consistent with the proposal, to encourage agencies to apply the provisions of parts 1502 and 1503 where it will improve the efficiency and effectiveness of an EA.

Some commenters provided general comments on EAs. Some commenters requested the final rule add more requirements to align with EISs, including requiring agencies to consider the same scope of effects as those considered in an EIS; to provide decision makers with a summary and comparison of effects; and to consider alternatives to address adverse environmental effects. Other commenters argued generally that the proposed changes to § 1501.5 would result in EAs looking more like EISs, which is contrary to goal of an efficient process.

CEQ declines to make additional changes to § 1501.5. As discussed in this section, CEQ concluded that § 1501.5 strikes the right balance to ensure agencies preparing an EA conduct an appropriate and efficient review without imposing unnecessary requirements that would mirror an EIS or result in a less efficient process.

5. Findings of No Significant Impact (§ 1501.6)

CEQ proposed two revisions to § 1501.6 on findings of no significant impact (FONSIs) to clarify the 2020 rule's codification of the longstanding agency practice of relying on mitigated FONSIs in circumstances where the agency incorporates mitigation into the action to reduce its effects below significance. Mitigated FONSIs are an important efficiency tool for NEPA compliance because they expand the circumstances in which an agency may prepare an EA and reach a FONSI, rather than preparing an EIS, consistent with the requirements of NEPA.

CEQ proposed to revise paragraph (a), which provides that an agency must prepare a FONSI if it determines, based on an EA, not to prepare an EIS because the action will not have significant effects. At the end of paragraph (a), CEQ proposed to clarify that agencies can prepare a mitigated FONSI if the action will include mitigation to avoid the significant effects that would otherwise occur or minimize or compensate for them to the point that the effects are not significant. The proposed rule noted that so long as the agency can conclude that effects will be insignificant in light of mitigation, the agency can issue a mitigated FONSI. The proposed rule noted this change improved consistency with the language in § 1501.6(c) and aligns with CEQ's guidance on appropriate use of mitigation, monitoring, and mitigated FONSIs.[72]

Numerous commenters supported proposed § 1501.6(a), viewing the proposed changes as consistent with agency practice and longstanding CEQ guidance as well as promoting efficiency in the NEPA process. In contrast, multiple commenters opposed the proposed changes and raised concerns that use of mitigated FONSIs would reduce opportunities for public participation and allow agencies to trade off different kinds of environmental effects to rely on a net benefit outcome to arrive at a FONSI.

In the final rule, CEQ revises paragraph (a) with additional, non-substantive edits for clarity, including subdividing paragraph (a) into subparagraphs. In paragraph (a), CEQ adds an introductory clause to make clear that an agency prepares a FONSI after completing an EA. In paragraph (a)(1), CEQ revises the text to clarify that an agency prepares a FONSI when it determines that NEPA does not require preparation of an EIS because the proposed action will not have significant effects. In paragraph (a)(2), CEQ also repeats the clause ''if the agency determines, based on the environmental assessment, that NEPA does not require preparation of an environmental impact statement'' after mitigated FONSI to make clear that a mitigated FONSI is also based on the EA. Finally, CEQ adds a new paragraph (a)(3) to clarify that an agency must prepare an EIS following an EA if the agency determines that the action will have significant effects.

CEQ has long recognized in guidance that agencies may use mitigation to reduce the anticipated adverse effects of a proposed action below the level of significance, resulting in a FONSI. CEQ agrees that mitigated FONSIs promote efficiency, and the final rule includes safeguards to ensure that agencies will only use mitigated FONSIs when they can reasonably conclude that the mitigation measures will occur. Regarding opportunities for public engagement, the final rule supports public engagement in the EA process, consistent with § 1501.9.

CEQ disagrees that the use of a mitigated FONSI allows agencies to trade off different kinds of environmental effects and rely on a net benefit outcome to arrive at a FONSI. The CEQ regulations have never allowed agencies to use a net benefit analysis across environmental effects to inform the level of review. Instead, agencies must consider each type of effect or affected resources separately when determining whether a proposed action would have a significant effect. Therefore, an agency could not rely upon mitigation focused on one type of effect to arrive at a FONSI if the proposed action would nonetheless have a significant adverse effect of a different kind or on a different resource. A mitigated FONSI only enables an agency, consistent with existing practice, to determine that an effect is not significant in light of mitigation.

To accommodate the changes to paragraph (a), in the final rule, CEQ redesignates paragraphs (a)(1), (a)(2), and (b) of 40 CFR 1501.6 (2020) as § 1501.6(b)(1), (b)(2), and (c), respectively. CEQ also makes a non-substantive, clarifying change to § 1501.6(b)(2) to simplify the language from ''makes its final determination'' to ''determines.''

Next, CEQ proposed to revise proposed § 1501.6(c) addressing what an agency must include in a FONSI regarding mitigation. The second sentence provides that when an agency relies on mitigation to reach a FONSI, the mitigated FONSI must state the enforceable mitigation requirements or commitments that will be undertaken to avoid significant effects. CEQ proposed to strike the last clause, ''to avoid significant impacts'' at the end of the second sentence and replace that phrase with a requirement for the FONSI to state the authorities for the enforceable mitigation requirements or

[72] CEQ, Mitigation Guidance, *supra* note 10.

commitments, since they must be enforceable for agencies to reach a mitigated FONSI. CEQ proposed this change because, where a proposed action evaluated in an EA may have significant effects, and an agency is not preparing an EIS, the FONSI must include mitigation of the significant effects. CEQ also proposed to add examples of enforcement authorities including ''permit conditions, agreements, or other measures.''

Commenters were generally supportive of proposed § 1501.6(c). A few commenters opposed the proposed changes or questioned CEQ's authority to include them in the regulations. As discussed in sections II.I.1 and II.I.2 on §§ 1505.2(c) and 1505.3(c), the rule reinforces the integrity of environmental reviews by ensuring that if an agency assumes as part of its analysis that mitigation will occur and will be effective, the agency takes steps to ensure that the assumption is correct. In the final rule, which redesignates proposed paragraph (c) as § 1501.6(d), CEQ strikes the phrase ''to avoid significant impacts,'' as proposed, from the end of the second sentence and replaces it with the clause ''and the authority to enforce them'' such that the sentence requires agencies to both state the enforceable mitigation requirements or commitments and the authority to enforce those commitments when the agency finds no significant effects based on mitigation. Next, the sentence includes a list of examples of such commitments and authorities. The final rule includes more specificity than the proposed rule, to include ''terms and conditions or other measures in a relevant permit, incidental take statement, or other agreement.''

Finally, as discussed further in section II.G.2, CEQ proposed to add a new sentence at the end of paragraph (c) to require agencies to prepare a monitoring and compliance plan when the EA relies on mitigation as a component of the proposed action, consistent with § 1505.3(c). CEQ proposed these changes to help effectuate NEPA's purpose as articulated in section 101, including to ''attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences'' and to ''preserve important historic, cultural, and natural aspects of our national heritage.'' 42 U.S.C. 4331(b).

For the reasons discussed in section II.G.2, CEQ adds this requirement in the final rule in § 1501.6(d). Specifically, the final rule requires agencies to prepare a mitigation and compliance plan for the enforceable mitigation and any other mitigation required by § 1505.3(c) to ensure that if an agency assumes as part of its analysis that mitigation will occur and will be effective, the agency takes steps to ensure that the assumption is correct.

6. Lead Agency (§ 1501.7)

CEQ proposed several changes to § 1501.7, which addresses the responsibilities of lead agencies. First, CEQ proposed to retitle § 1501.7 from ''Lead agencies'' to ''Lead agency'' to align with section 107(a) of NEPA. 42 U.S.C. 4336a(a). CEQ did not receive comments specific to the section title and makes this change in the final rule.

Second, in paragraph (a) of § 1501.7, CEQ proposed to eliminate the reference to ''complex'' EAs so that the regulations would require a lead agency to supervise the preparation of any EIS or EA for an action or group of actions involving more than one Federal agency. The 2020 rule added the concept of complex EAs to this section without defining the term. CEQ invited comment on whether it should retain the concept of a complex EA in the regulations, and if so, how the regulations should define a complex EA.

Three commenters supported removal of complex EAs arguing it was confusing and unnecessary. A commenter suggested that if CEQ retains the concept, the rule define it as an EA that requires reviews from multiple Federal agencies. CEQ removes the reference to complex EAs as unnecessary given that the provision already states that a lead agency must supervise preparation of an EA when more than one Federal agency is involved and the term is not used elsewhere in the rule.

Some commenters suggested that the text of proposed § 1501.7(a) was inconsistent with sections 107(a)(2) and 111(9) of NEPA, which address the role of and define ''lead agency.'' CEQ disagrees that the language in paragraph (a) is inconsistent. CEQ considers the longstanding language in paragraphs (a)(1) and (a)(2) to describe the situations where there are more than one Federal agency participating in the environmental review process for purposes of identifying the lead agency and therefore retains this text in the final rule.

Third, CEQ proposed to revise paragraph (b) regarding joint lead agencies for consistency with section 107(a)(1)(B) of NEPA. 42 U.S.C. 4336a(a)(1)(B). CEQ proposed to clarify that Federal, State, Tribal, or local agencies may serve as a joint lead agency upon invitation from the Federal lead agency and acceptance by the invited agency, consistent with paragraph (c). CEQ proposed to retain Federal agencies in the list of potential joint lead agencies because, consistent with current practice, there are circumstances in which having another Federal agency serving as a joint lead agency will enhance efficiency. CEQ noted in the proposed rule that it does not read the text in section 107(a)(1)(B) of NEPA, 42 U.S.C. 4336a(a)(1)(B), as precluding this approach; rather, Congress specified that State, Tribal, and local agencies may serve as joint lead agencies because they are ineligible to serve as the lead agency. CEQ also proposed to add a sentence at the end of paragraph (b) to require joint lead agencies to fulfill the role of a lead agency, consistent with the last sentence of section 107(a)(1)(B) of NEPA. 42 U.S.C. 4336a(a)(1)(B).

One commenter asserted CEQ's proposal was inconsistent with section 107(a)(1)(B) of NEPA. 42 U.S.C. 4336a(a)(1)(B). Other commenters expressed concerns or asked questions about how this might work in practice and how agencies might manage and share responsibilities. One commenter asserted that the proposal for lead agencies to jointly fulfill the role of a lead agency may be complicated and difficult to implement and requested CEQ maintain the existing regulatory approach for providing for joint lead agencies generally.

In the final rule, CEQ revises paragraph (b) as proposed, but makes agency singular in the first sentence for consistency with the rest of the paragraph. In general, CEQ anticipates that there will only be one joint lead agency but does not intend the regulations to be so restrictive. While section 107(a)(1)(B) does not specifically refer to Federal agencies, it makes clear that there is one lead agency when there is more than one Federal agency, but it is silent as to what role the other Federal agency or agencies will fulfill. 42 U.S.C. 4336a(a)(1)(B). Therefore, CEQ is clarifying in the final rule that other Federal agencies may serve as joint lead agencies or cooperating agencies. With respect to the questions about how agencies manage and share responsibilities, CEQ notes that the provision for joint lead agencies has been in the regulations since 1978, and agencies have a great deal of experience in implementing these provisions. Sometimes agencies will engage in an MOU or otherwise outline their respective roles and responsibilities. CEQ encourages this as a best practice to facilitate an efficient process, and agencies should consider using the letter or memorandum required by

§ 1501.7(c) to set out their roles and responsibilities.

Fourth, CEQ proposed to revise paragraph (c) for consistency with section 107(a)(1) of NEPA to clarify that the participating Federal agencies must determine which agency will be the lead agency and any joint lead agencies, and that the lead agency determines any cooperating agencies. 42 U.S.C. 4336a(a)(1). CEQ also proposed this change for consistency with the text in § 1506.2(c) on joint EISs.

One commenter interpreted paragraph (c) to mean that the factors listed in paragraphs (c)(1) through (c)(5) apply only if there is disagreement among participating agencies on which agency should be the lead agency and asserted this interpretation is inconsistent with section 107(a)(1)(A) of NEPA. 42 U.S.C. 4336a(a)(1)(A). CEQ did not intend this interpretation. Therefore, in the final rule, for clarity and greater consistency with the statute, CEQ adds the clause ''considering the factors in paragraphs (c)(1) through (c)(5)'' to the first sentence in paragraph (c) to clarify that participating Federal agencies should consider these factors in determining which agency should serve as the lead agency.

One commenter suggested that proposed paragraphs (b) and (c) might create confusion between agencies and a project proponent regarding which agency is ultimately the lead agency for the NEPA review, is responsible for meeting timeframes and deadlines, and serves as the contact for the project proponent.

In the final rule, CEQ revises the first sentence of paragraph (c) for additional clarity by moving the reference to joint lead agencies to the end. Consistent with this provision, participating Federal agencies will first determine which agency will serve as the lead agency. Then, the lead agency will determine which agencies will serve as joint lead or cooperating agencies. While agencies are in the best position to communicate with applicants about responsibilities and appropriate points of contact, the language in paragraphs (b) and (c) make clear that the lead agency is ultimately responsible, though it may share responsibilities with a joint lead agency if the participating agencies designate one. Further, § 1501.10(a) sets forth the provisions on setting deadlines and schedules and § 1500.5(g) indicates that all agencies are responsible for meeting deadlines.

Fifth, in paragraph (d), CEQ proposed to revise the text for consistency with section 107(a)(4) of NEPA, which allows any Federal, State, Tribal, or local agency or a person that is substantially affected by a lack of lead agency designation to submit a request for designation to a participating Federal agency. 42 U.S.C. 4336a(a)(4). CEQ also proposed to add a requirement for the receiving agency to provide a copy of such a request to CEQ consistent with the statute. Finally, CEQ proposed to make a non-substantive change to replace the phrase ''private person'' with the word ''individual'' for consistency with this term's use in other sections of the regulations.

Sixth, in paragraph (e), which addresses what happens if Federal agencies are unable to agree which agency will serve as the lead agency, CEQ proposed to revise the text for consistency with section 107(a)(5) of NEPA, clarify that the 45 days is calculated from the date of the written request to the senior agency officials as set forth in § 1501.7(d), and replace ''persons'' with ''individuals'' for consistency with the rest of regulations. 42 U.S.C. 4336a(a)(5).

A commenter stated that the change of ''person'' to ''individual'' is inconsistent with sections 107(a)(4) and (a)(5)(A) of NEPA. 42 U.S.C. 4336a(a)(4), 4336a(a)(5)(A). While CEQ does not view this as a substantive change, in the final rule, CEQ revises references to ''individual'' or ''private person'' to ''person'' throughout the regulations for consistency with the recent amendments to NEPA, including in § 1501.7(d) and (e), and to avoid using the word ''person'' and the word ''individual'' in different sections of the regulations where the same meaning is intended. Otherwise, CEQ makes the changes to paragraph (d) and (e) as proposed.

Seventh, in paragraph (f), CEQ proposed to revise the text for consistency with section 107(a)(5)(C) and (a)(5)(D) of NEPA, to change ''within 20 days'' to ''no later than 20 days'' in the first sentence, and ''20 days'' to ''40 days'' and ''determine'' to ''designate'' in the second sentence. 42 U.S.C. 4336a(a)(5)(C)–(D). CEQ did not receive any comments to this specific proposal and revises paragraph (f) as proposed in the final rule except that the final rule strikes ''and all responses to it'' to clarify that the 40-day deadline for CEQ to designate a lead agency runs from the date of request. This change is consistent with section 107(a)(5)(D) which requires that CEQ designate the lead agency ''[n]ot later than 40 days after the date of the submission of a request.'' 42 U.S.C. 4336a(a)(5)(D).

Eighth, CEQ proposed minor edits to paragraph (g), which addresses joint environmental documents, including EISs, RODs, EAs, and FONSIs. While section 107(b) of NEPA addresses joint EISs, EAs, and FONSIs, which are defined collectively as an ''environmental document'' in section 111(5) of NEPA, the statute does not explicitly address joint RODs. 42 U.S.C. 4336a(b); 4336e(5). Because joint RODs can in some circumstances be inefficient, CEQ proposed to revise § 1501.7(g) to add a caveat that agencies must issue joint RODs except where it is ''inappropriate or inefficient'' to do so, such as when an agency has a separate statutory directive, or it would take significantly longer to issue a joint ROD than separate ones. Additionally, for consistency with § 1501.5, CEQ proposed to add that agencies can jointly determine to prepare an EIS if a FONSI is inappropriate.

Commenters generally supported CEQ's proposal. Some commenters recommended CEQ expand the inappropriate or inefficient exception to EISs, EAs, and FONSIs. Another comment suggested the regulations require agencies to document their rationale for not preparing a joint document.

CEQ finalizes § 1501.7(g) as proposed with minor, non-substantive clarifying edits. CEQ is not applying the inappropriate or inefficient exception to EISs, EAs, and FONSIs because section 107(b) of NEPA directs agencies to prepare joint EISs, EAs, and FONSIs ''to the extent practicable.'' 42 U.S.C. 4336a(b). With respect to RODs, CEQ includes the inappropriate or inefficient exception in the final rule text in recognition that, in some cases, requiring a joint ROD could inadvertently slow the NEPA process down, and the exclusion of RODs from section 107(b) of NEPA makes it appropriate to apply a tailored standard to joint RODs. *See* 42 U.S.C. 4336a(b). For example, agencies may have different procedures for issuing authorizations under their applicable legal authorities or may need to consider different factors. However, in other cases, a joint ROD could improve efficiency by avoiding duplication of effort or analysis. Agencies collaborating on a NEPA document for a specific action are in the best position to identify when a joint ROD is not appropriate for that particular action.

Lastly, in paragraph (h)(2), CEQ proposed to add a clause to the beginning of the paragraph, consistent with section 107(a)(2)(C) of NEPA, to require the lead agency to give consideration to a cooperating agency's analyses and proposals. 42 U.S.C. 4336a(a)(2)(C). CEQ proposed to move the qualifier clause—to the extent practicable—to precede the existing

requirement to use the environmental analysis and information provided by cooperating agencies. CEQ proposed this move to clarify that this qualifier only modifies the second clause. CEQ also proposed to change ''proposals'' to ''information'' to make the text consistent with § 1501.8(b)(3) and because the use of ''proposal'' here was inconsistent with the definition of ''proposal'' provided in § 1508.1(ff). Finally, because the reference to jurisdiction by law or special expertise was unnecessarily redundant given that the definition of ''cooperating agency'' in § 1508.1(g) incorporates those phrases, CEQ proposed to remove them from the sentence.

One commenter asserted that proposed § 1501.7(h)(2) unnecessarily conflicts with section 107(a)(2)(C) of NEPA, 42 U.S.C. 4336a(a)(2)(C), and is inconsistent with proposed §§ 1501.8(b)(3), 1508.1(e), and 1508.1(dd). Another commenter opposed the changes to paragraph (h)(2) and requested CEQ retain the existing language. The commenter asserted that the existing text provides a clear statement that agencies should use information and analyses provided by cooperating agencies to the maximum extent practicable and that the proposed changes remove this clarity. As a result, the commenter opined that for cooperating agencies, it will be unclear on what qualifies as an analysis or proposal for consideration and what qualifies as information.

In the final rule, CEQ makes the changes as proposed but retains ''proposal'' in the second clause because, upon further consideration, CEQ has determined removing ''proposal'' could introduce unnecessary confusion and potential delay, particularly because both the 1978 regulations and the 2020 regulations treated proposals in the same manner as environmental analysis for purposes of this provision, and agencies have not raised concerns that the inclusion of proposals creates challenges for lead agencies. CEQ retains the qualifier ''to the maximum extent practicable,'' which CEQ views as striking the right balance between ensuring that the lead agency uses the environmental analysis, proposal, and information provided by cooperating agencies and providing the lead agency with flexibility in determining the content of a document. CEQ disagrees that this provision is in conflict with § 1501.8(b)(3), which merely states the requirement for cooperating agencies to assist with developing information and analyses for NEPA documents; it does not address the lead agency's role in considering or using that content. CEQ similarly does not see a conflict with the definitions of ''cooperating agency'' and ''proposal'' and the commenter who asserted that a conflict exists did not explain the conflict. Finally, CEQ disagrees that this provision conflicts with section 107(a)(2)(C) of NEPA; the provision incorporates the text of the statute and goes beyond it to require lead agencies to use the information in their documents to the maximum extent practicable. 42 U.S.C. 4336a(a)(2)(C).

Other commenters requested CEQ add a requirement for lead agencies to document how and to what extent they have considered the studies, analyses, and other information provided by cooperating agencies. CEQ declines to add this requirement as unnecessary and burdensome. In most cases, lead and cooperating agencies can address these issues informally and disclosure of this informal process is unnecessary for the decision maker to make an informed decision and documenting them would consume agency resources and could lead to a more formalized and less collaborative process between the agencies.

CEQ did not propose edits to paragraph (h)(4) requiring the lead agency to determine the purpose and need, and alternatives in consultation with any cooperating agency. One commenter recommended the final rule add ''with ultimate authority to finalize the purpose and need and alternatives resting with the lead agency'' to the end of this paragraph. CEQ declines to make this change. While the lead agency has ultimate responsibility, in order for documents to address the decisions of all agencies with jurisdiction by law and therefore result in an efficient review and decision-making process, the cooperating agency must have a consultative role. CEQ encourages agencies to collaborate early on purpose and need and alternatives to resolve any disputes early in the process and ensure the document will meet the needs of all agencies relying on the documents for their actions.

As discussed further in section II.C.8, CEQ proposed to move the requirements for schedules and milestones in paragraphs (i) and (j) of 40 CFR 1501.7 (2020) to § 1501.10(c) in order to consolidate provisions related to deadlines, schedules, and milestones in one section. CEQ makes this change in the final rule as discussed further in section II.C.9.

7. Cooperating Agencies (§ 1501.8)

CEQ proposed an addition to paragraph (a) of § 1501.8 to clarify the meaning of the phrase ''special expertise,'' which is one of the criteria that qualifies an agency to serve as a cooperating agency. Among other things, paragraph (a) provides that, at the request of a lead agency, an agency with special expertise may elect to serve as a cooperating agency. CEQ proposed to clarify in paragraph (a) that special expertise may include Indigenous Knowledge.

While a few commenters opposed the inclusion of Indigenous Knowledge as a form of special expertise, many commenters expressed support. Having considered the comments, CEQ continues to view the inclusion of Indigenous Knowledge as a form of special expertise as appropriate and, therefore, finalizes the change to § 1501.8(a) as proposed except that CEQ removes the cross reference to § 1507.3(e) because this provision does not address the appeals procedures for cooperating agencies. This addition of Indigenous Knowledge as a form of special expertise helps ensure that Federal agencies respect and benefit from the unique knowledge that Tribal governments bring to the environmental review process.

CEQ invited comment on whether it should include a definition of ''Indigenous Knowledge'' in the regulations. CEQ received a range of comments on this question. Some commenters opposed a definition, and several commenters suggested a range of diverse definitions. Other commenters recommended CEQ engage in Tribal consultation on the definition, CEQ held two Tribal consultations on the rule but a consensus view on a definition did not emerge from those consultations. CEQ has determined not to define ''Indigenous Knowledge'' in this rulemaking. The comments CEQ received did not provide an adequate basis for CEQ to determine that providing a definition in the regulations would be workable across contexts and Tribal Nations. CEQ, therefore, considers it appropriate for agencies to have flexibility to approach Indigenous Knowledge in a fashion that makes sense for their programs and the Tribal Nations with which they work. Agencies' implementation of this provision may be informed by the existing approaches that some agencies have developed to Indigenous Knowledge [73] and the Guidance for

[73] *See, e.g.,* U.S. Dep't of the Interior, 301 Departmental Manual 7, Departmental Responsibilities for Consideration and Inclusion of Indigenous Knowledge in Departmental Actions and Scientific Research (Dec. 5, 2023), *https://www.doi.gov/document-library/departmental-*

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Federal Departments and Agencies on Indigenous Knowledge that CEQ and the Office of Science and Technology Policy issued on November 30, 2022.[74] CEQ will consider whether additional guidance specific to the environmental review context or a regulatory definition is needed in the future.

A couple of commenters requested CEQ clarify what is meant by ''jurisdiction by law'' in § 1501.8(a). CEQ declines to add additional language to explain this phrase, which has been in the regulations since 1978 and generally has been construed to mean when an agency has a role in an action that is conferred by law. CEQ has not heard concern from agencies that the phrase is unclear or that a lack of definition is creating practical problems. Therefore, establishing a definition is unnecessary and could unsettle existing agency practice that has successfully implemented this provision.

Another commenter requested CEQ revise paragraph (a) to require the lead agency to grant cooperating agency status if a State or local agency has jurisdiction by law or special expertise over a project that could impact the local agency's interest. Other commenters requested that CEQ compel lead agencies to invite certain parties as a cooperating agency, such as substantially affected Tribal agencies. CEQ declines to make it a requirement for the lead agency to invite or grant cooperating agency status to a State, Tribal, or local agency. Section 107(a)(3) of NEPA permits but does not require lead agencies to designate Federal, State, Tribal, or local agencies that have jurisdiction by law or special expertise as cooperating agencies. *See* 42 U.S.C. 4336a(a)(3). Because agency authorities and obligations can vary dramatically, CEQ considers it important to maintain flexibility for the lead agency to determine on a case-by-case basis whether a State, Tribal, or local agency should serve as a cooperating agency.

One commenter requested that CEQ extend to potential non-Federal cooperating agencies the right to appeal to CEQ when a lead Federal agency denies them cooperating agency status. CEQ declines to make this change in the final rule because lead agencies are in the best position to make a case-by-case determination of whether to invite non-Federal agencies to be cooperating agencies. Such an appeal process could also unduly burden CEQ and its limited resources and delay the environmental review process.

In paragraph (b)(6) regarding consultation with the lead agency on developing schedules, CEQ adds ''and updating'' after ''developing'' for consistency with § 1501.10(a) that provides for both the development and updates to schedules. In paragraph (b)(7), CEQ proposed to require cooperating agencies to meet the lead agency's schedule for providing comments, but strike the second clause requiring cooperating agencies to limit their comments to those for which they have jurisdiction by law or special expertise with respect to any environmental issue. CEQ proposed this deletion to align this paragraph with section 107(a)(3) of NEPA, which provides that a cooperating agency may submit comments to the lead agency no later than a date specified in the lead agency's schedule. *See* 42 U.S.C. 4336a(a)(3).

Some commenters recommended CEQ retain this clause to avoid unnecessary delays and avoid disagreements amongst lead and cooperating agencies. CEQ disagrees that this clause will necessarily avoid disagreements amongst lead and cooperating agencies because agencies may disagree on whether an agency's comments fall within its jurisdiction or special expertise. Imposing this limitation on the participation of cooperating agencies may also undermine the kind of collaborative engagement between lead agencies and cooperating agencies that enhances the efficiency and quality of environmental reviews. CEQ is also concerned that retaining the clause could have unintended consequences that could delay decision making by cooperating agencies with jurisdiction by law. For example, if a cooperating agency considers a document to be legally insufficient with respect to a particular issue, this could lead the cooperating agency to develop its own, separate NEPA document, resulting in a delay in the cooperating agency's action and potential legal risk to the lead agency with a different analysis. CEQ encourages cooperating agencies to identify and seek to resolve issues as early in the process as possible.

8. Public and Governmental Engagement (§ 1501.9)

CEQ proposed to address public and governmental engagement in a revised § 1501.9 by moving the provisions of 40 CFR 1506.6 (2020), ''Public involvement,'' into proposed § 1501.9 and updating them as described in this section, and moving the provisions of 40 CFR 1501.9 (2020) specific to the EIS scoping process to § 1502.4. CEQ proposed these updates to better promote agency flexibility to tailor engagement to their specific programs and actions, maintaining the requirements to engage the public and affected parties in the NEPA process, and thereby fostering improved public and governmental engagement. CEQ proposed the revisions to § 1501.9 to emphasize the importance of creating an accessible and transparent NEPA process. CEQ also proposed many of these changes in response to feedback on the Phase 1 proposed rule, the 2020 proposed rule, and input received from stakeholders and agencies during development of this proposed rule. Much of that feedback requested increased opportunities for public engagement and increased transparency about agency decision making, along with general requests that CEQ elevate the importance of public engagement in the NEPA process. Finally, CEQ proposed to move general requirements related to public engagement to part 1501 to emphasize that public engagement is important to multiple components of the NEPA process and agency planning, while moving other provisions related to scoping for EISs to § 1502.4.

First, CEQ proposed to move the provisions of 40 CFR 1501.9 (2020) on scoping for EISs—paragraphs (a), (b), (c), (d), (d)(1) through (8), (f), and (f)(1) through (5)—to proposed § 1502.4, ''Scoping.'' As discussed in sections II.C.2 and II.C.10 CEQ proposed to move the provisions in 40 CFR 1502.4 (2020) on ''Major Federal actions requiring the preparation of environmental impact statements'' to §§ 1501.3 and 1501.11. Also, as discussed in section II.C.2, CEQ proposed to move the remaining text of 40 CFR 1501.9(e) and (e)(1) through (3) (2020) on the determination of scope to § 1501.3 because determining the scope of actions applies to all levels of NEPA review.

Many commenters were supportive of CEQ's proposed approach. Commenters expressed support for the restoration of provisions related to early review and coordination and the proposed revisions to §§ 1501.9 and 1502.4 to reinforce the importance of early public engagement designed to meet the needs of the community. Supportive commenters characterized CEQ's proposed changes as being more in line with the statute as well as best practice by emphasizing the importance of initiating public outreach and planning as early as possible. Commenters also pointed to early engagement and opportunities for comment as trademarks of an effective

manual/301-dm-7-departmental-responsibilities-consideration-and.

[74] *See* Office of Science and Technology Policy and CEQ, Guidance for Federal Departments and Agencies on Indigenous Knowledge (Nov. 30, 2022), *https://www.whitehouse.gov/wp-content/uploads/2022/12/OSTP-CEQ-IK-Guidance.pdf.*

NEPA process that can help prevent unexpected problems and delays by helping agencies identify potential roadblocks early, design effective solutions when proposals and alternatives are still being developed, and build trust with communities. Some commenters opposed the outreach and engagement requirements in proposed § 1501.9, asserting that they were too open ended and would add burden and time to the process.

In this final rule, CEQ is reorganizing these sections as proposed. Public engagement is a foundational element of the NEPA process and is appropriately addressed in part 1501. Agencies have decades of experience designing effective outreach strategies that are tailored to the specifics of their programs and actions. Technology, when used appropriately, can further improve these strategies, and this final rule will provide agencies with the flexibility and encouragement to more effectively engage with interested or affected governments, communities, and people.

Second, CEQ proposed to retitle § 1501.9 to ''Public and governmental engagement'' and accordingly update references to ''public involvement'' within this section and throughout the CEQ regulations to ''public engagement.'' CEQ proposed this change to better reflect how Federal agencies should interact with the public and interested or affected parties, stating that the word ''engagement'' reflects a process that is more interactive and collaborative compared to simply including or notifying the public of an action. Engagement is also a common term for Federal agencies with experience developing public engagement strategies or that work with public engagement specialists. CEQ proposed to add ''governmental'' to the title to better reflect the description of the provisions included in the section, which relate to both public and governmental entities.

Commenters were generally supportive of this proposed change because it implies a process that is more interactive and collaborative instead of just notifying the public of an action. CEQ is revising the title of § 1501.9 as proposed.

Third, CEQ proposed to add proposed paragraphs (a) and (b) to articulate the purposes of public and governmental engagement and to identify the responsibility of agencies to determine the appropriate methods of public and governmental engagement and conduct scoping consistent with § 1502.4 for EISs. CEQ proposed to use the phrase ''meaningful'' engagement in this particular paragraph to better describe the purpose of this process because public and governmental engagement should not be a mere check-the-box exercise, and agencies should conduct engagement with appropriate planning and active dialogue or other interaction with stakeholders in which all parties can contribute.

Many commenters expressed support for CEQ's use of ''meaningful engagement.'' Commenters who disliked the descriptor ''meaningful'' stated that the word is too subjective, open to differing interpretations, and likely to cause unnecessary controversy and delay. Other commenters suggested the description of ''meaningful'' was not strong or specific enough, as proposed, to result in the desired outcome and recommended CEQ define meaningful engagement.

In the final rule, CEQ combines purpose and responsibility, which it had proposed to address in separate paragraphs, in § 1501.9(a) because these concepts are linked, and upon further consideration, CEQ considers addressing them together to reduce redundancy in proposed paragraphs (a) and (b), and enhance the clarity of the final rule. Additionally, the second sentence of proposed paragraph (b) addresses the role of engagement in determining the scope of a NEPA review; as discussed further in this section, CEQ revises § 1501.9(b) to address this topic. The first two sentences in § 1501.9(a) describe the purposes of public engagement and governmental engagement. CEQ is retaining ''meaningful engagement'' as proposed to better describe the overall purpose of public engagement. Public engagement should not be a simple check-the-box exercise, and agencies should conduct engagement with appropriate planning and active dialogue or other interaction with interested parties in which all can contribute. Federal agencies have flexibility to determine what methods are appropriate to achieve a collaborative and inclusive process that meaningfully and effectively engages communities affected by their proposed actions. As part of meaningful engagement, CEQ encourages agencies to engage with all potentially affected communities including communities with environmental justice concerns, consistent with § 1500.2(d).

In the final rule, CEQ adds a new third sentence to paragraph (a) to clarify that the purpose of § 1501.9 is to set forth agencies' responsibilities and best practices for such engagement. Finally, CEQ moves the first sentence of proposed paragraph (b) to be the last sentence of paragraph (a) requiring agencies to determine the appropriate methods of engagement for their proposed actions. Agencies are best situated to carry out this responsibility, because agencies understand their programs and authorities, and the communities that are interested in and affected by them.

CEQ revises § 1501.9(b) in the final rule, different from the proposal, to clarify the role of public and governmental engagement in determining the scope of a NEPA analysis. As discussed in section II.C.2, agencies must identify the scope of their proposed action, consistent with the definition of ''major Federal action,'' which in turn informs the level of NEPA review, and what alternatives and effects an agency must consider; public input has long informed this process. Therefore, CEQ has added a sentence to § 1501.9(b) to require agencies to use public and governmental engagement to inform the level of review for and scope of analysis of a proposed action consistent with § 1501.3. CEQ qualifies this provision ''as appropriate'' to account for the variety of ways that agencies should engage with the public and because not all actions will necessitate public engagement. For example, agencies must engage with the public when developing new CEs, but generally do not do so when applying CEs to their proposed actions.

CEQ adds the second sentence of proposed paragraph (b) in the final rule, which cross references to scoping for EISs as set forth in § 1502.4. Finally, CEQ adds a new sentence to § 1501.9(b) encouraging agencies to apply that scoping provision to EAs as appropriate. This addition is consistent with § 1501.5(j), which encourages agencies to apply § 1502.4 to EAs as appropriate to improve efficiency and effectiveness and is also responsive to public comments requesting more clarity on what is required for an EIS versus an EA as well as comments requesting increased opportunities for involvement on EAs. Agencies have experience successfully using the scoping process for EAs, and the regulatory text clarifies that agencies may continue to use the scoping process to inform the level of review, or find it helpful when they intend to rely on mitigation in an EA to reduce effects below significance and reach a FONSI rather than preparing an EIS.

Fourth, in the proposed rule, § 1501.9 had separate paragraphs addressing outreach (paragraph (c)) and notification (paragraph (d)) with the former recommended procedures and the latter required. Specifically, proposed

paragraph (c)(1) recommended that agencies invite likely affected agencies and governments, and proposed paragraph (c)(2) recommended that agencies conduct early engagement with likely affected or interested members of the public. CEQ modeled these provisions on the prior approaches in 40 CFR 1501.7(a)(1) (2019) and 40 CFR 1501.9(b) (2020) requiring the lead agency to invite early participation of likely affected parties. Proposed paragraph (c)(3) would provide flexibility to agencies to tailor engagement strategies, considering the scope, scale, and complexity of the proposed action and alternatives, the degree of public interest, and other relevant factors. CEQ proposed to move from 40 CFR 1506.6(c) (2020) to § 1501.9(c)(3) the requirement that agencies consider the ability of affected parties to access electronic media when selecting the appropriate methods of notification. CEQ also proposed to add a clause to the end of paragraph (c)(3) to require agencies to consider the primary language of affected persons when determining the appropriate notification methods to use.

At least one commenter noted that the use of ''should'' in proposed paragraph (c)(1) was inconsistent with proposed § 1501.7(h)(1) requiring lead agencies to invite the participation of cooperating agencies. Other commenters asked that the language on outreach be stronger, recommending that CEQ change ''should'' to ''shall'' in proposed paragraph (c) and ''consider'' to ''ensure'' in proposed paragraph (c)(3).

In the final rule, CEQ combines proposed paragraphs (c) and (d) in § 1501.9(c) to address outreach and notification. CEQ revised the introductory text from ''lead agency'' to ''agencies'' for consistency with the use of ''agencies'' in the rest of § 1501.9. This change does not mean that each agency involved in an EIS or EA needs to conduct these responsibilities independently or that the lead agency is not ultimately responsible given its role in supervising the preparation of an EIS or EA consistent with § 1501.7(a), but rather that there is flexibility in which agency conducts these responsibilities under the lead agency's supervision.

CEQ also revises the introductory text from agencies ''should'' to ''shall'' for consistency with the both the 2020 and 1978 regulations and to resolve the inconsistency between § 1501.7(h)(1), which requires the lead agency to invite cooperating agencies at the earliest practicable time and proposed § 1501.9(c)(1) encouraging the lead agency to invite the participation of likely affected agencies and governments, including cooperating agencies, as early as practicable. CEQ also is changing ''should'' to ''shall'' because using ''should'' would be confusing and inaccurate to the extent that it could be read to suggest that some requirements are optional. CEQ adds ''as appropriate'' to qualify the requirement in paragraph (c)(2) to conduct early engagement to make clear that when the regulations require or encourage agencies to conduct engagement, they should do so early in the process. These changes from the proposal do not establish new obligations for agencies, but rather, clarify which provisions are obligatory in light of the requirements of the NEPA statute and other provisions in the regulations.

CEQ also adds ''any'' in paragraph (c)(1) to acknowledge that for some actions, there will not be any likely affected agencies or governments. CEQ finalizes paragraph (c)(3) as proposed with two changes, which requires agencies to consider the appropriate methods of outreach and notification, including the ability of affected persons and agencies to access electronic media and the primary language of affected persons. In the final rule, CEQ includes ''and persons'' after entities consistent with the phrasing in paragraph (c)(5)(i) and makes language plural for consistency with ''persons.'' Additionally, CEQ notes that agencies will also need to consider other statutory requirements, such as those under the Rehabilitation Act, when selecting appropriate methods of outreach and notification.

Fifth, CEQ proposed to move the introductory clause of 40 CFR 1506.6 (2020), ''Agencies shall'' to proposed paragraph (d) and add the paragraph heading ''Notification.'' As discussed earlier in this section, CEQ is combining proposed paragraph (c) and (d) in the final rule. CEQ proposed in § 1501.9 and throughout the proposed regulations to replace the word ''notice'' with ''notification,'' except where ''notice'' is used in reference to a **Federal Register** notice. CEQ is making this change in the final rule to clearly differentiate between those requirements to publish a notice in the **Federal Register** and other requirements to provide notification of an activity, which may include a notice in the **Federal Register** or use of other mechanisms.

Sixth, in the proposed rule, CEQ proposed a new paragraph (d)(1) to require agencies to publish notification of proposed actions they are analyzing through an EIS. CEQ proposed this requirement in response to feedback from multiple stakeholders and members of the public requesting more transparency about agency proposed actions. CEQ finalizes the proposed provision in § 1501.9(c)(4) with an additional clause at the end of its proposed language to reference that this requirement can be met through a NOI consistent with § 1502.4. CEQ adds this language in response to at least one comment expressing confusion on this point.

Agencies may publish notification through websites, email notifications, or other mechanisms such as the Permitting Dashboard,[75] so long as the notification method or methods are designed to adequately inform the persons and agencies who may be interested or affected, consistent with the definition of ''publish'' in § 1508.1(gg). An NOI in the **Federal Register,** consistent with § 1502.4(e), can fulfill the notification requirement, but agencies also may elect to use additional notification methods.

Seventh, CEQ proposed to move 40 CFR 1506.6(b) (2020), including its subparagraphs, (b)(1) through (b)(3) and (b)(3)(i) through (b)(3)(x), to proposed § 1501.9(d)(2) (including (d)(2)(i) through (d)(2)(iii) and (d)(2)(iii)(A) through (d)(2)(iii)(I)), and proposed to make minor revisions to improve readability and consistency with the rest of § 1501.9. CEQ is finalizing these changes with some additional edits as described in the following paragraphs.

In the final rule, proposed paragraph (d)(2) becomes § 1501.9(c)(5) requiring agencies to provide public notification of NEPA-related hearings, public meetings, or other opportunities for public engagement, as well as the availability of environmental documents. At least one commenter noted that CEQ's proposed addition of the qualifier ''as appropriate'' before the requirement to provide public notification of the availability of documents could be read to give agencies discretion to provide such notice. This was not CEQ's intent as the regulations have always required agencies to provide such notice so CEQ does not include this qualifier in the final rule.

In the proposed rule, paragraphs (d)(2)(i) through (d)(2)(iii) expanded on these general public notification requirements in paragraph (d)(2). Specifically, CEQ proposed to move 40 CFR 1506.6(b)(1) and (b)(2) (2020) to proposed paragraphs (d)(2)(i) and (d)(2)(ii), respectively, and change

[75] *See* Fed. Permitting Improvement Steering Council, Permitting Dashboard for Federal Infrastructure Projects, *https://www.permits.performance.gov/*.

''organizations'' to ''entities and persons'' in paragraph (d)(2)(ii). In the final rule, CEQ strikes the introductory clause, ''In all cases,'' as superfluous, and consolidates into § 1501.9(c)(5)(i) the requirement to notify both those entities and persons who have requested notification on an individual action as well as those who have requested regular notification, such as actions in a geographic region or a category of actions an agency typically takes. Paragraph (c)(5)(ii), which was proposed paragraph (d)(2)(ii), only addresses when notification is required in the **Federal Register**—when an action has effects of national concerns. CEQ also changes ''notice'' to ''notification'' in § 1501.9(c)(5)(ii) for consistency with the rest of § 1501.9 and adds the word ''also'' to make clear that this notification is in addition to the notification required by paragraph (c)(5)(i).

Eighth, CEQ proposed to move 40 CFR 1506.6(b)(3) (2020) to proposed paragraph (d)(2)(iii), which addressed notification for actions for which the effects are primarily of local concern. CEQ proposed to change ''notice may include'' to ''notification may include distribution to or through'' followed by a list of mechanisms for notification. CEQ makes this change as proposed in § 1501.9(c)(5)(iii) the final rule.

Ninth, CEQ proposed to move 40 CFR 1506.6(b)(3)(i) and (b)(3)(iii) through (b)(3)(x) (2020) to proposed § 1501.9(d)(2)(iii)(A) through (d)(2)(iii)(I), respectively. CEQ proposed to combine the provisions from 40 CFR 1506.6(b)(3)(i) and (ii) (2020) on notice to State, Tribal, and local governments and agencies in proposed § 1501.9(d)(2)(iii)(A) to consolidate similar provisions. CEQ also proposed to remove the parenthetical in proposed paragraph (d)(2)(iii)(C) and instead refer to local newspapers ''having general circulation.'' Lastly, CEQ proposed to add a sentence in proposed paragraph (d)(2)(iii)(I) that recommended agencies establish email notification lists or similar methods for the public to easily request electronic notifications for proposed actions. CEQ includes all of these changes as proposed in the final rule at § 1501.9(c)(5)(iii)(A) through (I).

Tenth, CEQ proposed to move the requirements to make EISs available under FOIA from 40 CFR 1506.6(f) (2020) to § 1501.9(d)(3). CEQ received comments on this provision requesting that CEQ restore the language from the 1978 regulations because some members of the public do not have easy access to electronic information, it is important for the public to have access to agency comments, and that restoring the language would help restore consistency in agency implementation of FOIA to ensure transparency. CEQ considered the comments and the changes between the 1978 and 2020 rules and determined the existing language addresses access to underlying documents and comments. However, CEQ determined it is appropriate to restore language related to fees as the 2020 rule removed language that agencies should make documents related to the development of NEPA documents free of charge or no more than the cost of duplication. Therefore, in the final rule, CEQ adds a clause to § 1501.9(c)(6) to require agencies to make EISs and any underlying documents available consistent with FOIA and without charge to the extent practicable.

Eleventh, CEQ proposed to move 40 CFR 1506.6(c) (2020) requiring agencies to hold or sponsor public meetings or hearings to § 1501.9(e), with modification, including adding the paragraph heading ''Public meetings and hearings.'' Additionally, CEQ proposed to make this provision discretionary, and add that agencies could do so in accordance with ''regulatory'' requirements as well as statutory requirements or in accordance with ''applicable agency NEPA procedures.'' In the proposal, CEQ revised the sentence requiring agencies to consider the ability of affected entities to access electronic media and to instead encourage agencies to ''consider the needs of affected communities'' when determining what format to use for a public hearing or public meeting because the best option for the communities involved may vary. Lastly, CEQ proposed to add a sentence to clarify that when an agency accepts comments for electronic or virtual meetings, agencies must allow the public to submit them electronically, via regular mail, or another appropriate method.

Commenters raised concerns about the proposed change from ''shall'' to ''may'' suggesting that this would make discretionary whether to hold public hearings, meetings and other opportunities for public engagement. CEQ notes that this provision gives agencies the discretion to determine the appropriate methods of public engagement except where required by other statutory or regulatory requirements, including agency NEPA procedures. However, CEQ did not intend to make a substantive change to this provision, and therefore, in § 1501.9(d) of the final rule, retains the use of ''shall'' consistent with 40 CFR 1506.6(c) (2020). In the third sentence addressing format for hearings or meetings, CEQ adds examples of formats agencies might consider—whether an in-person or virtual meeting or a formal hearing or listening session is most appropriate—and requires rather than encourages agencies to consider the needs of affected communities.

Commenters also requested that CEQ restore the recommendation from the 1978 regulations that agencies make draft EISs available at least 15 days in advance when they are the subject of a public meeting or hearing. CEQ agrees that this recommendation is helpful to facilitate a more effective public engagement, and therefore includes a new sentence at the end of § 1501.9(d) consistent with the longstanding recommendation from the 1978 regulations but broadening it to apply to draft environmental documents.

Twelfth, CEQ proposed to move 40 CFR 1506.6(a) (2020) requiring agencies to involve the public in preparing and implementing their agency NEPA procedures to proposed § 1501.9(f), adding a paragraph heading ''Agency procedures'' and changing the word ''involve'' to ''engage'' consistent with CEQ's proposed change of ''involvement'' to ''engagement'' through the regulations. CEQ finalizes this provision in § 1501.9(e) as proposed.

Finally, CEQ notes two provisions in 40 CFR 1506.6 (2020) that it did not incorporate into § 1501.9. First, as discussed in section II.I.3, CEQ proposed to move the requirement for agencies to explain in their NEPA procedures where interested persons can get information on EISs and the NEPA process from 40 CFR 1506.6(e) (2020) to § 1507.3(c)(11) since this is a requirement for NEPA procedures, not public engagement. And second, CEQ proposed to delete 40 CFR 1506.6(d) (2020) on soliciting information from the public because that concept is present in the purpose and language of revised § 1501.9. In the final rule, CEQ strikes these paragraphs from 40 CFR 1506.6 (2020).

9. Deadlines and Schedule for the NEPA Process (§ 1501.10)

CEQ proposed to retitle § 1501.10 to ''Deadlines and schedule for the NEPA process'' from ''Time limits'' and revise the section to direct agencies to set deadlines and schedules for NEPA reviews to achieve efficient and informed NEPA analyses consistent with section 107 of NEPA, 42 U.S.C. 4336a. CEQ proposed these changes to improve transparency and predictability for stakeholders and the public regarding NEPA reviews.

Commenters were generally supportive of CEQ's proposed changes to this provision in order to promote a timely NEPA process. Some commenters expressed support while suggesting additional changes as described further in this section and in the Phase 2 Response to Comments. Other commenters opposed the inclusion of the deadlines, expressing concerns that the deadlines would result in rushed analyses, strain agency and applicant resources, and have negative impacts on public engagement. CEQ addresses these concerns in the context of specific provisions discussed in this section.

CEQ revises the title of § 1501.10 and reorganizes and revises the provision as discussed further in this section. As discussed in section II.J.1, CEQ removes the references to ''project sponsor'' in favor of the defined term ''applicant,'' which includes project sponsors, throughout § 1501.10 and the rest of the regulations.

In addition to those revisions, CEQ proposed revisions to specific provisions of § 1501.10. First, in paragraph (a), CEQ proposed an edit to the first sentence to emphasize that while NEPA reviews should be efficient and expeditious, they also must include ''sound'' analysis. CEQ also proposed to direct agencies to set ''deadlines and schedules'' appropriate to individual or types of proposed actions to facilitate meeting the deadlines proposed in § 1501.10(b). Consistent with section 107(a)(2)(D) of NEPA, CEQ also proposed in this paragraph to require, where applicable, the lead agency to consult with and seek concurrence of joint lead, cooperating, and participating agencies and consult with project sponsors and applicants when establishing and updating schedules. 42 U.S.C. 4336a(a)(2)(D).

Some commenters supported the proposed requirement for consultation on schedules in paragraph (a), as well as in paragraph (c). Multiple commenters opposed the proposed requirements to seek concurrence asserting that it would result in delay and exceed the statutory requirements of section 107(a)(2)(D) of NEPA. 42 U.S.C. 4336a(a)(2)(D). Multiple commenters requested additional clarity on how agencies would carry out consultation with the applicant pursuant to paragraphs (a) and (c). One commenter suggested making reference to ''use of reliable and currently accurate data'' as an example of sound analysis in paragraph (a).

CEQ makes the revisions to paragraph (a) as proposed with three additional edits. First, CEQ excludes the reference to project sponsors in favor of the defined term ''applicant'' in § 1508.1(c). Second, CEQ adds ''for the proposed action'' after ''schedule'' to clarify that lead agencies establish schedules for each action. Third, CEQ includes the requirement to seek the concurrence of any joint lead, cooperating, and participating agencies, and in consultation with any applicants, adding the word ''any'' to clarify that not all actions will necessarily have a joint lead, cooperating, and participating agencies or applicants.

CEQ adds the requirement to ''seek the concurrence'' as proposed to encourage up-front agreement on schedules to facilitate achieving the statutory deadlines. This provision requires the lead agency to seek concurrence, not obtain concurrence. While lead agencies should strive to reach agreement on schedules because agreement on a schedule up front will facilitate the agencies' meeting a deadline, lead agencies do not need to obtain concurrence to proceed if the agencies cannot reach an agreement on the schedule. CEQ considers this approach to strike the right balance because requiring the lead agency to obtain, rather than seek, concurrence could unreasonably delay the process if an agency will not concur and not requiring any agreement would undermine the efficacy of the schedule if other agencies cannot meet the schedule or have unaddressed concerns with it. CEQ declines to add a reference to the ''use of reliable and currently accurate data'' as an example of sound analysis because § 1506.6 addresses the requirement to use reliable data, and CEQ does not consider it necessary or appropriate to address data in this section on deadlines and schedules.

Second, CEQ proposed to update paragraph (b) and its subparagraphs for consistency with section 107(g) of NEPA. *See* 42 U.S.C. 4336a(g). In the proposed revisions, paragraphs (b)(1) and (b)(2) would require agencies to complete an EA within one year and an EIS in two years, respectively, unless the lead agency, in consultation with any applicant or project sponsor, extends the deadline in writing and establishes a new deadline providing only as much time as necessary to complete the EA or EIS. CEQ proposed to include ''any'' to account for circumstances where there is no applicant or project sponsor, in which case the consultation requirement would be inapplicable to extension of deadlines.

Some commenters opposed the deadlines asserting that agencies will shortcut public participation or Tribal consultation in the NEPA process, and that the deadlines create conflicts with implementation of section 106 of the National Historic Preservation Act. 54 U.S.C. 306101. Other commenters expressed concern that the deadlines will impede the ability of ''minority and Indigenous communities'' to organize and advise their communities of impending harm. Other commenters expressed concerns that other proposed changes, including consideration of reasonably foreseeable climate change related effects and disproportionate and adverse effects on communities with environmental justice concerns, will make it challenging for agencies to meet the prescribed deadlines. One commenter asserted that the proposed deadlines are arbitrary and at odds with the need for rigorous scientific study to support NEPA findings.

CEQ makes the changes to paragraphs (b), (b)(1), and (b)(2) as proposed with two additions to implement the statutory deadlines established in section 107(g) of NEPA. 42 U.S.C. 4336a(g). First, CEQ excludes the reference to project sponsors in favor of the defined term ''applicant'' in § 1508.1(c). Second, CEQ includes ''as applicable'' before ''in consultation with any applicant'' in § 1501.10(b)(1) and (b)(2) to emphasize that not all actions have applicants. In such cases, an agency may extend the deadline and set a new deadline in writing. CEQ appreciates the concerns expressed by commenters that timelines could lead to rushed analysis but recognizes that establishing deadlines can improve the efficiency and timeliness of the environmental review process and notes that section 107(g) of NEPA and this provision provide agencies with the ability to extend the deadline where necessary to ensure they meet their public engagement and consultation obligations and conduct the requisite analysis. 42 U.S.C. 4336a(g). Further, agencies have demonstrated that they can complete robust and high-quality environmental reviews within these timelines. CEQ encourages agencies to conduct early public engagement, consistent with § 1501.9, because early engagement can improve the efficiency and quality of the environmental review process and can help ensure agencies conduct meaningful engagement while also meeting the statutory timeframes.

CEQ also notes that nothing in the regulations modifies compliance with section 106 of NHPA. CEQ disagrees that the updated provisions of these regulations, including §§ 1502.15(b); 1502.16(a)(6), (a)(9), and (a)(13); and 1508.1(g)(4)—which reflect current practice and requirements such as those requiring consideration of certain effects

like climate-related effects—impose new requirements that will increase review timeframes such that agencies will not be able to meet timelines. Rather, as discussed in section II.D.14, II.D.15, and II.J.5, CEQ is updating these provisions to reflect current practice and categories of reasonably foreseeable effects long considered under NEPA consistent with the statute and case law. CEQ disagrees that these changes will prevent agencies from complying with the deadlines or that the deadlines will prevent agencies from conducting rigorous analysis. Many agencies already have considerable experience analyzing these types of effects.

Third, consistent with section 107(g) of NEPA, CEQ proposed a new paragraph (b)(3) to identify the starting points from which agencies measure the deadline for EAs and EISs and to require agencies to measure from the soonest of three dates, as applicable. 42 U.S.C. 4336a(g). Consistent with section 107(g)(1) of NEPA, the proposed dates were: (i) the date the agency determines an EA or EIS is required; (ii) the date the agency notifies an applicant that its application to establish a right-of-way is complete; and (iii) the date the agency issues an NOI. 42 U.S.C. 4336a(g)(1).

Multiple commenters expressed support for the starting points proposed in paragraph (b)(3), with some commenters suggesting changes for further clarification. Many of these commenters requested the regulations require agencies to include in their agency NEPA procedures criteria for automatically starting the one-year or two-year periods. Suggestions included criteria for when an application for a permit, authorization, or right-of-way is considered complete.

CEQ makes the changes as proposed in paragraph (b)(3) and (b)(3)(i) through (b)(3)(iii) because they incorporate the statutory provisions of section 107(g)(1) of NEPA. *See* 42 U.S.C. 4336a(g)(1). CEQ declines to require agencies to include criteria in their agency NEPA procedures, though agencies may do so at their discretion so long as they are consistent with this provision.

Fourth, after considering the comments on this section and more generally emphasizing the importance of consistency and clarity, in the final rule, CEQ adds paragraph (b)(4) to address the end dates for measuring the deadlines. This revision is consistent with CEQ's approach in the proposed rule to implementing section 107(g)(1) in a manner that is transparent and practical and will ensure consistency across Federal agencies in measuring deadlines, avoiding inconsistencies that could create confusion among agencies and applicants. 42 U.S.C. 4336a(g)(1). Paragraphs (b)(4)(i) and (b)(4)(i)(A) through (b)(4)(i)(C) specify that for EAs, the end date is the date on which the agency publishes an EA; makes the EA available pursuant to an agency's pre-decisional administrative review process, where applicable; or issues an NOI to prepare an EIS. CEQ notes that in situations where an agency publishes both a draft EA and a final EA, the final EA is the EA used to determine the end date. Paragraph (b)(4)(ii) specifies for EISs that the end date is the date on which EPA publishes a notice of availability of the final EIS or, where applicable, the date the agency makes the final EIS available pursuant to its pre-decisional administrative review process, consistent with § 1506.10(c)(1).

Fifth, CEQ proposed in paragraph (b)(4) to require agencies to submit the report to Congress on any missed deadlines as required by section 107(h) of NEPA. 42 U.S.C. 4336a(h). Some commenters requested the regulations include additional detail on the annual report to Congress, including detail on the content and deadlines for submitting the report. One commenter also requested that the regulations allow for a pause in the time periods for specific scenarios, such as when the agency is waiting for information from an applicant or to award contracts to support analyses. Similarly, other commenters suggested generally that the final rule include provisions to provide more flexibility in measuring the deadlines to avoid rushed environmental analyses.

CEQ finalizes proposed § 1501.10(b)(4) in paragraph (b)(5) as proposed but changes ''The'' to ''Each'' to clarify that each lead agency separately has a responsibility to report to Congress if it misses a deadline. CEQ declines to provide more specifics about the report to Congress at this time, but will consider whether guidance is necessary to assist agencies in their reporting obligations. CEQ also declines to provide a mechanism for pausing the deadline clock. The regulations, consistent with the statute, provide that a lead agency may extend the deadline in order to provide any additional time necessary to complete an EIS or EA. Where an agency has extended a deadline for an EA or EIS in conformity with this section and section 107(g) of NEPA, the agency has not missed a deadline for purposes of 107(h) and would not need to submit a report to Congress. 42 U.S.C. 4336a(g)–(h). For example, if an agency is experiencing a delay outside its control such that it does not have the requisite information to complete its EA or EIS, the lead agency may extend the one- or two-year deadlines. Because the statute and regulations provide agencies with the flexibility to extend deadlines when necessary to complete an EA or EIS, CEQ does not consider it necessary or appropriate to establish a mechanism for agencies to pause the deadline clock.

Sixth, to enhance predictability, CEQ proposed to move the text from paragraph (i) of 40 CFR 1501.7 (2020) to the beginning of a new paragraph (c) and modify the language for consistency with sections 107(a)(2)(D) and 107(a)(2)(E) of NEPA, which require the lead agency to develop schedules for EISs and EAs. 42 U.S.C. 4336a(a)(2)(D), 4336a(a)(2)(E). CEQ proposed to divide the first sentence moved from 40 CFR 1501.7(i) (2020) into two sentences and add an introductory clause, ''[t]o facilitate predictability,'' to reinforce the purpose of schedules. CEQ proposed to add ''for completion of environmental impact statements and environmental assessments as well as any authorizations required to carry out the action'' after ''the lead agency shall develop a schedule'' for consistency with section 107(a)(2)(D) of NEPA. 42 U.S.C. 4336a(a)(2)(D). CEQ proposed in the second sentence to retain the requirement for the lead agency to set milestones for environmental reviews and authorizations, and add ''permits'' for consistency with section 107(a)(2)(D) of NEPA. 42 U.S.C. 4336a(a)(2)(D). CEQ also proposed in the second sentence to require agencies to develop the schedules in consultation with the applicant or project sponsor, and in consultation with and seek the concurrence of any joint lead, cooperating, and participating agencies.

CEQ proposed to add a new third and fourth sentence to paragraph (c) to note that schedules may vary depending on the type of action; agencies should develop schedules based on their experience reviewing similar types of actions; and highlight factors listed in paragraph (d) that may help agencies set specific schedules to meet the deadlines.

Finally, CEQ proposed to move the text from paragraph (j) of 40 CFR 1501.7 (2020) regarding missed schedule milestones to the end of paragraph (c) and modify it to make it consistent with section 107(a)(2)(E) of NEPA and provide clarification to enhance interagency communication and issue resolution. 42 U.S.C. 4336a(a)(2)(E). CEQ proposed to require that, when the lead or any participating agency anticipates a missed milestone, that agency notify the responsible agency (and the lead agency if identified by another agency) and request that they

take action to comply with the schedule. To emphasize the importance of informed and efficient decision making, CEQ proposed to require agencies to elevate any unresolved disputes contributing to the missed milestone to the appropriate officials for resolution within the deadlines for the individual action.

One commenter requested that the final rule include a deadline for the development of a schedule. CEQ declines to include this proposal in the final rule. While CEQ encourages agencies to work efficiently in developing a schedule, CEQ recognizes that the complexity of the schedule will vary considerably from case to case, and defers to agencies to oversee the efficient and effective preparation of a schedule. Also, as discussed earlier in this section, commenters both supported and opposed the requirement for lead agencies to consult with applicants and consult and seek concurrence of joint lead, cooperating, and participating agencies when establishing schedule milestones. Another commenter stated that, with respect to the fifth sentence of paragraph (c), the final rule should require, not just recommend, agencies to consider all previous relevant actions and incorporate that information into their schedules.

In the final rule, CEQ revises the existing text of paragraph (c) as proposed excluding the reference to project sponsors in favor of the defined term ''applicant'' in § 1508.1(c)) for consistency with section 107(a)(2)(D) of NEPA and to ensure that agencies are identifying at the beginning of the process the steps they need to take and the timeframe in which they need to take them in order to meet the statutory timeframes. 42 U.S.C. 4336a(a)(2)(D). For the reasons articulated earlier in this section, CEQ includes the requirements for consultation and seeking concurrence on schedules. Next, CEQ adds a new sentence in the final rule to direct all agencies with milestones to take appropriate measures to meet the schedule. Finally, CEQ moves paragraph (j) of 40 CFR 1501.10 (2020) regarding missed milestones to the end of paragraph (c) as proposed, but further revises it for clarity in the final rule. CEQ simplifies the text to clarify that any participating agency can identify a potentially missed milestone to the lead agency and the agency responsible for the milestone. CEQ also adds ''potentially'' before ''missed milestone'' in the last sentence for consistency of use in the sentence.

Seventh, CEQ proposed to redesignate paragraph (c) of 40 CFR 1501.10 (2020), addressing factors in setting deadlines, as paragraph (d), and make changes to the text for consistency with proposed paragraph (b). Specifically, CEQ proposed to change ''senior agency official'' to ''lead agency'' and ''time limits'' to reference ''the schedule and deadlines.''

Eighth, CEQ proposed to add a new factor that the lead agency may consider in determining the schedule and deadlines to paragraph (d)(7): the degree to which a substantial dispute exists regarding the size, location, nature, or consequences of the proposed action and its effects. CEQ proposed this factor to restore and clarify a factor included in the 1978 regulations at 40 CFR 1501.8(a)(vii) (2019) regarding the degree to which the action is controversial. While the 2020 regulations removed this factor because it overlapped with other factors, CEQ reconsidered its position and determined that this is an important factor that could have implications for establishing schedules and milestones. CEQ noted in the proposed rule that, in such instances, agencies should seek ways to resolve disputes early in the process, including using conflict resolution and other tools, to achieve efficient outcomes and avoid costly and time-consuming litigation later in the process. To accommodate this new factor, CEQ proposed to redesignate paragraph (c)(7) of 40 CFR 1501.10 (2020) to be paragraph (d)(8).

One commenter suggested CEQ append ''or benefit'' to ''[p]otential for environmental harm'' in paragraph (d)(1). CEQ declines this change because ''environmental benefits'' is already covered by the factor in paragraph (d)(4) regarding public need. Other commenters suggested CEQ modify paragraph (d)(4) in the final rule to include consideration of the impact on the environment in addition to public need or modify it to reflect that the consequences of delay include cost considerations of short- and long-term delays. CEQ declines to make these changes because paragraph (d)(1) already covers potential for environmental harm, and CEQ interprets ''consequences of delay'' to include any cost-related consequences to the public of short- or long-term delays.

Regarding paragraph (d)(7), one commenter opposed the replacement of ''controversial'' from the 1978 regulations with ''substantial dispute'' asserting that ''controversial'' is well defined in case law as scientific rather than public controversy. The commenter further asserted that shifting this language could become a new source of dispute. CEQ disagrees and considers this change consistent with case law interpreting the term ''controversial,'' as used in the 1978 regulations as distinct from general public controversy or opposition. *See, e.g., Bark* v. *United States Forest Serv.,* 958 F.3d 865, 870 (9th Cir. 2020) (''A project is 'highly controversial' [under the 1978 regulations] if there is a 'substantial dispute about the size, nature, or effect of the major Federal action rather than the existence of opposition to a use.' '' (quoting *Native Ecosystems Council* v. *United States Forest Serv.,* 428 F.3d 1233, 1240 (9th Cir. 2005) (alteration omitted)); *see also Standing Rock Sioux Tribe* v. *U.S. Army Corps of Eng'rs,* 985 F.3d 1032, 1042 (D.C. Cir. 2021).

One commenter recommended the final rule add a factor to accommodate government-to-government consultation with Tribal Nations, while other commenters requested inclusion of consideration of Tribal consultation in developing schedules overall. In the final rule, CEQ adds paragraph (d)(9) for consideration of the time necessary to conduct government-to-government Tribal consultation. While agencies are already able to take this into account when building schedules, CEQ adds this factor to encourage agencies to ensure they are building sufficient time in the schedule to conduct meaningful consultation. Finally, CEQ adds ''court ordered deadlines'' to paragraph (d)(8), which lists time limits imposed on the agency, since agencies are sometimes conducting NEPA for actions subject to a court order.

Ninth, CEQ proposed to redesignate paragraph (d) of 40 CFR 1501.10 (2020) as paragraph (e), strike the text allowing a senior agency official to set time limits because this is superseded by the enactment of section 107(g) of NEPA, 42 U.S.C. 4336a(g), setting statutory deadlines, and replace it with a requirement for EIS schedules to include a list of specific milestones. CEQ proposed to strike the text in paragraphs (d)(1) through (d)(7) of 40 CFR 1501.10 (2020) listing potential time limits a senior agency official could set and replace them with proposed new paragraphs (e)(1) through (e)(5) to list the minimum milestones that an EIS schedule must include: publication of the NOI, issuance of the draft EIS, the public comment period, issuance of the final EIS, and issuance of the ROD.

Relatedly, CEQ proposed to add new paragraphs (f) and (f)(1) through (f)(4) to identify the milestones that agencies must include in schedules for EAs: the decision to prepare an EA; issuance of

a draft EA, where applicable; the public comment period, where applicable; and issuance of the final EA and a decision whether to issue a FONSI or NOI to prepare an EIS.

Multiple commenters expressed support for proposed § 1501.10(e) and (f), asserting the changes would improve the transparency, timeliness, and certainty of environmental reviews. Some commenters suggested additional milestones to further these goals, such as the starting points in proposed paragraph (b)(3), specific stages of the review process (*i.e.,* decision to prepare a document and issuance of a draft or final document), and 60-or 90-day deadlines for cooperating and participating agency review stages.

CEQ declines to add additional milestones at this time. CEQ notes that this is a non-exhaustive list, and CEQ may issue guidance with recommendations for additional milestones in the future or agencies may elect to include additional milestones on an action-by-action basis or in their agency NEPA procedures.

Tenth, CEQ proposed to redesignate paragraph (e) of 40 CFR 1501.10 (2020) as paragraph (g) allowing an agency to designate a person to expedite the NEPA process, with no proposed changes to the language. One commenter asserted that paragraph (g) provides agencies too much discretion as to whether they should designate someone to expedite the NEPA process. The commenter suggested that, at a minimum, the paragraph be expanded to discuss when that role would be beneficial and set requirements on who can fill the role. CEQ declines additional edits to paragraph (g), which has been in the regulations since 1978. CEQ considers it appropriate to preserve agency flexibility to assign staff to expedite the NEPA process.

Eleventh, CEQ proposed to strike paragraph (f) of 40 CFR 1501.10 (2020), allowing State, Tribal, or local agencies, or members of the public to request a Federal agency set time limits. One commenter opposed the proposed removal of this paragraph, expressing concern that the proposal would diminish the involvement and use of information from States. CEQ makes this change in the final rule because the NEPA statute sets deadlines for EAs and EISs rendering this paragraph unnecessary and inconsistent with the statute. However, CEQ notes that State, Tribal, and local agencies have a role in the development of schedules to the extent they are serving as joint lead, cooperating, or participating agencies.

Finally, to increase predictability and enhance agency accountability, CEQ proposed to add a new paragraph (h) to require agencies to make schedules for EISs publicly available and to publish revisions to the schedule. The proposal also would require agencies to publish revisions to the schedule and include an explanation for substantial revisions to increase transparency and public understanding of decision making and to encourage agencies to avoid unnecessary delays.

One commenter expressed concern that paragraph (h) would increase the potential for litigation related to timelines. Another commenter opposed the requirement for agencies to publicly post schedules for an EIS, asserting that the requirement would distract from analyzing and disclosing significant environmental effects.

CEQ adds paragraph (h) as proposed in the final rule. CEQ disagrees that making schedules publicly available will have any meaningful effect on the agency's analysis. CEQ also does not see litigation risk attached to the posting of schedules, which would not constitute a final agency action for purposes of judicial review, and the commenter did not provide an explanation as to how this might be the case.

Multiple commenters requested clarity on what qualifies as ''substantial'' changes to an EIS schedule. CEQ declines to include additional language in the rule and defers to agencies to determine what schedule changes are ''substantial'' and require an explanation. CEQ anticipates this may vary from case-to-case depending on the agency and the complexity of the proposed action. CEQ will continue to consider whether additional guidance would be helpful.

A few commenters requested that the final rule expand paragraph (h) to require agencies to make EA schedules publicly available. CEQ declines to require agencies to publish schedules for EAs, though CEQ encourages agencies to do so, especially when doing so would facilitate public engagement. CEQ is concerned that requiring agencies to make schedules for all EAs publicly available could significantly increase the administrative burden on agencies especially since not all EAs will involve complex schedules, *i.e.,* they may only include the dates for the decision to prepare an EA and the issuance of an EA.

Some commenters expressed general support for § 1501.10 but suggested additional changes arguing that there are ''loopholes'' for agencies to exploit or manipulate the deadlines. Commenters requested the regulations provide for oversight of agencies to ensure they are adhering to the deadlines. Another commenter suggested CEQ add incentives to the final rule for agencies to adhere to the timelines.

CEQ declines to make additional revisions to address the commenters' suggestions. The final rule implements the statutory deadlines, and Congress has provided a reporting mechanism to address situations where agencies miss deadlines. Further, section 107(g)(3) of NEPA provides a mechanism for project sponsors to petition the courts for relief if an agency fails to meet the deadlines. 42 U.S.C. 4336a(g)(3). The statute does not establish a mechanism for CEQ to enforce deadlines, and CEQ declines to revise the regulations in a manner that would substantially change the role that CEQ has played with respect to environmental reviews for decades.

A commenter requested clarification on supplementation and whether or not supplemental environmental documents would affect the timeline of the original document. CEQ declines to add additional language to § 1501.10 in response to this comment. In cases where an agency determines a supplemental draft EA or a supplemental draft EIS is necessary, the end point remains the final EA or final EIS. However, as provided in § 1501.10(b), the lead agency may extend the deadline to provide additional time necessary to complete the final EA or final EIS. When an agency prepares a supplemental EA or EIS following the completion of a final EA or EIS, the lead agency should adhere to the deadlines and develop schedules for the supplemental NEPA review consistent with paragraph (b) and section 107(g) of NEPA. 42 U.S.C. 4336a(g).

10. Programmatic Environmental Documents and Tiering (§ 1501.11)

CEQ has encouraged agencies to engage in environmental reviews for broad Federal actions through the NEPA process since CEQ's initial guidelines issued in 1970. This continues to be a best practice for addressing broad actions, such as programs, policies, rulemakings, series of projects, and larger or multi-phase projects. CEQ developed guidance in 2014 on Effective Use of Programmatic NEPA Reviews,[76] compiling best practices across the Federal Government on the development of programmatic environmental reviews. CEQ proposed to codify some of these principles in the CEQ regulations.

First, CEQ proposed to revise and retitle § 1501.11, ''Programmatic

[76] CEQ, Programmatic Guidance, *supra* note 12.

environmental documents and tiering,'' for consistency with section 108 of NEPA, to consolidate relevant provisions, and to add new language to codify best practices for developing programmatic NEPA reviews and tiering, which are important tools to facilitate more efficient environmental reviews and project approvals. 42 U.S.C. 4336b. As discussed further in this section, CEQ proposed to move portions of 40 CFR 1502.4 (2020) on EISs for broad Federal actions to § 1501.11 because agencies can review actions at a programmatic level in both EAs and EISs.

Several commenters expressed support for the overall proposed changes in § 1501.11 and for use of programmatic reviews and tiering. These commenters asserted that programmatic reviews and tiering are important tools for efficiency and supported the clarity provided in the proposed rule on both tools. In the final rule, CEQ revises the title of § 1501.11 and moves the text of 40 CFR 1502.4 (2020) to § 1501.11 as further described in this section.

CEQ proposed to reorganize the paragraphs in § 1506.11 to address programmatic environmental documents and then tiering. Accordingly, second, CEQ proposed to add a new paragraph (a) to address programmatic environmental documents. CEQ proposed to move paragraph (b) of 40 CFR 1502.4 (2020) to § 1501.11(a) and revise the first sentence to clarify that agencies may prepare programmatic EAs or EISs to evaluate the environmental effects of policies, programs, plans, or groups of related activities. CEQ proposed to revise the second sentence to provide that programmatic environmental documents should be relevant to the agency's decisions and timed to coincide with meaningful points in agency planning and decision making; change ''statements'' to ''documents'' to include EAs; and change ''program'' to ''agency'' to broaden the language for consistency with the revised first sentence of paragraph (a). Finally, CEQ proposed a third sentence in paragraph (a) to clarify that agencies can use programmatic environmental documents in a variety of ways, highlighting some examples for agencies to consider to facilitate better and more efficient environmental reviews.

One commenter requested that CEQ change paragraph (a) to require agencies to prepare programmatic environmental documents. CEQ declines to require preparation of programmatic environmental documents as agencies need flexibility to determine when a programmatic environmental document is appropriate.

Another commenter suggested CEQ add language stating if an agency is preparing to make a programmatic decision on a policy, program, plan, or group of related activities that meets other applicable thresholds for NEPA analysis, an agency must prepare a programmatic analysis commensurate with the scope of that decision. The commenter asserted that while it may be permissible to prepare a programmatic analysis when an agency is not presently making a decision, it is mandatory to prepare one when making a programmatic decision.

A few commenters requested CEQ restore regulatory language from 40 CFR 1502.4(b) (2019) stating that programmatic EISs are sometimes required for proposed decisions regarding new agency programs or regulations. The commenter stated that the 2020 rule removed this direction to focus the provision on the discretionary use of programmatic EISs in support of clearly defined decision-making purposes. The commenter asserted CEQ would better serve agencies and the public by acknowledging that programmatic EISs are sometimes required.

CEQ declines to make these change in the final rule. Agencies have the discretion to determine whether to prepare a programmatic or non-programmatic NEPA document to evaluate their actions, and CEQ is concerned that the commenter's proposals are unnecessarily prescriptive and declines to introduce a new concept of ''programmatic decision.''

Third, CEQ proposed to move the list of ways agencies may find it useful to evaluate a proposal when preparing programmatic documents from paragraphs (b)(1) and (b)(1)(i) through (b)(1)(iii) of 40 CFR 1502.4 (2020) to § 1501.11(a)(1) and (a)(1)(i) through (a)(1)(iii), respectively. CEQ proposed to expand the list to encompass EAs as well as EISs. CEQ proposed to modify the beginning of paragraph (a)(1)(ii) to clarify ''[g]enerically'' to mean ''[t]hematically or by sector,'' and add technology as an example action type. CEQ proposed in paragraph (a)(1)(iii) to modify ''available'' to ''completed'' for clarity. CEQ moves these provisions and makes these revisions as proposed in the final rule.

One commenter opined that the language in proposed paragraph (a)(i)(iii) regarding stage of technological development makes it seem as though environmental review must happen more quickly than accrual of significant investment. The commenter asserted that the accrual of significant investment would prejudice the review and, therefore, should be barred until the review takes place and suggested regulatory language to that effect.

CEQ declines to modify paragraph (a)(1)(iii) to incorporate the commenter's proposed language. The concept the commenter proposes to add—to not prejudice the outcome of dependent decisions—is addressed in § 1506.1, and it is unnecessary and potentially confusing to address that issue here. However, CEQ changes ''restrict later alternatives'' to ''limit the choice of reasonable alternatives'' to align the text with § 1506.1(a).

Fourth, CEQ proposed to add a new paragraph (a)(2) to provide examples of the types of agency actions that may be appropriate for programmatic environmental documents, including programs, policies, or plans; regulations; national or regional actions; or actions with multiple stages and are part of an overall plan or program. CEQ did not receive any comments specific to this paragraph and adds it in the final rule.

Fifth, CEQ proposed to move paragraph (b)(2) of 40 CFR 1502.4 (2020) to § 1501.11(a)(3) and revise it to recommend, rather than require, that agencies employ scoping, tiering, and other tools to describe the relationship between programmatic environmental documents and related actions to reduce duplication. CEQ proposed to strike the last sentence of 40 CFR 1502.4(b)(2) (2020) stating that agencies may tier their analyses because tiering and programmatic environmental documents would now be addressed together in this section, rendering the language unnecessary.

A commenter requested CEQ replace ''should'' with ''shall'' in paragraph (a)(3) because the discretionary language relaxes the standard for agencies to seek efficiencies. CEQ declines to make this change. While scoping is required for EISs, including programmatic EISs, it is not required for EAs. It also would unnecessarily constrain agency processes to require tiering for all programmatic environmental documents, particularly because at the time that an agency prepares a programmatic environmental document, it may not yet know whether or what agency actions it may consider in the future related to the programmatic environmental document. Rather, CEQ intends this provision to encourage agencies to use scoping, tiering, and other methods to make programmatic environmental documents more effective, efficient, and transparent.

A commenter requested that CEQ add text to proposed paragraph (a)(3)

providing that programmatic documents should explain which issues the programmatic document analyzes and which issues the agency is deferring. This commenter pointed to CEQ's 2014 memorandum on use of programmatic NEPA reviews, which explains that the programmatic analysis and the decision document should explain which decisions are supported by the programmatic NEPA document and which decisions are deferred to a later time. Two commenters further requested CEQ clarify that tiering is required to analyze the deferred analysis of issues, effects, or alternatives before making a final project-level or site-specific decision; stating that the current text is permissive in that it allows but does not require tiering.

CEQ considered the comments and in the final rule revises § 1501.11(a)(3) to clarify that a programmatic document must identify any decisions or categories of decisions that the agency anticipates making in reliance on it. This direction includes any action or category of action that the agency anticipates making in reliance on a programmatic environmental document without additional analysis and any action or category of action the agency anticipates making after developing a subsequent, tiered environmental document. This provision only requires agencies to identify actions the agency anticipates making when it prepares a programmatic environmental document; it does not require agencies to identify every conceivable circumstance in which the agency could develop a tiered environmental review in the future. Including this information in a programmatic environmental document ensures that agencies are transparent about the relationship between their programmatic documents and any subsequent documents and decisions. Failure to anticipate and list a particular circumstance where a programmatic environmental document could inform a future decision does not preclude tiering to the programmatic environmental document in an environmental document related to that future circumstance.

Sixth, CEQ proposed to redesignate paragraphs (a), (b), and (c) of 40 CFR 1501.11 (2020), which address tiering, as paragraphs (b), (b)(1), and (b)(2), respectively, with some modifications as discussed further in this section. CEQ also proposed to redesignate paragraphs (c), (c)(1), and (c)(2) as paragraphs (b)(2), (b)(2)(i), and (b)(2)(ii), respectively, with no proposed modifications. CEQ proposed to title paragraph (b) ''Tiering.'' CEQ makes these changes in the final rule.

Seventh, CEQ proposed to add two new sentences at the beginning of paragraph (b) to describe when agencies may employ tiering. The first proposed sentence would allow agencies to employ tiering with an EIS, EA, or programmatic environmental document relevant to a later proposed action. The sentence emphasizes the benefits of tiering to avoid duplication and focus on issues, effects, or alternatives, not fully addressed in the earlier document. In the existing text, CEQ proposed to strike as redundant the reference to issues not yet ripe for decision as well as the last sentence on applying tiering to different stages of actions. CEQ did not receive comments specific to the changes proposed in this paragraph and finalizes them as proposed except that CEQ reorders the list of documents—EISs, EAs, and programmatic environmental documents—in § 1501.11(b)(1) for consistency with paragraph (b).

Eighth, in § 1501.11(b)(1) CEQ proposed to add ''programmatic environmental review'' to the list of documents from which agencies may tier. CEQ also proposed to clarify that the tiered document must discuss the relationship between the tiered analysis and the previous review; analyze site-, phase-, or stage-specific conditions and effects; and allow for public engagement opportunities consistent with the type of environmental document prepared and that are appropriate for the location, phase, or stage. Finally, CEQ proposed to clarify that the tiered document must state where the earlier document is ''publicly'' available.

One commenter requested CEQ clarify that tiering to a previous programmatic analysis is only appropriate if those analyses took the requisite ''hard look'' at site-specific environmental impacts. CEQ declines to make this change. While agencies must ensure a hard look at site-specific effects before finalizing a site-specific agency action, agencies have discretion to consider such effects in a programmatic environmental document or subsequent tiered documents. Multiple commenters requested CEQ clarify that tiered reviews must include the requisite site-specific analysis for the action, with some commenters raising concerns that agencies do not provide the necessary opportunity for the public to review alternatives and provide comments by using programmatic environmental reviews without subsequent site-specific reviews. CEQ agrees that tiering does not authorize an agency to avoid the public engagement, including any opportunity for comment, that it would need to do if it analyzed an action through a single environmental document, rather than through a tiered approach and notes that the text CEQ proposed in § 1501.11(b)(1) addresses this issue. Regardless of whether an agency employs tiering, agencies must comply with the requirements for consideration of alternatives and public comments consistent with the requirements for EAs or EISs, as applicable.

A few commenters expressed concern that the use of tiering would lead to delays in incorporating new scientific evidence into environmental reviews and allow agencies to circumvent the requirement to consider alternatives. Another commenter expressed similar concern that the expanded use of programmatic documents with CEs would limit consideration of alternatives. CEQ disagrees with the commenters' concerns because agencies cannot use programmatic documents or tiering to circumvent the requirements of NEPA, including section 102(2)(C)(iii) requirement to consider a reasonable range of alternatives for actions requiring an EIS. 42 U.S.C. 4332(2)(C)(iii).

Other commenters requested CEQ clarify certain aspects of tiering, including establishing bounds for use of programmatic CEs. As described in § 1501.11(a), programmatic environmental documents may be an EA or EIS. As such, § 1501.11 does not address programmatic CEs. Section 1501.4 addresses circumstances in which agencies may conduct programmatic reviews to establish new CEs.

One commenter stated that the rule needs to clearly distinguish between tiering and supplementation and suggested CEQ could clarify the different approaches in § 1501.11(b)(2)(ii). CEQ agrees that the reference to supplementation in § 1501.11(b)(2)(ii) is confusing because supplementation is a different concept. Section 1502.9(d) sets forth the standard for supplementation of EISs, and agencies may supplement EAs at their discretion. Therefore, CEQ strikes ''a supplement (which is preferred)'' from the first sentence of this paragraph.

CEQ makes the changes to § 1501.11(b) and (b)(1) as proposed, though CEQ revises programmatic environmental ''review'' to ''document'' in paragraph (b)(1) for consistency with the rest of the section. CEQ notes that programmatic documents can most effectively address later activities when they provide a description of planned activities that would implement the program and consider the effects of the program as specifically and

comprehensively as possible. A sufficiently detailed programmatic analysis with such project descriptions can allow agencies to rely upon programmatic environmental documents for further actions with no or little additional environmental review necessary. When conducting programmatic analyses, agencies should engage the public throughout the NEPA process and consider when it is appropriate to re-engage the public prior to implementation of the action.

Ninth, in paragraph (c), CEQ proposed to include the provisions of section 108 of NEPA, which address when an agency may rely on a programmatic document in subsequent environmental documents. 42 U.S.C. 4336b. CEQ notes that it interprets the reference to ''judicial review'' in paragraph (c)(1) to mean an opportunity for a party to challenge the programmatic document, including through an administrative proceeding or challenge brought under the Administrative Procedure Act. CEQ proposed in paragraph (c)(2) to require agencies to briefly document their reevaluations when relying on programmatic environmental documents older than 5 years. Two commenters opined that there is no incentive for an agency to prepare a programmatic environmental document if the statute and regulations require them to complete it within one or two years and then review it every five years. The commenters asserted that programmatic documents generally take longer to prepare, but the long-term benefits are worth the investment. The commenters are concerned that the time limits for EAs and EISs will result in agencies preparing fewer programmatic environmental documents. A separate commenter indicated that many agencies review programmatic documents at longer intervals than five years.

CEQ appreciates the commenters' concerns but notes that the timeframes are statutory. CEQ encourages agencies to use programmatic environmental documents and tiering whenever it will result in more efficiency overall. CEQ also notes that a reevaluation of a programmatic document need not be a lengthy process especially where agencies can quickly and easily verify the ongoing accuracy of the evaluation.

One commenter asserted that the process for reevaluation is unclear in the statute and in the proposed rule and asked CEQ to clarify the steps. The commenter requested that the regulations state that the tiered environmental review is what triggers the need for reevaluation and that it also serves as the documentation of the reevaluation.

CEQ declines to articulate additional steps for reevaluation. The regulations already provide a process for reevaluation in §§ 1501.5 and 1502.9(e). CEQ agrees that agencies may make use of tiered documents to support their reevaluation. However, because of the nature of tiering, such documents may not assess all of the underlying assumptions of the programmatic document.

Another commenter recommended that the regulations allow agencies to tier from programmatic documents while reevaluation is ongoing and requested CEQ clarify that those projects are not at risk of noncompliance for reliance on previous versions should the agency issue a new version of the document.

CEQ declines to make these specifications in the final rule. CEQ agrees that a tiered document may also serve as a reevaluation of the programmatic document. CEQ considers the language in section 108(1) of NEPA to be clear that agencies may tier from a programmatic review in a subsequent environmental document for up to five years without additional analysis, and therefore any tiered documents relying on the programmatic document during those five years is entitled to the statutory presumption that no additional review is required even where the agency subsequently revises the programmatic document. 42 U.S.C. 4336b(1).

A few commenters requested that the regulations require the five-year reevaluation for EISs and EAs be subject to public comment; that agencies provide public notice of the reevaluation; and that reevaluation of programmatic analyses be made publicly available.

CEQ declines to make these changes to retain flexibility depending on the context of the reevaluation. Some reevaluations may be simple and not require public comment. Other reevaluations may warrant and benefit from public engagement, including public comment. If the agency finds that any assumptions are no longer valid or that the criteria for supplementation in § 1502.9(d) are met, then the regulations require the agency to conduct a supplemental analysis to continue to rely on the programmatic review in subsequent environmental documents.

11. Incorporation by Reference Into Environmental Documents (§ 1501.12)

CEQ proposed minor modifications to § 1501.12 to emphasize the importance of transparency and accessibility of material that agencies incorporate by reference. First, CEQ proposed to revise the title to add ''into environmental documents'' at the end to clarify into what agencies incorporate by reference. CEQ makes this change in the final rule.

Second, CEQ proposed to add to the second sentence a specific requirement for agencies to briefly explain the relevance of any material incorporated by reference into the environmental document to clarify that agencies must not only summarize the content incorporated but also explain its relevance to the environmental review document. CEQ proposed this addition because explaining the relevance of incorporated material in addition to summarizing it will better inform the decision maker and the public.

A few commenters opposed the proposed requirement for agencies to briefly explain the relevance of the incorporated material to the environmental document, asserting that the relevance of the material is often obvious and that requiring this explanation would add burdensome paperwork without additional benefit. A commenter also asserted that the requirement defeats the purpose of incorporating material by reference.

CEQ disagrees with the commenters' assertions and makes the proposed addition in the final rule. CEQ adds the language to emphasize the importance of transparency regarding material that agencies incorporate by reference and rely upon as part of their analysis. Briefly explaining the relevance of incorporated material should not require substantial agency resources or lengthy text. Section 1501.11 already requires an agency to briefly summarize material that it incorporates by reference; briefly explaining the relevance of the material does not require additional analysis, but rather, only requires that the agency briefly document how the material is related to the agency action it is reviewing in an environmental document. While in some cases the relevance of material incorporated by reference may be obvious, in such cases, briefly explaining relevance will be a trivial task that may require no more than a sentence. Where the relevance of the material is not immediately obvious, a brief explanation will help better inform both the public and decision makers. CEQ disagrees that the requirement is burdensome or duplicative, and encourages agencies to integrate the description of relevance into the summary of the material.

Third, CEQ proposed to change ''may not'' to ''shall not'' in the third sentence to eliminate a potential ambiguity over

whether agencies must make material they incorporate by reference reasonably available for public inspection. One commenter supported the preclusion of incorporation by reference if the material is not reasonably available for public inspection. Another commenter requested that CEQ define ''reasonably available for inspection'' to clarify what information should be made available prior to public comment. In considering this comment, CEQ determined that it was more appropriate to revise the text in the final rule to improve clarity rather than define this phrasing from the 1978 regulations, and therefore changes ''inspection'' to ''review.'' CEQ does not intend this change in wording to be substantive, but rather to modernize the regulatory language and, thereby, improve clarity of the requirement. CEQ anticipates that agencies will generally make this material available electronically or online, though it may be appropriate for agencies to provide physical copies in certain circumstances such as for localized actions where internet access or bandwidth is limited.

Another commenter expressed support for incorporation by reference, but questioned whether the standard should allow agencies to incorporate by reference proprietary data. CEQ declines to change the ''reasonably available for review'' standard. Incorporation by reference is a tool that agencies can use to improve the efficiency of their environmental review process. However, it cannot be used to circumvent the public engagement, public comment, public access, and transparency requirements of NEPA and these regulations, including section 107(c)'s requirement that for an EIS, an agency must request public comment on ''alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action.'' 42 U.S.C. 4336a(c). CEQ therefore retains the requirement that has been in the NEPA regulations since 1978 that prohibits agencies from incorporating by reference material that is not reasonably available for review, including proprietary data that is not available for review and comment.

Another commenter recommended CEQ revise existing regulatory text in the third sentence. The commenter suggested CEQ replace ''within the time'' with ''at the beginning of and throughout the time'' asserting that the current language allows an agency to post documents near the end of the comment period. The commenter stated that documents should be available for the full comment period to allow for meaningful public review and comment. CEQ agrees that materials that are incorporated by reference should be reasonably available throughout the public comment period. CEQ is unaware of agencies incorporating by reference material that is not available throughout the comment period. However, CEQ agrees that the reasonable availability of material incorporated by reference is critical to the public comment process for EISs under the regulations and under section 107(c) of NEPA, which requires agencies preparing EISs to request public comment on ''relevant information, studies, or analyses with respect to the proposed agency action.'' 42 U.S.C. 4336a(c). Therefore, the final rule replaces the word ''inspection'' with ''review'' and the word ''within'' with the word ''throughout'' to remove any ambiguity over when the materials an agency incorporates by reference must be reasonably available to the public. The final rule also adds ''or public review'' after ''comment'' to make it clear that the material must be available while an environmental document is available for public review in those cases where the regulations do not require an agency to seek public comment. CEQ makes these changes in the final rule to ensure that material incorporated by reference, including research publications and data, is openly available and accessible to the public.

Fourth, CEQ proposed in the third sentence to add a reference to ''publicly accessible website'' as an example of a mechanism through which material incorporated by reference may be reasonably available to the public. CEQ did not receive any comments specific to this proposed example. CEQ makes this change in the final rule.

Finally, CEQ proposed to add a new fourth sentence encouraging agencies to provide digital references, such as hyperlinks, to incorporated material or otherwise indicate how the public can access the material for review. One commenter expressed support for the proposed inclusion of digital references. CEQ adds this sentence in the final rule.

A few commenters expressed general support for proposed § 1501.12. Another supportive commenter appreciated the emphasis on transparency and accessibility of material incorporated by reference, but suggested CEQ establish standards for the digital format of environmental documents and their underlying analysis to facilitate interagency information sharing and collaboration. CEQ appreciates the comment and notes that it is currently engaged in an eNEPA study, consistent with section 110 of NEPA, to assesses such issues. *See* 42 U.S.C. 4336d. Following the completion of that study, CEQ may issue guidance or consider additional rulemaking in the future to address these issues.

Another commenter requested that the regulations require agencies to disclose if the cited material is outdated, disputed, or not fully proven. CEQ declines to make this change. Agencies generally have an obligation under § 1506.6 and § 1502.21 for EISs to disclose any relevant assumptions or limitations of the information on which they rely, including information incorporated by reference. Imposing a distinct requirement for material that is incorporated by reference is unnecessary and could create confusion.

One commenter expressed agreement that incorporation by reference can cut down on bulk but indicated that CEQ should expand § 1501.12 to address other reasons to incorporate materials by reference, such as to reduce duplicative work and ensure efficient use of agency resources. The commenter also requested CEQ rephrase the section to ensure that agencies can use pre-existing documents to further the efficiency requirements of NEPA. While CEQ agrees that incorporation by reference also reduces duplicative work and facilitates efficient use of agency resources, CEQ does not consider it necessary to add additional text to the regulations to make these points as the regulations already emphasize efficiency and use of other documents. *See, e.g.,* §§ 1506.2, 1506.3.

Finally, a commenter asserted the proposed rule did not sufficiently address avoidance of duplication between the NEPA process and States' environmental review and permitting processes. The commenter requested that CEQ clarify in § 1501.12 that there is a presumption that agencies can incorporate by reference environmental studies prepared in accordance with State procedural requirements akin to NEPA. CEQ declines to make this change. Establishing a presumption that agencies can incorporate by reference States' materials would be confusing and is unnecessary because the language in § 1501.12 allows agencies to incorporate material generated by States, and § 1506.2 has long promoted elimination of duplication with State requirements.

D. Revisions To Update Part 1502, Environmental Impact Statements

CEQ proposed to revise several sections of part 1502, as discussed in section II.D of the NPRM. CEQ is not implementing any substantive changes to § 1502.3, but is revising the section title to read ''Statutory requirements for environmental impact statements.'' CEQ

is not making substantive changes to § 1502.6, Interdisciplinary preparation; § 1502.18, List of preparers; § 1502.19, Appendix; § 1502.20, Publication of the environmental impact statement; § 1502.22, Cost-benefit analysis; or § 1502.24, Environmental review and consultation requirements. CEQ received some comments on these sections but declines to make additional changes, as further explained in the Phase 2 Response to Comments.

1. Codification of 2023 GHG Guidance

CEQ invited comment on whether it should codify any or all of its 2023 National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change (2023 GHG guidance).[77] CEQ also invited comment on which provisions of part 1502 or other provisions of the CEQ regulations CEQ should amend if a commenter recommended codification of part of the guidance.

CEQ received numerous comments responding to this request for comments on codification of the 2023 GHG guidance. Comments expressed both support and opposition, with many commenters including general recommendations or considerations that did not specify what amendments to the rule CEQ should consider. Others identified specific text or concepts they recommended CEQ include. Some commenters resubmitted the same comments they submitted on the interim guidance, whereas others reiterated points they made as part of their comments on the interim guidance.

Some commenters requested that CEQ incorporate quantification and contextualization of climate effects from the guidance into the final rule, with specific suggestions for adding text to §§ 1502.16(a)(1), 1501.3(d), and 1508.1(g). Another commenter requested that CEQ modify § 1502.16(a)(7) to align the provision with the guidance for emphasizing quantification of emissions in determining reasonably foreseeable climate change-related effects. This commenter also recommended CEQ add provisions to § 1501.3 recognizing that while there is no particular threshold for GHG emissions that triggers an EIS, Federal agencies should quantify, where relevant, the reasonably foreseeable direct and indirect GHG emissions of their proposed actions and reasonable alternatives and the effects associated with those projected emissions in the determination of significance.

Another commenter asked that CEQ expand § 1502.6(a)(7) or § 1508.1(g)(4) to include key principles from the guidance. The commenter provided as an example that CEQ could clarify that climate change related effects should include analysis of reasonably foreseeable direct, indirect, and cumulative GHG emissions over the expected lifetime of the action.

Multiple commenters requested that CEQ add, in full, sections IV(B), (E), and (F); V; VI(A) through (C) and (E); and VII of the guidance. One commenter requested that CEQ strengthen proposed § 1502.15(b) and proposed § 1502.23(c) to require consideration of projections based on varying emissions scenarios and related variations in climate change effects on the proposed action and alternatives. The commenter referenced information included in the 2023 GHG guidance that provides important information on quantifying and analyzing uncertainty in the long-range projects of climate change. The commenter requested CEQ strengthen the final rule by codifying the need to manage this uncertainty and analyze it; otherwise, the commenter asserted, agencies may unlawfully seek to minimize or avoid analysis of long-range projects of climate change altogether.

One commenter requested that CEQ add consideration for proportionality and causality in the NEPA analysis of GHG-related impacts to more appropriately assign mitigation efforts to the true source of greenhouse gases. Another commenter suggested that CEQ integrate the warning against perfect substitution analysis from the guidance directly into the regulatory text. They also requested the rule include a provision on the appropriate use of the social cost of GHGs in climate change analyses.

Some commenters opposed codifying any part of the 2023 GHG guidance for multiple reasons. Two commenters expressed that inclusion of the guidance in the regulations would trigger concerns on overreach of the authority of the administrative branch. Other commenters expressed the view that CEQ should not codify any parts of the guidance until CEQ resolves policy issues and addresses the comments submitted on the guidance. A few other commenters were concerned that incorporation of climate change would unlawfully expand the scope of NEPA analyses past ''foreseeable effects'' and result in agencies prioritizing climate change above other environmental issues. One commenter expressed that because climate change science continues to evolve, it would be premature to codify the guidance and that retaining it as guidance would provide flexibility to continue to update the manner in which agencies address climate change in NEPA reviews as science evolves. Another commenter stated that codification of guidance would be arbitrary and capricious, and that NEPA was not intended to be a climate policy framework.

Two commenters stated that if CEQ does decide to codify all or part of the 2023 GHG guidance, CEQ should issue another NPRM to provide an opportunity for the public to comment prior to issuing a final rule, consistent with the APA. Similarly, a few other commenters stated that CEQ did not provide enough information about how CEQ may incorporate the guidance, including what parts of the guidance CEQ would include, and that any attempt to codify the interim guidance through the final rule would be contrary to CEQ's obligations under the APA.

A few commenters asserted that the guidance wrongfully elevates climate change and its effects, no matter how small the effect may be, and that this emphasis is inconsistent with the purpose of NEPA and recent NEPA amendments.

After considering the comments, CEQ has determined not to revise the text of the proposed rule in the final rule to codify the 2023 GHG guidance, with the exception of one revision on quantification that was requested by commenters and that is included in the final rule in § 1502.16. CEQ responds to the comments summarized here in the Phase 2 Response to Comments, and CEQ will consider these and the comments received on the 2023 GHG guidance during development of any final GHG guidance. If CEQ deems it appropriate, CEQ may consider codification of the 2023 GHG guidance in a future rulemaking.

2. Purpose of an Environmental Impact Statement (§ 1502.1)

CEQ proposed to divide § 1502.1 into paragraphs (a), (b), and (c) to enhance readability and amend the text in the section to restore the approach taken in the 1978 regulations regarding the purpose of EISs as they relate to NEPA.

In proposed paragraph (a), CEQ proposed to restore language from the 1978 regulations clarifying that one purpose of an EIS is to ''serve as an action-forcing device'' for implementing the policies set out in section 101 of NEPA by ensuring agencies consider the environmental effects of their action in decision making. 42 U.S.C. 4331. CEQ proposed these changes because Congress did not enact NEPA to create

[77] *See* CEQ, 2023 GHG Guidance, *supra* note 10.

procedure for procedure's sake; rather, NEPA's procedures serve the substantive policies and goals Congress established and restoring the action-forcing language would clarify how EISs serve this broader function. CEQ proposed this change for consistency with the proposed edits in § 1500.1. *See* section II.B.1.

One commenter expressed support for the proposed changes in paragraph (a), specifying that the action-forcing language captures the intent of NEPA and serves the substantive policies and goals established by Congress. Multiple commenters opposed the proposed changes in paragraph (a), asserting that the language is contrary to the procedural approach of NEPA, and that it elevates the goals of the Act above the statutory requirements of other legislation. One commenter requested CEQ replace the proposed clause at the end of the sentence with language stating that the goals of NEPA cannot and do not supersede the requirements of other Federal statutes. Specific to the restoration of the action-forcing language, one commenter opposed the language because they do not agree that an EIS could be an action-forcing device on its own. The commenter described that an environmental study could reveal information that could be action forcing but that an EIS itself should not be and that an EIS is a device used to disclose and study the environmental consequences of actions. Other comments expressed that the phrasing inappropriately inserts a substantive element into NEPA's procedural requirements.

CEQ disagrees with the assertions of the commenters opposing this change and restores the language from the 1978 regulations as proposed in § 1502.1(a). As CEQ articulated in the proposed rule, CEQ considers it appropriate to restore this text from the 1978 regulations to ensure that agencies use the information gathered and analyzed in an EIS in their decision-making processes. CEQ disagrees that this language, which was part of the 1978 regulations implemented by agencies and interpreted by courts for decades, imposes a substantive requirement inconsistent with the statute. This provision does not require agency decision makers to make any particular decision based on the information in an EIS; it only requires that the information in an EIS inform the agency's decision, which is consistent with NEPA, agency practice, and case law.

In proposed paragraph (b), CEQ proposed minor edits for clarity and consistency with other changes proposed throughout the regulations. CEQ proposed to change ''It'' to ''Environmental impact statements'' to improve readability in light of the proposal to break this section into lettered paragraphs. CEQ also proposed to change ''significant'' to ''important'' before ''environmental issues'' and insert ''reasonable'' before ''alternatives'' for consistency with similar phrasing throughout the regulations.

Two commenters requested that CEQ further revise paragraph (b). One requested that CEQ replace ''enhance'' with ''restore and maintain'' because the underlying statute does not put the burden on Federal decision makers or project sponsors to ''enhance'' the quality of the human environment. This commenter pointed to 42 U.S.C. 4331(a) and the language ''restoring and maintaining environmental quality.'' A second commenter requested CEQ replace ''avoid and minimize'' with ''reduce to the extent practical'' to conform to the plain language of the NEPA statute.

CEQ finalizes § 1502.1(b) as proposed. CEQ does not consider it necessary to further revise this paragraph as the commenters suggested because this language has been in the regulations since 1978, and CEQ is unaware of any confusion or practical or legal problems created by this language. In the absence of such confusion or problem, CEQ views the potential cost to agencies and applicants of assessing what, if any, change in practice is needed to accommodate revised text as likely to outweigh any potential benefit of the language proposed by the commenters.

In proposed paragraph (c), CEQ proposed to restore the 1978 language clarifying that an EIS is more than a disclosure document, and that agencies must use EISs concurrently with other relevant information to make informed decisions. CEQ considers this language to provide important direction to agencies to ensure that EISs inform planning and decision making and do not serve as a perfunctory check-the-box exercise.

One commenter expressed support for the changes in proposed paragraph (c) stating that it reinforces that EISs must state how alternatives and decisions will or will not achieve the requirements of NEPA, the CEQ regulations, and other environmental laws and policies. Another commenter expressed that the language regarding an EIS being more than a disclosure document suggests that something more than a disclosure of environmental impacts is required to comply with the regulations. The commenter asserted this is contrary to NEPA's original intent.

One commenter requested that CEQ delete the last sentence of the paragraph requiring agencies to use EISs in conjunction with other relevant material to plan actions and make decisions. The commenter asserted that the sentence is not tethered to the EIS review process but addresses agency efforts to plan actions and make decisions, and therefore, the commenter asserted, CEQ is inserting itself into ongoing activities beyond environmental review pursuant to NEPA.

CEQ makes the changes as proposed in § 1502.1(c) and adds ''involve the public'' to the last sentence directing agencies to use other material to plan actions and make decisions. As CEQ noted elsewhere in this final rule, CEQ disagrees that NEPA is merely a check-the-box exercise, and considers it appropriate to reinforce this point in the regulations. CEQ also declines to exclude the proposed last sentence of paragraph (c). This provision does not go beyond NEPA, but rather emphasizes that an EIS is one of the documents agencies must use in their decision-making processes along with other relevant documents.

3. Implementation (§ 1502.2)

CEQ proposed minor modifications to § 1502.2. First, CEQ proposed to restore from the 1978 regulations the introductory paragraph directing agencies to prepare EISs consistent with paragraphs (a) through (g) to achieve the purpose established in § 1502.1. While the 2020 rule removed this paragraph as unnecessary, upon reconsideration CEQ proposed to restore the language to provide clarity on the purpose of this section and improve readability.

One commenter expressed support for all of the proposed revisions in § 1502.2 to ensure that lead agencies explain in an EIS how alternatives and agency decisions will or will not achieve the requirements of NEPA, CEQ regulations, and other environmental policies. Further, the commenter characterized the proposed changes as necessary to facilitate NEPA's goals of transparency and public participation. CEQ appreciates the commenters' supportive statements and in the final rule adds the introductory paragraph to § 1502.2 as proposed.

Next, in paragraph (b), CEQ proposed to replace the word ''significant'' with ''important'' and add a reference to an EA for clarity and consistency. In paragraph (c), CEQ proposed to change ''analytic'' to ''analytical,'' and ''project size'' to ''the scope and complexity of the action'' since this provision is

applicable to more than projects, and the length of an EIS should be proportional to the scope and complexity of the action analyzed in the document.

One commenter expressed support for EISs being brief, concise, and no longer than necessary, but expressed concern over the language encouraging that the length of an EIS should be proportional to the effects and scope because this language conflicts with the page limits identified in § 1502.7. The commenter requested CEQ delete the sentence discussing proportionality to resolve any confusion.

CEQ disagrees with the commenter. The page limits provide the maximum length for EISs. Agencies should not automatically use every page allowable under the page limits and should not write documents longer than necessary. This statement acknowledges that some EISs may be less than the page limits.

CEQ proposed to delete ''as interpreted in'' before ''the regulations in this subchapter'' in paragraph (d), for consistency with the changes in §§ 1500.6 and 1502.9 as discussed in section II.B.6. The proposed rule explained that this phrase could inappropriately constrain agencies whose agency NEPA procedures go beyond the CEQ regulations. One commenter opposed the deletion of this language, expressing support for the inclusion of it to meet the spirit and flexibility of the 2020 rule.

CEQ removes ''as interpreted in'' from paragraph (d) in the final rule because CEQ considers this language inappropriately constricting and potentially causing confusion in light of changes CEQ is making to other provisions of the regulations allowing agencies to tailor their procedures to their programs and include more specific requirements and suggestions. Under the revisions, EISs must state how alternatives and decisions will or will not achieve the requirements of NEPA, the CEQ regulations, and other environmental laws and policies.

Finally, CEQ proposed to delete the word ''final'' in paragraph (f) because the regulations do not distinguish between a decision and final decision and, therefore, using the phrase ''final decision'' is inconsistent with use of ''decision'' elsewhere in the regulations. CEQ makes this change as proposed in the final rule.

4. Scoping (§ 1502.4)

As discussed in section II.C.8 on § 1501.9, ''Public and governmental engagement,'' section II.C.2 on § 1501.3, ''Determine the appropriate level of NEPA review,'' and section II.C.10 on § 1501.11, ''Programmatic environmental document and tiering,'' CEQ proposed to revise § 1502.4 by retitling it ''Scoping'' and moving provisions from 40 CFR 1501.9 (2020) to this section and moving the existing provisions of 40 CFR 1502.4 (2020), ''Major Federal actions requiring the preparation of environmental impact statements'' to §§ 1501.3 and 1501.11. CEQ proposed to move the requirements of scoping for EISs to part 1502, which addresses the requirements specific to EISs, while moving requirements for determining scope applicable to all environmental reviews to § 1501.3(b). CEQ also proposed to revise the provisions moved from 40 CFR 1501.9 (2020) to proposed § 1502.4 to align scoping with related changes made on public engagement in § 1501.9 and to add requirements focused on increasing efficiency in the EIS scoping process.

As discussed further in sections II.C.8 and section II.C.10, commenters were generally supportive of this approach. Commenters did provide a few targeted comments as discussed further in this section and the Phase 2 Response to Comments.

CEQ proposed these changes because it has heard from multiple Federal agencies that there is uncertainty over the differences between the scoping process required for EISs and other public involvement or engagement requirements for NEPA reviews more generally. By revising § 1501.9 on public and governmental engagement and moving the scoping provisions to § 1502.4, CEQ is emphasizing the importance of public engagement in the NEPA process generally, clarifying what requirements are specific to the scoping process for EISs, and clarifying what requirements and best practices agencies should consider regardless of the level of NEPA review.

First, CEQ proposed to move 40 CFR 1501.9(a) (2020), outlining the general purpose of scoping, to § 1502.4(a) and proposed to change the words ''significant'' and ''non-significant'' to ''important'' and ''unimportant,'' respectively, to align with CEQ's proposed change to only use the word ''significant'' when describing effects, which CEQ indicated was a clarifying, non-substantive change. CEQ finalizes this paragraph as proposed with three additional changes to replace the paragraph heading ''Generally'' with ''Purpose,'' to more accurately describe the paragraph; to add use of the word ''scoping'' in the first sentence to make clear that this sentence is describing the purpose of scoping; and to change ''may'' to ''should'' in the second sentence to address comments requesting clarification that scoping can and should begin prior to issuance of the NOI. This last change also emphasizes the importance for agencies to begin scoping work early to facilitate meeting the statutory two-year deadline for completing EISs. CEQ made clear in the 2020 regulations that scoping should begin as soon as practicable, so the agency can gather the requisite information to allow the public to provide meaningful input on the NOI, including on the topics specifically identified for inclusion in the notice in § 1502.4(e)(1) through (e)(10). Agencies cannot be reasonably expected to have this information available to them without beginning scoping prior to issuance of the NOI.

Second, CEQ proposed to move paragraph (c) of 40 CFR 1501.9 (2020) on scoping outreach to § 1502.4(b) and add an introductory sentence requiring agencies to facilitate notification to persons and agencies that may be interested or affected by an agency's proposed action, consistent with the public and governmental engagement requirements in proposed § 1501.9. CEQ finalizes this paragraph as proposed.

Third, CEQ proposed to move paragraph (b) of 40 CFR 1501.9 (2020) on cooperating and participating agencies to § 1502.4(c) and retitle it ''Inviting participation'' to better reflect that the paragraph covers cooperating and participating agencies as well as proponents of the action and other likely affected or interested persons. CEQ also proposed to strike the last sentence providing an example of when an agency might hold a scoping meeting.

Some commenters expressed concern for the removal of the language requiring cooperating and participating agencies be invited and consulted, and noted their specific reference in the NEPA statute. CEQ did not intend a substantive change by modifying the paragraph heading and notes that §§ 1501.7 and 1501.8 have long provided for the invitation of such agencies to serve as cooperating or participating agencies. In the final rule, CEQ adds a clause to the regulatory text to make clear that the invitation to Federal, State, Tribal, and local agencies and governments is to participate as cooperating or participating agencies. CEQ also notes that agencies invited to serve as cooperating or participating agencies should respond in a timely manner to facilitate the inclusion in the NOI of any information that these agencies may need as part of the scoping process.

A commenter also expressed confusion about the reference to ''the

proponent of the action'' since that is the lead agency. This phrase, which has been in the regulations since 1978, refers to an outside party such as a project sponsor or applicant. Therefore, in this final rule, CEQ revises this phrase to ''any applicant'' for consistency with the final rule's definition of ''applicant'' and includes ''any'' since not all actions will involve such parties.

Fourth, CEQ proposed to move paragraphs (f) and (f)(1) through (f)(5) of 40 CFR 1501.9 (2020), which addresses additional scoping responsibilities, to § 1502.4(d) and (d)(1) through (d)(5), respectively. Within this list, CEQ proposed modifications to paragraph (d)(1) to change ''significant'' to ''important'' to align with changes in paragraph (a) and the use of ''significant'' throughout the regulations, which CEQ intended to be a clarifying, non-substantive change. CEQ finalizes these changes consistent with its proposal. Additionally, in paragraph (d)(3) of the final rule, CEQ changes ''public'' EAs and other EISs to ''publicly available'' to clarify the meaning of this provision.

Fifth, CEQ proposed to move the requirements for an NOI from paragraphs (d) and (d)(1) through (d)(8) of 40 CFR 1501.9 (2020) to § 1502.4(e) and (e)(1) through (e)(8), respectively. CEQ proposed to delete the reference to 40 CFR 1507.3(f)(3) (2020) because CEQ proposed to remove that provision from the regulations, as discussed in section II.I.3 of the proposed rule. CEQ proposed to revise the language in paragraph (e)(7) for consistency with section 107(c) of NEPA requiring the NOI to include a request for public comment on alternatives or impacts and on relevant information, studies, or analyses, and proposed to delete the cross reference to § 1502.17 because CEQ proposed to broaden the language in § 1502.17. 42 U.S.C. 4336a(c). CEQ also proposed to delete the cross reference because it would no longer be necessary since CEQ proposed to remove the exhaustion process in 40 CFR 1500.3 (2020), which relied, in part, on this provision as the first step in that process. Lastly, CEQ proposed these edits because the purpose of scoping is to receive input from the public on the proposed action and alternatives as well as other information relevant to consideration of the proposed action, and CEQ considered the language in this paragraph to be redundant to the other required information in proposed paragraph (e). CEQ is finalizing these changes as proposed for the reasons set forth in the NPRM and this final rule. Also, CEQ revises paragraph (e)(1) to add the word ''agency'' between ''proposed action'' to align the text with changes to § 1502.13 and for consistency with section 107(d) of NEPA. *See* 42 U.S.C. 4336a(d).

Sixth, to this list of NOI requirements, CEQ proposed to add paragraph (e)(9) to require the lead agency to list any cooperating and participating agencies that have been identified at the time of the NOI, as well as any information those agencies require to facilitate their decisions or authorizations related to the EIS. CEQ proposed to add this requirement to ensure that lead and cooperating agencies communicate about any unique statutory or regulatory requirements of each agency so that the necessary information is included in the initial NOI and does not require re-issuance of a second NOI by the cooperating or participating agency. For example, the U.S. Forest Service's regulations regarding administrative review require the responsible official to disclose during the NEPA scoping process that a proposed project or activity or proposed plan, plan amendment, or plan revision is subject to one of its administrative review regulations. 36 CFR 218.7(a), 219.52(a). When the Forest Service acts as a cooperating agency and the lead agency does not include the necessary information in the NOI, the Forest Service then must issue its own NOI, which can add additional time to the NEPA process. CEQ is finalizing this proposal consistent with the NPRM.

Seventh, CEQ proposed to add paragraph (e)(10) to require that the NOI include a unique identification number for tracking purposes that would be carried forward in all other documents related to the action such as the draft and final EISs and ROD (comparable to the provision in § 1501.5(c)(4) requiring tracking numbers for EAs). As discussed in greater detail in section II.C.4, CEQ proposed this provision because identification numbers can help both the public and agencies track the progress of an EIS for a specific action as it moves through the NEPA process. In the final rule, CEQ has retained the proposal and, in response to comments, added a clause to also require use of the unique identification numbers in any agency databases or tracking systems.

Eighth, CEQ proposed to move and edit the second sentence regarding supplemental notices in 40 CFR 1507.3(f)(3) (2022) to paragraph (f), ''Notices of withdrawal or cancellation,'' to require that an agency publish in the **Federal Register** a notice of withdrawal of the NOI or a supplemental notice to inform the public that it is no longer considering a proposed action and, therefore, discontinuing preparation of an EIS. CEQ proposed this requirement to codify common agency practice and to increase transparency to the public. CEQ is finalizing this change as proposed because agencies should publish such notices if they withdraw, cancel, or otherwise cease the consideration of a proposed action before completing a final EIS in order to provide notice to the public that a proposed action is no longer under consideration. Such a notice does not need to be lengthy, but should clearly reference the original NOI, name of the project in the original notice, unique identification number, and who to contact for additional information.[78]

Finally, CEQ proposed to move paragraph (g) of 40 CFR 1501.9 (2020) on NOI revisions to § 1502.4(g), updating the cross references and changing ''significant'' to ''important'' and ''impacts'' to ''effects,'' which CEQ indicated was a clarifying, non-substantive edit. CEQ makes this change in the final rule, consistent with the NPRM to align the text with the changes to § 1502.9(d)(1)(ii).

5. Timing (§ 1502.5)

CEQ proposed to make three clarifying amendments to § 1502.5. First, in paragraph (a), CEQ proposed to add ''*e.g.,*'' in the parenthetical ''(go/no-go).'' CEQ proposed this amendment in response to agency feedback during the development of the proposed rule to clarify that the feasibility analysis and the ''go/no-go'' stage may not occur at the same point in time and may differ depending on what is included in the feasibility analysis and how the agency has structured that analysis. CEQ proposed this change for consistency with the longstanding practice that agencies have discretion to decide the appropriate time to begin the NEPA analysis, but also that agencies should integrate the NEPA process and other planning or authorization processes early. *See* § 1501.2(a).

Two commenters recommended CEQ delete the introductory paragraph of § 1502.5 encouraging agencies to commence preparation of an EIS as close as practicable to the time the agency is developing or receives a proposal, as well as the feasibility analysis and go/no-go language in

[78] *See, e.g.,* U.S. Forest Serv., Powell Ranger District; Utah; Powell Travel Management Project; Withdrawal of Notice of Intent to Prepare an Environmental Impact Statement, 87 FR 1109 (Jan. 10, 2022); U.S. Army Corps of Eng'rs, Withdrawal of the Notice of Intent to Prepare an Environmental Impact Statement for the Carpinteria Shoreline, a Feasibility Study in the City of Carpinteria, Santa Barbara County, CA, 86 FR 41028 (July 30, 2021).

paragraph (a). The commenters asserted that the feasibility analysis stage is generally considered an early stage of project management and suggested this stage was pre-proposal and therefore pre-NEPA. The commenters explained that this stage can and should take considerable time, and therefore should not be covered by the time limits, or agencies will likely miss the statutory deadlines. The commenters asserted that the NEPA process should not commence until this stage is completed. One of these commenters further pointed to the statutory definition of ''proposal'' added in 2023 and asserted this should be the starting point for the timing requirements for EISs and EAs. The commenter further asserted that CEQ should encourage pre-NEPA ''environmental considerations'' early in agency planning and decision making prior to issuing a NOI to file an EIS.

In the final rule CEQ revises § 1502.5(a) to revise ''at the feasibility analysis (go/no-go) stage'' to instead refer to the feasibility analysis or equivalent stage evaluating whether to proceed with the project. This revised text improves the clarity of the sentence and recognizes that feasibility analyses are not a component of project authorizations for every agency. The regulations have long encouraged agencies to integrate NEPA into their planning and decision-making processes. As CEQ advised in the 2020 regulatory revisions, agencies often begin ''pre-NEPA'' work before they make the formal determination to prepare an EIS by issuing a NOI. As discussed in section II.D.4, agencies must commence this work before issuing an NOI in order to meet the content requirements for an NOI. CEQ does not consider it necessary to delineate these phases in the regulations, as the commenter suggests, because agencies have decades of experience in developing EISs consistent with this provision, and CEQ is unaware of any agency concerns with or practical problems created by this provision.

Second, CEQ proposed to add ''complete'' in the first sentence of paragraph (b) to clarify that agencies must begin preparing an EIS after receiving a complete application, though agencies can elect to begin the process earlier if they choose to do so. CEQ also proposed to add ''together and'' in the second sentence of paragraph (b) to clarify further that agencies should work ''together and with'' potential applicants and other entities before receiving the application. CEQ proposed these changes based on its experience that early conversations and coordination among Federal agencies, the applicant, and other interested entities can improve efficiencies in the NEPA process and ultimately lead to better environmental outcomes. Additionally, CEQ noted that similar to the proposed change to paragraph (a), the proposed changes to paragraph (b) are consistent with other directions in the regulations to integrate the NEPA process and other processes early. *See* §§ 1500.5(h)–(i), 1501.2(a).

One commenter requested CEQ revise paragraph (b) in order to ensure there are no unnecessary delays in proceeding. The commenter suggested language be added to require agencies to commence review of the application and decide on its completeness within 30 days and issue a NOI within 6 months. The commenter also requested CEQ add language requiring agencies to establish objective measures in their regulations for determining when an application is complete.

CEQ declines to add this level of specificity in its regulations because the regulations apply to a broad range of agencies and contexts, and these specific requirements may not work for all of them. Instead, it is best left to agency-specific NEPA procedures or agency program regulations to articulate these sorts of deadlines. In the final rule, CEQ adds ''complete'' in paragraph (b) consistent with its proposal.

6. Page Limits (§ 1502.7)

CEQ proposed to amend § 1502.7, to align the text with section 107(e) of NEPA, which sets page limits for EISs at 150 pages or 300 pages for proposals of extraordinary complexity, not including citations or appendices. 42 U.S.C. 4336a(e). CEQ proposed to remove the requirement for the senior agency official of the lead agency to approve longer documents for consistency with the statute, which does not provide a mechanism to approve longer documents.

CEQ received a number of comments on page limits. Some commenters expressed concerns that the page limits would prevent agencies from conducting the requisite analysis under NEPA. Some of those commenters requested that CEQ retain the provision allowing the senior agency official to authorize an exceedance of the page limits. Other commenters expressed support for the page limits and requested that CEQ impose additional requirements to ensure agencies do not circumvent the page limits. Commenters also requested CEQ define ''extraordinary complexity.''

CEQ makes the changes as proposed in the final rule. The NEPA statute sets clear page limits for EAs and EISs and does not establish a mechanism for exceeding those page limits. Allowing senior agency officials to approve an exceedance of the page limits would undermine the direction in the statute and CEQ's longstanding goals of developing concise, readable NEPA documents that will inform the decision maker and the public. CEQ is confident that agencies can both meet page limits and fully consider the elements required by the statute and these regulations.

CEQ has long encouraged and continues to strongly encourage agencies to prepare EISs that are both comprehensive and informative, as well as understandable, to the decision maker and the public. Agencies should consider establishing within their procedures mechanisms to do so that will be most effective for their programs and activities. These mechanisms could include placing technical analyses in appendices and summarizing them in plain language in the EIS; making use of visual aids, which are excluded from the definition of ''page'' provided by § 1508.1(bb), including sample images, maps, drawings, charts, graphs, and tables; and using interactive documents, insets, colors, and highlights to create visually interesting ways to draw attention to key information and conclusions. Agencies should consider making EISs and technical appendices machine readable, where possible and feasible, to facilitate data sharing and reuse in future analyses.

7. Writing (§ 1502.8)

CEQ proposed minor edits to § 1502.8 to change ''may'' to ''should'' and change ''graphics'' to ''visual aids or charts'' for consistency with modifications proposed in § 1502.12 regarding visual aids or charts. One commenter expressed support for the proposed changes to require agencies to use plain language and encourage use of visual aids and charts. However, this commenter stated that use of visual aids and charts must be designed to be understandable to non-technical audiences, pointing to documents they have reviewed that included tables that are difficult to understand.

CEQ makes the edits as proposed in § 1502.8 in the final rule. The CEQ regulations have long required agencies to write environmental documents in plain language as a means to preparing readable, concise, and informative documents. *See, e.g.,* §§ 1500.4 and 1502.8. Agencies commonly use visual aids, such as graphics, maps, and pictures, throughout their environmental documents. CEQ agrees with the commenters that the visual

aids and charts must be understandable but does not consider it necessary to make additional changes to the regulatory text since the text indicates that the purpose of visual aids and charts is to enable decision makers and the public to readily understand the EIS. EISs must be written in plain language, and this requirement would also apply to visual aids and charts.

8. Draft, Final, and Supplemental Statements (§ 1502.9)

CEQ did not propose any substantive changes to paragraph (a) of § 1502.9 and did not receive any comments on it. Therefore, CEQ finalizes paragraph § 1502.9(a) as proposed.

CEQ proposed to revise paragraph (b) addressing draft EISs by deleting ''as interpreted'' from the requirement that draft EISs meet the requirements for final EISs in section 102(2)(C) of NEPA ''as interpreted in the regulations in this subchapter.'' 42 U.S.C. 4332(2)(c). CEQ proposed to delete this clause as inappropriately restrictive and for consistency with the same proposed change in §§ 1500.6 and 1502.2. CEQ makes this change in the final rule for the reasons discussed in section II.B.6 with respect to deleting the same phrase in § 1500.6.

CEQ also proposed to add the phrase ''the agency determines that'' to the introductory clause of the third sentence of § 1502.9(b) so that the beginning of the sentence would read, ''If the agency determines that a draft statement is so inadequate as to preclude meaningful analysis.'' CEQ proposed this addition to clarify that it is the agency preparing a draft EIS that determines a draft statement requires supplementation to inform its decision-making process.

A commenter suggested additional language for the second sentence of paragraph (b) to clarify that a lead agency must work with a cooperating agency to develop the proposed action and subsequent range of all alternatives. Another commenter recommended CEQ add the phrase ''may identify a preferred alternative'' to the end of § 1502.9(b) to clarify that agencies have the authority to identify a preferred alternative in a draft EIS.

In the final rule, CEQ revises paragraph (b) consistent with its proposed clarifying changes. CEQ declines to make the edits suggested by the commenters as §§ 1501.7 and 1501.8 address the roles of lead and cooperating agencies, and § 1502.14(d) already requires agencies to identify a preferred alternative or alternatives in the draft EIS, if one or more exists.

In § 1502.9(c), CEQ proposed to clarify that a final EIS should ''consider and respond'' to comments rather than just ''address'' them, thereby restoring language from the 1978 regulations and aligning the language with text in § 1503.4(a) regarding consideration of comments. The proposed rule explained that the 2020 rule did not explain the change from ''consider and respond'' to ''address,'' [79] and CEQ is concerned that it could be read as weakening the standard for responding to comments within § 1502.9 and in § 1503.4. CEQ makes this change in the final rule for consistency with § 1503.4(a).

One commenter suggested that CEQ replace ''responsible opposing view'' in paragraph (c) with ''relevant and non-frivolous opposing view'' to promote transparency and remove subjectivity regarding the definition of ''responsible.'' In the final rule, CEQ revised paragraph (c) consistent with its proposed clarifying changes. CEQ declines to change ''responsible,'' which has been in the regulations since 1978, and CEQ has not heard that there is confusion regarding the meaning of this term or that it is creating practical problems for agencies implementing NEPA or the public seeking to participate in NEPA reviews. CEQ interprets this phrasing to mean that there is a reasoned basis for the opposing view, not one that is arbitrary.

Paragraph (d) of § 1502.9 and its subparagraphs address the standards for supplemental EISs. While CEQ did not propose changes to paragraph (d)(1), a commenter suggested that the phrase ''if a major Federal action remains to occur'' is vague. In the final rule, CEQ revises the text in paragraph (d)(1) addressing when an agency has to consider a supplemental EIS. In the 2020 rule, CEQ added a clause to specify that agencies prepare supplements if an action ''remains to occur.'' Upon further consideration, CEQ revises this phrase in the final rule to ''is incomplete or ongoing'' to provide more clarity and specifically identify the circumstances when an agency needs to consider supplementation. CEQ intends the phrase ''incomplete and ongoing'' to have the same substantive meaning as ''remains to occur,'' and notes that courts have used both phrases. *See, e.g., Marsh* v. *Or. Nat. Res. Council,* 490 U.S. 360, 373 (1989) (holding that supplementation may be required ''[i]f there remains major Federal action to occur''; *Norton* v. *S. Utah Wilderness All.,* 542 U.S. 55, 73 (2004) (citing *Marsh* and holding that an agency is not required to supplement when the action in question is ''completed,'' and is no longer ''ongoing'').

In paragraph (d)(1)(ii), CEQ proposed to replace the word ''significant'' with ''important'' and ''impacts'' with ''effects'' (except where ''impact'' is used as part of the term FONSI) for consistency, as discussed in section II.A. CEQ also proposed to add ''substantial or'' before ''important new circumstances or information,'' for consistency with language in section 108(1) of NEPA, which confirms that an agency may rely on the analysis in an existing programmatic environmental document for five years without having to supplement or reevaluate the analysis, provided no substantial new circumstances or information exists. 42 U.S.C. 4336b(1).

Two commenters indicated that the proposed rule does not align with the statutory language in section 108 of NEPA regarding supplementation and reevaluation, because that section does not include the words ''or important'' before ''new circumstances.'' *See* 42 U.S.C. 4336b. Two commenters opposed the replacement of ''significant'' with ''substantial,'' expressing concern that it will increase uncertainty. A few commenters also requested that CEQ add definitions for ''substantial changes,'' ''substantial or important new circumstances,'' and ''environmental concerns are not substantial.''

In the final rule, CEQ revises paragraph (d)(1)(ii) by replacing ''significant'' with ''substantial'' to track the language of section 108(1) of NEPA requiring agencies to supplement if there are substantial new circumstances or information about the significance of adverse effects that bear on the analysis. 42 U.S.C. 4336b(1). CEQ interprets this language as consistent with the longstanding standard for supplementation and considers it a non-substantive change that clarifies one of the standards for supplementation of an EIS. Directly incorporating the language from section 108(1) of NEPA also avoids creating an implication that there are different supplementation standards for programmatic environmental documents and other environmental documents. As noted, the language in section 108(1) is consistent with longstanding practice, so there are not different standards for supplementation for programmatic environmental documents. 42 U.S.C. 4336b(1). This approach also obviates the need for the definitions requested by commenters because agencies have extensive experience applying the supplementation standard.

One commenter suggested that CEQ revise § 1502.9(d)(1)(ii) to clarify that

[79] *See* CEQ, 2020 Final Rule, *supra* note 39, at 43364–65.

supplementation is not limited to new environmental effects and that it also would apply to situations where the purpose and need or the alternatives are changed. CEQ declines to edit this paragraph to clarify this point because this scenario would be covered by the other criterion for supplementation in paragraph (d)(1)(i). Consistent with existing agency practice, agencies should continue to focus on whether a change to the proposed action could have environmental effects that have not been analyzed in determining whether changes to the proposed action require supplementation.

Another commenter noted that the cross-reference to the Emergencies section, § 1506.11, was incorrect in proposed paragraph (d)(3). In the final rule, CEQ fixes the cross reference and revises ''alternative procedures'' to ''alternative arrangements'' for consistency with the phrasing of § 1506.11.

CEQ proposed to redesignate paragraph (d)(4) of 40 CFR 1502.9 (2020) as paragraph (e) of § 1502.9 and title it ''Reevaluation'' to clarify that reevaluation is a separate tool to document new information when supplementation is not required. CEQ proposed to add in paragraph (e) that agencies may ''reevaluate'' an EIS in part to determine that changes to the proposed action or new circumstances or information relevant to environmental concerns are not ''substantial'' or ''that the underlying assumptions of the analysis remains valid,'' and therefore, the agency does not need to prepare a supplemental EIS. CEQ proposed this language in part for consistency with section 108(2) of NEPA's rule that an agency may rely on programmatic documents that are more than five years old if it reevaluates the underlying analysis. 42 U.S.C. 4336b(2). However, while section 108(2) requires reevaluation for programmatic documents more than five years old, CEQ proposed to leave agencies discretion over whether and when to reevaluate non-programmatic documents. 42 U.S.C. 4336b(1).

One commenter requested that CEQ revise paragraph (e) to clarify that when agencies reevaluate their NEPA documents, supplementation is required if the changes are substantial or the underlying assumptions of the analysis do not remain valid. A couple of commenters requested specific wording changes, including adding ''or important'' after ''substantial'' in the first sentence of paragraph (e) and changing ''the agency should'' to ''the agency must document the finding.'' Another commenter asked CEQ to revise paragraph (e) to clarify that new circumstances or information in the absence of a major Federal action do not trigger a requirement to reevaluate an EIS. Another commenter recommended language to clarify that reevaluation should only be permitted in circumstances for which the proposed action has not changed physical location.

In the final rule, CEQ revises paragraph (e) to simplify the paragraph on reevaluation and provide that agencies may reevaluate EISs to determine that supplementation is not required. This text is substantively the same as the proposed rule, but avoids unnecessary repetition of the standard for supplementation and avoids any potential confusion that there is an independent standard for reevaluation. Agencies may use reevaluation to document why a change to an action or new information does not require supplementation. Additionally, agencies may use reevaluation to conduct additional analysis to determine whether the change to the action or the new information meets either of the criteria for supplementation; in such cases, the agency would then prepare a supplemental EIS. Some agency procedures already provide such processes and § 1507.3(c)(10) provides that agencies must include such processes in their NEPA procedures, as appropriate. CEQ revises the last sentence of paragraph (e) to clarify that agencies also may prepare a supplemental EA and FONSI to reevaluate an EIS. Some agencies already do this in practice, and CEQ is revising this language in the final rule to codify the practice.

One commenter provided general feedback on § 1502.9 recommending CEQ include language requiring that final EISs and reevaluated EISs adhere to the regulatory requirements in place at the time the agency develops the supplement. CEQ declines to make these changes as agencies are in the best position to determine which regulatory requirements apply on a case-by-case basis, consistent with § 1506.12, which addresses the effective date of the final rule.

9. Recommended Format (§ 1502.10)

In § 1502.10, CEQ proposed to revise the recommended format of an EIS. CEQ proposed to add cross references to the relevant regulatory sections at the end of paragraphs (a)(1), (a)(2), and (a)(4) through (a)(6). In paragraph (a)(7), CEQ proposed to strike the reference to ''submitted alternatives, information, and analyses'' given the proposed revisions to § 1502.17. CEQ proposed to move appendices to paragraph (a)(7), include the summary of scoping information required by § 1502.17 and the list of preparers required by § 1502.18 in appendices, rather than the main body of the EIS, and add cross references to the relevant regulatory sections. Therefore, CEQ proposed to strike paragraphs (a)(8) and (a)(9) of 40 CFR 1502.10 (2020) referencing the list of preparers and appendices since these lists would be addressed in paragraph (a)(7). Finally, CEQ proposed to revise paragraph (b) to require agencies to include all of the sections referenced in paragraph (a) if they choose to use a different format.

CEQ received minimal comments on the proposed changes to § 1502.10, and the few comments submitted expressed support for the proposed changes. One commenter also requested that CEQ require the EIS format for EAs. CEQ makes the changes to § 1502.10 as proposed. CEQ declines to apply this section to EAs as well because § 1501.5 already addresses the required sections of an EA.

10. Cover (§ 1502.11)

CEQ proposed to revise § 1502.11(a) to clarify that the list of ''responsible agencies'' on an EIS cover are the ''lead, joint lead, and any cooperating agencies.'' CEQ did not receive comments specific to this proposal but has added the phrase ''to the extent feasible'' before ''any cooperating agencies'' to address the rare circumstance in which there may be such a large number of cooperating agencies that listing all of them on the cover would make the cover unreadable. In such circumstances, an agency may include a note on the cover that identifies where in the EIS a list of the cooperating agencies is found.

Consistent with the proposed change in § 1502.4(e)(10) to require a unique identification number for tracking purposes, CEQ proposed to amend paragraph (g) to require the cover to include the identification number identified in the NOI. As discussed further in sections II.C.4 and II.D.4, CEQ is including the requirement for unique identification numbers in the final rule, and therefore adds this requirement to § 1502.11(g) as proposed. The inclusion of the identification number on the cover clarifies the relationships of documents to one another, helps the public and decision makers easily track the progress of the EIS as it moves through the NEPA process, and facilitates digitization and analysis.

CEQ proposed to strike the requirement in paragraph (g) of 40 CFR 1502.11 (2020) to include on the cover

of the final EIS the estimated preparation cost. Multiple agencies requested this change during development of the proposed rule. The 2020 rule added this requirement stating that including estimated total costs would be helpful for tracking such costs, and that agencies could develop their own methodologies for tracking EIS preparation costs in their agency NEPA procedures.[80] However, Federal agency commenters stated that agencies typically do not estimate total costs, that they are difficult to monitor especially when applicants and contractors are bearing some of the cost, that the methodology for estimating costs is inconsistent across agencies, and that providing these estimates would be burdensome. At least one agency commenter noted that agencies inconsistently implemented a similar requirement in E.O. 13807,[81] which undermined the utility of the estimates, that tracking costs added a significant new burden on staff, and that it was not clear whether tracking such costs provided useful information for agencies or the public.

Commenters both supported and opposed the proposal to remove the requirement to include the estimated preparation costs on the cover of the final EIS. Commenters who supported removing the requirement stated that the requirement added in 2020 imposed a substantial administrative burden on agencies and increased the length of the EIS preparation process because accurately tracking the total cost of preparation is difficult and labor-intensive. A few commenters expressed support for removing the requirement but suggested that, in order to facilitate transparency, CEQ could encourage agencies to include estimated cost information in the EIS, indicating this information could easily be included in an appendix.

Commenters who opposed the removal expressed that the requirement improves transparency and accountability and also suggested that tracking costs can improve the efficiency of the NEPA process. One commenter also asserted that CEQ failed to explain why it is no longer necessary to fulfill the data gap that was outlined in the 2020 rulemaking as a basis for adding the requirement.

As stated in the proposed rule, CEQ does not consider EIS costs to be germane to the purpose of an EIS. Requiring that they be included on the cover could incorrectly lead the public and decision makers to believe that those costs provide information about the proposed action addressed in the EIS. In general, the purpose of the cover is to indicate the subject matter of the document and provide the public with an agency point of contact, provide a short abstract of the EIS, and indicate the date by which the public must submit comments. Further, CEQ was concerned that requiring agencies to calculate costs may unnecessarily add time and expense to the EIS preparation process, particularly where aspects of an environmental review serve multiple purposes, and allocating costs to NEPA compliance and other obligations may be complicated.

CEQ recognizes the value in gathering information on overall costs, trends in costs, and approaches that can reduce costs, as this can provide a full picture of how and whether agencies are effectively using their resources, including to conduct environmental reviews. Each agency should track and monitor these costs through their own procedures and mechanisms and consult with CEQ about any lessons learned to inform CEQ's ongoing evaluation of the efficiency and effectiveness of the NEPA process. However, CEQ does not consider requiring in the NEPA regulations that agencies publish costs on the cover of EISs to be the appropriate mechanism to develop that information.

CEQ considered the comments it received and is removing the requirement to include costs from paragraph (g). Removing this requirement does not preclude agencies from developing cost information or including it in an EIS if they deem it appropriate, but CEQ is concerned that the increased administrative burden of tracking costs, including the potential additional time needed to gather information, will unnecessarily delay NEPA processes. Further, the lack of consistent methodology across agencies coupled with the significant burden to develop consistent methodology, for which CEQ lacks the specialized expertise to do so, limits the utility of requiring agencies to present this information.

11. Summary (§ 1502.12)

CEQ proposed modifications to § 1502.12 to clarify the purpose of the summary and update what elements agencies should include in the summary, with a goal of creating summaries that are more useful to the public and agency decision makers. CEQ proposed these changes so that the summary would provide the public and agency decision makers with a clear, high-level overview of the proposed action and alternatives, the significant effects, and other critical information in the EIS.

In the second sentence of § 1502.12, CEQ proposed to replace the word ''stress'' with ''include'' in describing the contents of the summary to clarify that an adequate and accurate summary may include more than what is listed in § 1502.12. Next, CEQ proposed to clarify that the summary should ''summarize any disputed issues,'' ''any issues to be resolved,'' and ''key differences among alternatives.''

CEQ proposed these changes to provide the public and decision makers with a more complete picture of the disputed issues, rather than focusing on ''areas of'' disputed issues, and to facilitate informed decision making and transparency. CEQ also proposed these edits for consistency with § 1502.14(b), which requires agencies to discuss alternatives in detail. CEQ explained in the proposed rule that summarizing the key differences between alternatives would enhance the public's and decision makers' understandings of the relative trade-offs between the alternatives that the agency considered in detail.

One commenter expressed concern with CEQ's proposal stating that summarizing ''any'' issue trivializes the analytical process and makes the summary more like a catalog of issues raised, regardless of how ill-informed or baseless the issues may be.

CEQ finalizes the changes as proposed. CEQ disagrees with the commenter's interpretation of the use of the term ''any.'' CEQ's intent in using the qualifier ''any'' is to acknowledge that some EISs will not have any disputed issues or issues for resolution. It is not CEQ's intent for agencies to include a laundry list of every minor issue. Rather, CEQ intends the summary to explain the big-picture and important issues that the EIS addresses.

CEQ also proposed to add language to the second sentence to require that the summary identify the environmentally preferable alternative or alternatives. CEQ proposed this addition to enhance the public's and decision makers' understandings of the alternative or alternatives that will best promote the national environmental policy, as expressed in section 101 of NEPA, by providing a summary of that alternative early on in the document. As discussed further in section II.D.13, CEQ is finalizing its proposal to require agencies to identify the environmentally preferable alternative in the EIS, and therefore finalizes this addition to § 1502.12 as proposed.

[80] *Id.* at 43329.

[81] E.O. 13807, *supra* note 14.

CEQ proposed to add a third sentence to § 1502.12 to require agencies to write the summary in plain language and encourage use of visual aids and charts. CEQ proposed this addition to make EIS summaries easier to read and understand.

One commenter expressed support for the proposed changes to require agencies to write the summary in plain language and to encourage use of visual aids and charts. However, this commenter stated that agencies must design their use of visual aids and charts to be understandable to non-technical audiences, pointing to documents they have reviewed that included tables that are difficult to understand.

CEQ adds the proposed sentence to § 1502.12 in the final rule. The CEQ regulations have long required agencies to write environmental documents in plain language as a means to preparing readable, concise, and informative documents. *See, e.g.,* 40 CFR 1500.4 and 1502.8 (2019). Agencies commonly use visual aids, such as graphics, maps, and pictures, throughout their environmental documents. CEQ agrees with the commenters that visual aids and charts should be understandable but does not consider it necessary to make additional changes to the regulatory text. Section 1502.8 explains that agencies should use visual aids or charts in EISs so that decision makers and the public can readily understand them, which includes in the summary.

Finally, similar to other changes regarding page limits, CEQ proposed to allow agencies flexibility in the length of a summary. CEQ proposed to remove the 15-page limitation on summaries and instead to encourage that summaries not exceed 15 pages. Although summaries should be brief, CEQ acknowledged with this proposed change that some proposed actions are more complex and may require additional pages.

One commenter suggested that CEQ require the summary to include a consistency analysis that compares the proposed action and alternatives with applicable State and county resource management plans and State statutes. To accommodate their suggestion, the commenters indicated that the page limit might need to be adjusted to more than 15 pages.

CEQ makes the change to the length of summaries as proposed to provide agencies with flexibility to vary the length of documents based on the complexity of the action. Because summaries count toward the page limits set in § 1502.7, agencies have an incentive to keep summaries as short as possible while providing necessary information to the public and decision makers. While CEQ declines to require the summary to include a consistency analysis per the commenter's suggestion because it is inappropriately specific for government-wide regulations, the additional flexibility for length would accommodate such an approach, should an agency choose to do so.

12. Purpose and Need (§ 1502.13)

CEQ proposed to revise § 1502.13 to align the language with the text of section 107(d) of NEPA, which requires an EIS to include a statement that briefly summarizes the underlying purpose and need for the proposed agency action. *See* 42 U.S.C. 4336a(d).

CEQ received multiple comments requesting that CEQ revise § 1502.13 to revert to the 2020 rule's language providing that when an agency's statutory duty is to review an application for authorization, the agency must base the purpose and need on the applicant's goals and the agency's authority. CEQ revised this language in the Phase 1 rulemaking and declines to restore the 2020 language for the reasons discussed in the Phase 1 rulemaking, the Phase 1 Response to Comments, and the Phase 2 Response to Comments. Additionally, CEQ declines to include this language in the final rule because it is inconsistent with section 107(d) of NEPA. 42 U.S.C. 4336a(d). CEQ revises § 1502.13 as proposed.

One commenter requested CEQ clarify that the purpose and need of a proposed action should define or limit the reasonableness of the range of alternatives, which is identified in the statutory amendments. CEQ addresses alternatives in § 1502.14 and declines to edit this section to address alternatives. Another commenter requested CEQ add a direction for agencies to use narrow purpose and need statements that limit the potential reasonable alternatives. CEQ declines to make this change because it would be inconsistent with section 107(d) of NEPA and would undermine the discretion and judgment that agencies appropriately exercise in defining the purpose and need for their actions. *See* 42 U.S.C. 4336a(d).

13. Alternatives Including the Proposed Action (§ 1502.14)

CEQ proposed revisions to § 1502.14 to promote the rigorous analysis and consideration of alternatives. To that end, CEQ proposed to reintroduce to § 1502.14 much of the 1978 text that the 2020 rule removed and to modernize it to ensure agency decision makers are well-informed. Many commenters on the Phase 1 rule requested CEQ revise this provision to revert to the 1978 language or otherwise revise it to ensure agencies fully explore the reasonable alternatives to their proposed actions.[82]

First, CEQ proposed to revise the introductory paragraph of § 1502.14 to reinstate the language from the 1978 regulations that provided that the alternatives analysis ''is the heart of the environmental impact statement.'' As CEQ explained in the NPRM, while the 2020 rule described this clause as ''colloquial language'' to justify its removal,[83] CEQ has reconsidered its position and now considers the language to be an integral policy statement that emphasizes the importance of the alternatives analysis to allow decision makers to assess a reasonable range of possible approaches to the matters before them, and notes that numerous court decisions quoted this language from the 1978 regulations in stressing the importance of the alternatives analysis. *See, e.g., Wyoming* v. *U.S. Dep't of Agric.,* 661 F.3d 1209, 1243 (10th Cir. 2011). The proposed rule also noted that numerous commenters on the 2020 rule and the 2022 Phase 1 rule supported the inclusion of this language.[84]

Multiple commenters supported restoring the language that describes the alternatives section as the heart of the EIS, citing pre-1978 case law and asserting that without evaluation of reasonable alternatives, the NEPA process loses its potential to truly inform better decision making. Another commenter asserted that robust analysis of the relative environmental effects of a range of reasonable alternatives is necessary to ensure the EIS serves the regulatory purpose of providing for meaningful public input and informed agency decision making. In the final rule, CEQ reinstates the language from the 1978 regulations to the introductory paragraph of § 1502.14, as proposed.

Second, CEQ proposed a clarifying edit in the second sentence of the introductory paragraph to replace ''present the environmental impacts'' with ''identify the reasonably foreseeable environmental effects'' for consistency with § 1500.2(e) and section 102(2)(C)(i) of NEPA. 42 U.S.C. 4332(2)(C)(i). CEQ did not receive comments specific to this proposal and makes this change in the final rule.

Third, in the introductory paragraph, CEQ proposed to add a third sentence

[82] *See* CEQ, Phase 1 Response to Comments, *supra* note 52, at 162.

[83] *See* CEQ, 2020 Final Rule, *supra* note 39, at 43330.

[84] *See, e.g.,* CEQ, 2020 Response to Comments, *supra* note 69, at 274; CEQ, Phase 1 Response to Comments, *supra* note 52, at 55.

stating that the alternatives analysis should sharply define issues for the decision maker and the public and provide a clear basis for choice among the alternatives. CEQ proposed reintroducing this language from the 1978 regulations because it provides an important policy statement, concisely explaining the goals of the alternatives analysis. CEQ received generally supportive comments on this proposal, and CEQ makes this edit to the third sentence of the introductory paragraph in the final rule.

Fourth, CEQ proposed in paragraph (a) to restore from the 1978 regulations the clause that agencies must ''rigorously explore and objectively evaluate'' reasonable alternatives at the beginning of the first sentence. CEQ proposed to reinsert this language because it provides a standard that agencies have decades of experience applying in the analysis of alternatives.

Some commenters expressed general support for restoring the requirement to rigorously explore and objectively evaluate reasonable alternatives in paragraph (a). Other commenters opposed the restoration of this language, asserting that it is arbitrary and subjective and has the potential to increase litigation over whether an agency met the subjective test of rigorous and objective evaluation. CEQ makes this change in the final rule because restoring this language will help ensure agencies conduct a robust analysis of alternatives and their effects, rather than a cursory, box-checking analysis.

One commenter asserted that the first sentence of paragraph (a) should refer to the definition of ''reasonable alternatives'' to make it clear that alternatives proposed in scoping that do not meet the purpose and need and that are not technically and economically feasible should be eliminated from further consideration. CEQ declines to add a cross reference to the definition of ''reasonable alternatives'' as unnecessary because the phrase ''reasonable alternatives'' is a defined term in the regulations, and the definition applies whenever the regulations use the term.

Fifth, CEQ proposed to add two additional sentences to paragraph (a). CEQ proposed the first sentence to clarify that agencies need not consider every conceivable alternative to a proposed action, but rather must consider a reasonable range of alternatives that fosters informed decision making. CEQ proposed to add this sentence to replace the first sentence in paragraph (f) of 40 CFR 1502.14 (2020), which required agencies to limit their consideration to a reasonable number of alternatives. CEQ proposed this language for consistency with longstanding CEQ guidance [85] and to reinforce that the alternatives analysis is not boundless; the key is to provide the decision maker with reasonable options to ensure informed decision making. CEQ did not receive specific comments on this proposed change and adds the proposed new sentence to § 1502.14(a).

CEQ also proposed a second new sentence in paragraph (a) to clarify that agencies have the discretion to consider reasonable alternatives not within their jurisdiction, but NEPA and the CEQ regulations generally do not require them to do so. CEQ explained that such alternatives may be relevant, for instance, when agencies are considering program-level decisions [86] or anticipate funding for a project not yet authorized by Congress.[87]

Several commenters opposed this proposal, asserting that if an agency has no authority to implement an alternative, it is unreasonable, and the agency should not consider it. One commenter stated that NEPA is a procedural statute that does not confer substantive authority; as such, NEPA cannot authorize an agency to pursue an action that is otherwise not authorized. Some commenters characterized consideration of alternatives outside the agency's jurisdiction as inefficient and a waste of agency resources. Others expressed that allowing consideration of such alternatives would be contrary to law, and the alternatives would not be consistent with the purpose and need of the proposal. Multiple commenters stated that *Public Citizen* supports the proposition that an agency's NEPA analysis is properly limited by the scope of the agency's authority and that, as such, CEQ's proposed language is in tension with this ruling as well as other case law. However, other commenters stated the opposite—that case law has well established that agencies may and in some cases must consider alternatives beyond the agency's jurisdiction.

CEQ adds this second new sentence to the end of § 1502.14(a) in the final rule to acknowledge that in limited situations, it may be appropriate for an agency to consider an alternative outside its jurisdiction. As noted in the proposed rule, CEQ anticipates that such consideration will occur relatively infrequently and notes that such alternatives would still need to be technically and economically feasible and meet the purpose and need for the proposed action, consistent with the definition of ''reasonable alternatives.'' CEQ's revision is intended to strike a balance; the final rule does not require agencies to consider alternatives outside their jurisdiction or preclude agencies from doing so. Further, the final rule retains the qualification that the agency need only consider reasonable alternatives.

Some commenters requested CEQ revise § 1502.14(a) to expressly comply with the statutory direction that alternatives must be technically and economically feasible and must meet the purpose and need of the proposal. 42 U.S.C. 4332(2)(C)(iii). The commenters stated the alternatives that do not meet those criteria are not consistent with the statute. CEQ declines to add additional language in § 1502.14(a) because the definition of ''reasonable alternatives'' already includes the requirement that an alternative be technically and economically feasible and meet the purpose and need. CEQ addresses additional comments on the definition of ''reasonable alternatives'' in section II.J.22.

Sixth, as noted earlier in this section, CEQ proposed to strike the requirement to limit consideration to a reasonable number of alternatives from paragraph (f) and to add a sentence to paragraph (a) directing agencies to consider a reasonable range of alternatives that fosters informed decision making. CEQ proposed to repurpose paragraph (f) to establish a requirement to identify the environmentally preferable alternative. In addition to proposing a new definition of ''environmentally preferable alternative'' in § 1508.1(*l*), CEQ proposed in this provision to describe elements that the environmentally preferable alternative may generally include. CEQ proposed to use ''or'' in the list to make clear that the environmentally preferable alternative need not include each delineated element and recognize that identifying the environmentally preferable alternative may entail making trade-offs in some cases. CEQ explained that it proposed this approach to provide agencies flexibility to rely on

[85] *See* CEQ, Forty Questions, *supra* note 5.

[86] *See, e.g.,* Fed. R.R. Admin., Final Program Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the proposed California High-Speed Train System (2005), *https://hsr.ca.gov/programs/environmental-planning/program-eir-eis-documents-for-the-statewide-high-speed-rail-system-tier-1/final-program-environmental-impact-report-environmental-impact-statement-eir-eis-for-the-proposed-california-high-speed-train-system-2005/.*

[87] *See, e.g.,* U.S. Army Corps of Eng'rs, *Final Environmental Impact Statement for Savannah Harbor Expansion Project* (rev. July 2012), *https://www.sas.usace.army.mil/Missions/Civil-Works/Savannah-Harbor-Expansion/Final-Environmental-Impact-Statement/.*

their discretion and expertise to strike an appropriate balance in identifying the environmentally preferable alternative. Finally, CEQ proposed to clarify in paragraph (f) that the environmentally preferable alternative may be the proposed action, the no action alternative, or a reasonable alternative and that agencies may identify more than one environmentally preferable alternative as they deem appropriate.

Two commenters opposed the removal of ''limit their consideration to a reasonable number of alternatives'' in paragraph (f), asserting the statement is consistent with long-standing CEQ guidance and case law. The commenter further opined that the proposed paragraph (f) unnecessarily and inexplicably creates an open question regarding the number of alternatives an agency must consider and is likely to result in delays and increase litigation risk. One commenter stated that while they recognize that proposed paragraph (a) states that an agency does not need to consider every conceivable alternative, they asserted that it is helpful and consistent with judicial precedent to describe what constitutes a ''reasonable number.'' Another commenter asserted that removal of this language could lead agencies to develop more alternatives than are reasonable or necessary under NEPA.

CEQ declines to retain the statement that agencies must limit their consideration to a reasonable number of alternatives because CEQ considers the new sentence in paragraph (a) to provide clearer direction to agencies that they should consider a reasonable range of alternatives that foster informed decision making. Agencies have long had discretion to identify that range, and CEQ encourages agencies to identify and consider an appropriate range and explain why it considered and dismissed other alternatives so that agency decision makers and the public have a clear understanding as to how the agency arrived at the alternatives it considered in the document. While CEQ considers the new sentence in paragraph (a) to be clearer than the sentence previously included in paragraph (f), it does not interpret the new sentence to require agencies to consider a greater number of alternatives and does not intend for agencies to do so.

Multiple commenters supported proposed § 1502.14(f), while other commenters opposed it. Those who supported identification of the environmentally preferable alternative in the EIS expressed that earlier identification will provide more transparency to the public and allow the public an opportunity to comment on it. Some commenters also specifically supported the inclusion of addressing climate-change related effects and disproportionate and adverse effects on communities with environmental justice concerns in the examples of an environmentally preferable alternative.

Commenters who opposed the proposed language expressed concern that the concept of an environmentally preferable alternative would create new complexity and risk for litigation. They expressed that the identification of such an alternative is inherently subjective and would result in unnecessarily broad and time-consuming environmental reviews not supported by the statute. One commenter contended that the proposed new requirement inappropriately introduces political doctrine into the rule. One commenter suggested that if CEQ retains the requirement to identify the environmental preferable alternative in the EIS, that the final rule should be less prescriptive about the attributes of the environmentally preferable alternative.

CEQ adds the requirement to identify the environmentally preferable alternative or alternatives in the EIS in § 1502.14(f), and adds a clause to clarify that the agency must identify the environmentally preferable alternative from amongst the alternatives considered in the EIS. CEQ adds this clarification to address a misunderstanding by some of the commenters that the environmentally preferable alternative or alternatives that § 1502.14(f) requires agencies to identify is an additional alternative to the proposed action, no action, and reasonable alternatives that the agency would otherwise consider in an EIS. Rather, this provision requires agencies to identify which alternative amongst the proposed action, no action, and reasonable alternatives is the environmentally preferable alternative.

CEQ disagrees that requiring agencies to identify the environmentally preferable alternative in the EIS requires an inherently subjective determination, would result in unnecessarily broad and time-consuming environmental reviews, or introduces political doctrine. As CEQ noted in the proposed rule, the regulations have always required agencies to identify the environmentally preferable alternative in a ROD. 40 CFR 1505.2 (2019) and 40 CFR 1505.2 (2020). Agencies, therefore, have decades of experience with identifying the environmentally preferable alternative.

Moreover, CEQ views this information as helpful for decision makers and the public. Requiring agencies to identify the environmentally preferrable alternative in the draft EIS will enable public comment on this determination, which can include comment on whether the agency has adequately explained its conclusion or whether the determination is overly subjective. This new provision provides additional guidance on what this alternative entails, improving consistency and furthering NEPA's goal of ensuring that agencies make informed decisions regarding actions that impact the environment. Additionally, requiring the draft and final EIS to identify the environmentally preferable alternative will increase the transparency of the agency's decision-making process at an earlier stage, as well as provide an opportunity for the public to comment on the environmentally preferable alternative before the agency makes its decision.

CEQ disagrees that merely requiring agencies to identify which alternative or alternatives are environmentally preferable in the EIS, rather than only in the ROD, will increase litigation. The requirement in the final rule shifts the timing of identifying the environmentally preferred alternative or alternatives, but commenters have not explained why requiring agencies to make this identification earlier in the decision-making process would increase litigation risk, and CEQ does not view this shift as materially affecting litigation risk, since claims alleging a violation of NEPA must be brought after an agency issues a ROD. *See, e.g., Oregon Nat. Res. Council* v. *Harrell,* 52 F.3d 1499, 1504 (9th Cir. 1995). CEQ also notes the regulations do not require agencies to select the environmentally preferable alternative, just as the long-standing requirement for agencies to identify the environmentally preferable alternative in a ROD did not. Rather, identifying the environmentally preferable alternative will increase transparency and allow the public to comment on it.

Some commenters expressed that, overall, the proposed changes to § 1502.14 expand the alternatives analysis and could interfere with agencies' ability to meet the page and time limits. CEQ disagrees with the commenters' assertions because the revised regulations clarify, rather than expand, the requirements for alternatives analysis.

While CEQ did not propose edits to § 1502.14(b), one commenter requested that CEQ restore the 1978 language to ensure agencies devote substantial treatment to each alternative they considered in detail. The 2020 rule removed the substantial treatment

language and replaced it with the requirement to discuss each alternative. The commenter asserted that CEQ should restore this language because restoring direction to rigorously explore and objectively evaluate reasonable alternatives would ensure agencies take a hard look at their proposed action. CEQ declines to add this language. The language that CEQ adds to paragraph (a), requiring agencies to rigorously explore and objectively evaluate alternatives to foster informed decision making, addresses this concern and provides agencies sufficient direction to take a hard look at their proposed actions and alternatives.

14. Affected Environment (§ 1502.15)

CEQ proposed revisions to § 1502.15 to emphasize the use of high-quality information; clarify considerations of reasonably foreseeable environmental trends; and emphasize efficiency and concise documents. CEQ also proposed to divide § 1502.15 into separate lettered paragraphs.

First, CEQ proposed to move the first sentence of 40 CFR 1502.15 (2020) into paragraph (a) of § 1502.15 but did not propose any changes to the text. One commenter suggested changes to proposed paragraph (a) to more clearly describe that the affected environment must be a clear, unambiguous base case against which the agency can compare all effects equally and noted a particular example in which, the commenter asserted, confusion about this point had resulted in distorted analyses for a category of actions that did not provide the agency decision maker and the public an appropriate comparison of the proposed actions, no action alternatives, and reasonable alternatives. In the final rule, CEQ deletes ''or created'' in the first sentence because areas created by the proposed action or alternatives would constitute reasonably foreseeable effects, and are not part of the affected environment. CEQ notes, however, that the affected environment cannot be frozen in time and therefore must examine reasonably foreseeable environmental trends in the affected areas.

Second, CEQ proposed to add new paragraph (b) to encourages agencies to use high-quality information, including best available science and data—in recognition that high-quality information should inform all agency decisions—to describe reasonably foreseeable environmental trends. CEQ also proposed to note explicitly that such trends include anticipated climate-related changes to the environment and that agencies should provide relevant information, consistent with § 1502.21, when such information is lacking. CEQ proposed this paragraph to articulate clearly NEPA's statutory mandate that science inform agencies' decisions as part of a systematic, interdisciplinary approach. *See* 42 U.S.C. 4332(2)(A).

In the second sentence of paragraph (b), CEQ proposed to encourage agencies to use the description of baseline environmental conditions and reasonably foreseeable trends to inform its analysis of environmental consequences and mitigation measures by connecting the description of the affected environment with the agency's analysis of effects and mitigation. CEQ proposed this language to clarify that agencies should consider reasonably foreseeable future changes to the environment, including changes of climate conditions on affected areas, rather than merely describing environmental trends or climate change trends at the global or national level. When describing the proposed changes to paragraph (b) in the proposed rule, CEQ noted that, in line with scientific projections, accurate baseline assessment of the affected environment over an action's lifetime should incorporate forward-looking climate projections rather than relying on historical data alone.

A few commenters opposed proposed § 1502.15(b), with some commenters particularly taking issue with the singling out of climate change. A few commenters requested that the final rule require agencies to use high-quality information, with some further requesting that the regulations define high-quality information. One commenter expressed that it will be nearly impossible to use best available science, and another requested that Indigenous Knowledge be included as a source of high-quality information.

CEQ adds proposed § 1502.15(b) in the final rule with a few modifications. In the first sentence, CEQ changes ''should'' to ''shall'' before ''use high-quality information'' for consistency with § 1506.6 (proposed as § 1502.23) and modifies the clause providing examples of high-quality information for consistency with the changes to the examples CEQ makes in § 1506.6, as discussed in section II.H.4. The final rule includes ''reliable data and resources, models, and Indigenous Knowledge'' as examples of high-quality information in lieu of the proposed phrase ''including the best available science and data.'' As noted in section II.H.4, this change incorporates the language of section 102(2)(E) of NEPA and is consistent with section 102(2)(D) of NEPA. 42 U.S.C. 4332(2)(D)–(E). Peer-reviewed studies and models are examples of reliable data and resources.[88] The final rule also replaces ''lacking'' with ''incomplete or unavailable'' for consistency with the language of § 1502.21, which the sentence cross-references. CEQ declines to remove the example of climate change from this sentence. Because climate change has implications for numerous categories of effects—from species to water to air quality—it is a particularly important environmental trend for agencies to consider in addressing the affected environment.[89] *See* 42 U.S.C. 4321, 4331, 4332(2)(C)(iv). Lastly, CEQ includes the third proposed sentence in the final rule but uses ''affected environment'' instead of ''baseline'' and describes existing ''environmental conditions, reasonably foreseeable trends, and planned actions in the area'' as examples of the affected environmental that should inform the agency's analysis of environmental consequences and mitigation measures.

Third, CEQ proposed to move the second through fourth sentences of 40 CFR 1502.15 (2020) to new paragraph (c) and revise the second sentence to divide it into two sentences to enhance readability. In the first sentence of paragraph (c), CEQ proposed minor revisions to clarify that agencies may combine the affected environment and environmental consequences sections in an EIS. In the second sentence, CEQ proposed to clarify that the description ''should,'' rather than ''shall'', be no longer than necessary to understand the ''relevant affected environment'' and the effects of the alternatives.

One commenter disagreed with allowing agencies to combine the affected environment and environmental consequences sections of the EIS. The commenter asserted that agencies should discuss the two issues separately so that it is clear in the EIS how much attention is paid to each section and in order to ''force the agency to present actual'' effects in the EIS. The commenter asserted that agencies will provide more material on the affected environment instead of describing effects.

CEQ makes the change as proposed in § 1502.15(c) of the final rule. The final rule allows but does not require

[88] *See, e.g.,* OMB, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 FR 8452 (Feb. 22, 2002); OMB, Final Information Quality Bulletin for Peer Review, 70 FR 2664 (Jan. 14, 2005); and OMB, M–19–15, Improving Implementation of the Information Quality Act (2019), *https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-15.pdf.*

[89] *See, e.g.,* U.S. Glob. Change Rsch. Program, Fifth National Climate Assessment (2023), *https://nca2023.globalchange.gov.*

agencies to combine the description of the affected environment with the analysis of environmental consequences. CEQ added this provision in the 2020 regulations to promote more efficient documents, and CEQ encourages agencies to reduce redundancy in their documents and provide clear and concise but thorough descriptions in the EIS. CEQ disagrees that allowing agencies to combine these discussions also allows them to give more weight to one section or the other. Agencies must thoroughly discuss both the affected environment and the environmental consequences of their proposed actions and alternatives to meet the requirements of both §§ 1502.15 and 1502.16.

15. Environmental Consequences (§ 1502.16)

CEQ proposed several changes to § 1502.16 to clarify the role of this section and methods of analysis and make updates to ensure that agencies integrate climate change and environmental justice considerations into the analysis of environmental effects. First, CEQ proposed to add ''reasonably foreseeable'' in proposed paragraph (a)(1) before ''environmental effects'' for consistency with section 102(2)(C)(i) of NEPA and in proposed paragraph (a)(2) before ''adverse environmental effects'' for consistency with section 102(2)(C)(ii) of NEPA. 42 U.S.C. 4332(2)(C)(i)–(ii). In the final rule, CEQ reorganizes § 1502.16 to integrate proposed paragraph (a)(1) into § 1502.16(a), as discussed further in this section, and adds the reference to ''reasonably foreseeable'' effects in paragraph (a) to make clear that agencies must discuss the environmental consequences described in paragraphs (a)(1) through (a)(13) when they are reasonably foreseeable effects of the proposed action or alternatives. Therefore, CEQ omits further references to ''reasonably foreseeable'' in paragraphs (a)(1) through (a)(13) to avoid duplication. The recent amendments to NEPA codified the longstanding principle from the 1978 regulations and recognized by the courts that effects must be reasonably foreseeable. CEQ also notes that the definition of ''effects'' in § 1508.1(i) incorporates ''reasonably foreseeable'' into the definition such that the term ''effects'' incorporates the reasonably foreseeable standard each time it is used in this section and throughout the regulations.

Second, in proposed paragraph (a)(1), CEQ proposed to modify the second sentence, requiring agencies to base the comparison of the proposed action and reasonable alternatives on the discussion of effects, to add a clause at the end: ''focusing on the significant or important effects.'' CEQ proposed this change to emphasize that agencies' analyses of effects should be proportional to the significance or importance of the effects. CEQ did not receive specific comments on this proposal, and CEQ makes this change in the final rule in paragraph (a), into which CEQ integrates proposed paragraph (a)(1) as discussed further in this section. CEQ includes the word ''important'' in addition to ''significant'' because even if an agency does not identify which effects rise to the level of significance, it should still focus on the effects that are important for the agency decision maker to be aware of and consider. Consistent with this provision, agencies should generally identify the effects they deem significant to inform the public and decision makers.

While CEQ did not propose any substantive changes to paragraph (a), a few commenters suggested changes. One commenter expressed that even though paragraph (a) specifies that the environmental consequences discussion should not duplicate discussions from § 1502.14, it is confusing and unnecessary for the regulations to essentially require the same information in both sections. Another commenter requested that CEQ add qualifying language, ''as relevant or appropriate'' to the last sentence of paragraph (a) stating that ''[t]he discussion shall include.'' The commenter asserted this language would help improve efficiency by providing lead agencies flexibility to tailor the EIS to the specifics of the action.

CEQ agrees with the commenter that the language in paragraph (a) could be confusing. To enhance clarity, the final rule integrates proposed paragraph (a)(1) into § 1502.16(a) and combines the first two sentences of proposed paragraph (a)(1), to require that the comparison of the proposed action and alternatives ''be based on their reasonably foreseeable effects and the significance of those effects'' and that this discussion focus on the significant and important effects. The final rule also consolidates the last two sentences of proposed paragraph (a) to state that the environmental consequences section should not duplicate discussions ''required by'' § 1502.14, which CEQ revises to address the commenter's confusion about this text, and must include ''an analysis of'' the issues discussed in the subparagraphs to paragraph (a).

CEQ declines to add the qualifier ''as relevant or appropriate'' to the last sentence, because some of the items in the list are always required. For paragraphs (a)(5) through (a)(10) and (a)(13), which are only required when they are reasonably foreseeable, the final rule adds the qualifier ''where applicable''—in some cases replacing the word ''any,'' as used in the proposed rule—to make clear that an EIS need only include the specific topics where those effects are reasonably foreseeable. Where the effects that relate to a particular topic in the list exist but are not significant or important, the EIS can briefly describe the effect and explain why the agency has reached the conclusion that it is not significant or important.

Third, CEQ proposed to add a new sentence to the end of proposed paragraph (a)(1) clarifying the proper role of the no action alternative to ensure that agencies do not distort the comparative analysis by selecting a different alternative (for example, the preferred alternative) as the baseline against which the agency assesses all other alternatives. CEQ also invited comment on whether it should include additional direction or guidance regarding the no action alternative in the final rule.

One commenter requested that the regulations clarify the proper role of the no action alternative and disagreed with the direction included in the proposed rule. The commenter asserted that establishing a no action alternative as the baseline against which alternatives are compared, rather than establishing the proposed action as the baseline, favors the no action alternative over the proposed action and is contrary to NEPA's goals of informing rather than driving decisions. CEQ disagrees with the commenter's position as agencies have long used the no action alternative as the baseline from which to assess the proposed action and alternatives,[90] and this approach is consistent with the requirement of section 102(2)(C)(i)–(ii) of NEPA that an EIS include the reasonably foreseeable environmental effects of the proposed agency action. 42 U.S.C. 4332(2)(C)(i)–(ii). The no action alternative is a particularly useful comparison for the effects of the proposed action, and the CEQ

[90] *See* CEQ, Forty Questions, *supra* note 5, Question 3, ''No Action Alternative'' (stating that the no action alternative ''provides a benchmark, enabling decisionmakers to compare the magnitude of environmental effects of the action alternatives.''); *see also Ctr. for Biological Diversity* v. *United States DOI*, 72 F.4th 1166, 1185 (10th Cir. 2023) (''In general, NEPA analysis uses a no-action alternative as a baseline for measuring the effects of the proposed action.''' (quoting *Biodiversity Conservation All.* v. *U.S. Forest Serv.*, 765 F.3d 1264, 1269 (10th Cir. 2014)).

regulations require agencies to compare effects across alternatives.

Multiple commenters requested guidance on how to evaluate the no action alternative in circumstances in which the Federal action does not dictate whether the underlying project will occur. CEQ declines to add additional specifications to the regulations but will consider whether additional guidance on this topic will help agencies carry out their NEPA responsibilities. CEQ notes that agencies have decades of experience with this issue even prior to the addition of this provision into NEPA and the CEQ regulations.

One commenter requested CEQ revise the language to make it clear that the no action alternative is focused on the environmental consequences of not issuing the approval rather than on the proposed facility not being built or the proposed physical action not occurring. CEQ declines to add this specific additional language to the regulations as the consideration of the no action alternative is specific to the agency's authority and the scope of the NEPA review.

One commenter stated CEQ should provide additional guidance to ensure that Federal agencies fully disclose the environmental implications of the no action alternative. Another commenter requested CEQ provide additional guidance encouraging agencies to select the no action alternative, when appropriate. Relatedly, another commenter stated that the no action alternative should be more than a baseline for comparison; it should also be an alternative that the agency can select even if it does not meet the applicant's or project's purpose and need. CEQ agrees that in many cases, the no action alternative is among the alternatives that the agency may select, and that doing so is consistent with the regulations and long-standing agency practice, but this is a fact-specific inquiry based on the agency's authority. CEQ will consider this and the other recommended topics when developing guidance.

One commenter requested the regulations include a new section on the no action alternative instead of including it in § 1502.16. Another commenter requested the regulations include a definition of ''no action alternative'' and requested clarification that agencies should analyze more than one action alternative and therefore must include more than just the no action alternative and one action alternative. CEQ declines to add a separate section on or define the phrase ''no action alternative.'' CEQ includes the proposed language in the final rule, as the fourth sentence of paragraph (a), to provide additional context for the longstanding requirement in § 1502.14 to assess the no action alternative and for consistency with section 102(2)(C)(iii) of NEPA and longstanding agency practice. 42 U.S.C. 4332(2)(C)(iii).

Fourth, CEQ proposed to add a new paragraph (a)(3), requiring an analysis of the effects of the no action alternative, including any adverse environmental effects. CEQ proposed this change for consistency with section 102(2)(C)(iii) of NEPA, which requires ''an analysis of any negative environmental impacts of not implementing the proposed action in the case of a no action alternative.'' 42 U.S.C. 4332(2)(C)(iii).

One commenter suggested that the phrase ''including any adverse effects'' does not conform with section 102(2)(C)(iii) of NEPA. CEQ disagrees with the commenter's characterization. The difference in phrasing between proposed paragraph (a)(3) and section 102(2)(C)(iii) is because paragraph (a)(3) addresses what needs to be contained in the discussion of environmental consequences, while section 102(2)(C)(iii) of NEPA addresses the range of alternatives. 42 U.S.C. 4332(2)(C)(iii). Multiple commenters were generally supportive of the requirement to analyze the adverse effects of the no action alternative.

CEQ adds proposed paragraph (a)(3) in the final rule at § 1502.16(a)(2). As CEQ noted in the proposed rule, CEQ interprets ''negative'' to have the same meaning as the term ''adverse.'' For example, an environmental restoration project that helps mitigate the effects of climate change and restores habitat could have adverse effects if it were not implemented or the construction of a commuter transit line could have adverse effects from persistent traffic congestion, air pollution, and related effects to local communities if it were not implemented.

Fifth, to accommodate proposed new paragraph (a)(3), CEQ proposed to redesignate paragraphs (a)(3) through (a)(5) of 40 CFR 1502.16 (2020) as paragraphs (a)(4) through (a)(6), respectively. CEQ did not receive any comments on this proposed reorganization. However, because the final rule integrates proposed paragraph (a)(1) into paragraph (a), the final rule does not redesignate these paragraphs.

Sixth, in proposed paragraph (a)(5), CEQ proposed to insert ''Federal'' before ''resources'' for consistency with section 102(2)(C)(v) of NEPA. 42 U.S.C. 4332(2)(C)(v). One commenter asserted that the proposed insertion of ''Federal'' ignores analysis and reporting of potentially significant resources committed by other entities. CEQ adds the word ''Federal'' to the final rule in § 1502.16(a)(4) because Congress added it to the corresponding phrase in the statute. Another commenter suggested CEQ revise this paragraph to encompass resources held in trust. CEQ declines to make this addition, as CEQ interprets the phrase ''Federal resources'' to plainly mean resources owned by the Federal Government or held in trust for Tribal Nations.

Seventh, CEQ proposed to add references to two specific elements that agencies must include in the analysis of environmental consequences and revise the reference to another element, all related to climate change. CEQ proposed to revise proposed paragraph (a)(6), addressing possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal and local land use plans, policies, and controls for the area concerned. CEQ proposed to broaden ''land use plans'' to ''plans'' generally and to add an example that clarifies that these plans, policies, and controls include those addressing climate change.

Eighth, CEQ proposed to add a new paragraph (a)(6) to clarify that the discussion of environmental consequences in an EIS must include any reasonably foreseeable climate change-related effects, including effects of climate change on the proposed action and alternatives (which may in turn alter the effects of the proposed action and alternatives).

Ninth, CEQ proposed to add a new paragraph (a)(9) to require agencies to address any risk reduction, resiliency, or adaptation measures included in the proposed action and alternatives. CEQ proposed this addition to ensure that agencies consider resiliency to the risks associated with a changing climate, including wildfires, extreme heat and other extreme weather events, drought, flood risk, loss of historic and cultural resources, and food scarcity. CEQ noted in the proposed rule that these analyses further NEPA's mandate that agencies use ''the environmental design arts'' in decision making and consider the relationship between the ''uses'' of the environment ''and the maintenance and enhancement of long-term productivity.'' 42 U.S.C. 4332(2)(A), 4332(2)(C)(iv). CEQ also noted that the proposed change helps achieve NEPA's goals of protecting the environment across generations, preserving important cultural and other resources, and attaining ''the widest range of beneficial uses of the environment without degradation, risk to health or safety, or

other undesirable and unintended consequences.'' 42 U.S.C. 4331(b)(3).

Multiple commenters expressed support generally for both proposed paragraphs (a)(6) and (a)(7), asserting that it is necessary to emphasize climate change. On the other hand, one commenter opposed proposed paragraphs (a)(6) and (a)(7) and asserted that they are based on political doctrine rather than scientific and technical analyses. CEQ disagrees with the commenter's assertion and notes that the inclusion of climate change in proposed paragraphs (a)(6) and (a)(7) is consistent with section 102(2)(C)(i) of NEPA, 42 U.S.C. 4332(2)(C)(i), which requires agencies to address ''reasonably foreseeable environmental effects of the proposed agency action;'' with section 102(2)(I) of NEPA, 42 U.S.C. 4332(I), which requires Federal agencies to ''recognize the worldwide and long-range character of environmental problems;'' and with a large volume of case law invalidating NEPA analyses that failed to adequately consider reasonably foreseeable effects related to climate change. *See e.g., Vecinos para el Bienestar de la Comunidad Costera* v. *FERC,* 6 F.4th 1321 (D.C. Cir. 2021) (holding NEPA analysis for pipeline and liquified natural gas port deficient due to inadequate climate change analysis); *WildEarth Guardians* v. *Zinke,* 368 F.3d 41 (D.C. Cir. 2019) (invalidating oil and gas leases for failure to consider downstream greenhouse gas emissions during the NEPA process); and *WildEarth Guardians* v. *BLM,* 870 F.3d 1222 (10th Cir. 2017) (holding that EIS and ROD for four coal leases were arbitrary and capricious because they failed to adequately consider climate change).

With respect to proposed paragraph (a)(6), a couple of commenters asserted the regulations should not direct agencies to discuss a proposed action's relationship with governmental plans related to climate change. The commenters urged CEQ to exclude the language ''those addressing climate change'' from the final rule or recommended the regulations clarify that NEPA does not require agencies to attempt to resolve these conflicts. Another commenter opined that the proposal to remove ''land use plans'' and instead include plans addressing climate change threatens to lead to speculative analyses. Further, the commenter asserted that the regulations do not explain how agencies should analyze multi-State projects or determine how a particular project conflicts with a State- or region-wide plan or emissions target.

In the final rule, CEQ removes ''land use'' and adds the example of plans that address climate change in the final rule at § 1502.16(a)(5). CEQ notes that the reference to climate change plans is only an example, but also that the example is consistent with the 2023 GHG guidance, which identifies climate change plans as having the potential to assist agencies in their analysis of reasonably foreseeable GHG emissions. CEQ also notes that nothing in this provision or any other provision of the NEPA regulations has ever required agencies to resolve conflicts; it merely requires agencies to discuss any possible conflicts. With respect to multi-State projects, CEQ does not consider it appropriate to modify this provision to address a specific type of project. However, CEQ is unaware of agency confusion regarding how to address multi-State projects. CEQ will consider whether additional guidance is needed in the future. CEQ retains the term ''policies'' to promote inclusive consideration of positions taken by regional, State, Tribal and local government entities, noting that policies are formally adopted by those entities while preferences or positions generally are not formally adopted.

Multiple commenters specifically opposed proposed paragraph (a)(7) and the singling out of reasonably foreseeable climate change-related effects in the regulations. One commenter stated that the integration of one specific category of potential environmental effects is a notable break from NEPA precedent and historic practice, which emphasizes that NEPA is neutral towards the type of resource concern and the type of potential environmental effect. CEQ disagrees with the assertion that identifying a category of effects is unprecedented and notes that this provision has always referenced certain types of effects, including effects related to energy, natural and depletable resources, and historic and cultural resources.

A commenter asserted that the references to climate change-related effects in proposed paragraph (a)(7) and other provisions of the regulations inconsistently refer to NEPA's reasonable foreseeability limitation and otherwise ignore the fundamental principle of causation. A few other commenters also raised the issue of causation, arguing that NEPA only requires an agency to consider effects that have a sufficiently close causal connection to the proposed action and stating that the proposed rule, and specifically proposed paragraph (a)(7), diverges from this principle by requiring analysis of any reasonably foreseeable climate-change related effects of the proposed action. One commenter asserted CEQ is rewriting the standard that requires an agency to consider effects that have a sufficiently close causal relationship to the proposed action. They also asserted proposed paragraph (a)(7) could require an agency to discuss effects that are remote and speculative because it does not require the ability to demonstrate a direct causal chain between a project and climate change or how a specific project's greenhouse gas emissions would lead to actual environmental effects in that specific location.

Another commenter asserted that proposed paragraph (a)(7) places unnecessary emphasis on climate change when there are many other effects on the environment that may occur due to a proposed action. A separate commenter asserted the proposed paragraph conflicts with the flexibility provided in CEQ's Interim Greenhouse Gas Guidance, which explains that agencies have the flexibility to discuss climate change and any other environmental issues to the extent the information will or will not be useful to the decision-making process and the public consistent with the ''rule of reason.'' Another commenter stated proposed paragraph (a)(7) is inconsistent with NEPA and would be impractical, resulting in lengthy reviews for projects without climate consequences.

CEQ disagrees with these commenters' assertions and includes proposed paragraph (a)(7) at § 1502.16(a)(6) in the final rule. CEQ adds the phrase ''where feasible, quantification of greenhouse gas emissions from the proposed action and alternatives and'' before ''the effects of climate change on the proposed action and alternatives.'' This provision incorporates into the final rule one of the recommendations of CEQ's 2023 GHG guidance.[91] CEQ includes this provision in response to comments that CEQ received in response to CEQ's request for comment on potentially codifying elements of the Guidance in the rule. *See* section II.D.1.[92] CEQ agrees with the comments discussed in section II.D.1 that contend that requiring agencies to quantify greenhouse gas emissions, where feasible, will increase the clarity of the regulations and is consistent with case law. *See, e.g., Food & Water Watch* v. *FERC,* 28 F.4th 277, 289 (D.C. Cir. 2022) (remanding to the agency to prepare a supplemental EA

[91] *See* CEQ, 2023 GHG Guidance, *supra* note 10.

[92] *See* CEQ, Phase 2 proposed rule, *supra* note 51, at 49945.

''in which it must either quantify and consider the project's downstream carbon emissions or explain in more detail why it cannot do so''); *Sierra Club* v. *FERC,* 867 F.3d 1357, 1375 (D.C. Cir. 2017) (holding that the agency ''must either quantify and consider the project's downstream carbon emissions or explain in more detail why it cannot do so''); *WildEarth Guardians* v. *Zinke,* 368 F.Supp.3d 41, 68 (D.D.C. 2019) (BLM's failure to quantify greenhouse gas emissions that were reasonably foreseeable effects of oil and gas development during the leasing and development process was arbitrary and capricious). As such, CEQ disagrees with the commenters' assertions that the rule requires agencies to go beyond what case law generally already requires them to consider under NEPA. Moreover, as CEQ indicates earlier in this section and makes clearer with its edits to paragraph (a) in the final rule, this paragraph indicates that agencies must analyze climate-related effects that meet the definition of ''effects''—that is, are reasonably foreseeable—and includes the qualifier ''where applicable'' to acknowledge that not all actions will have climate-related effects that require analysis in the EIS.

A few commenters opposed the addition of proposed paragraphs (a)(7) and (a)(10), stating that taken together, the proposed changes expand the scope of NEPA effects and alternatives analyses relative to discrete projects and authorizations and will result in agencies relying on unsubstantiated projections on a project's potential to impact climate change locally or globally.

Other commenters opposed proposed paragraph (a)(10) for various reasons. One commenter asserted risk reduction, resiliency, or adaptation measures are best addressed through planning and programming, asset management, and emergency response that occurs programmatically prior to NEPA review and in final design that occurs after the NEPA review, instead of as part of the project-specific review. Similarly, another commenter stated requiring an EIS to incorporate these measures into the proposed action or alternatives will be costly if completed during the NEPA process and should be done earlier, such as during long-range planning processes that occur prior to NEPA. CEQ notes that if an agency engages in long-range planning processes, the agency may incorporate by reference any analyses that are completed programmatically prior to the NEPA review for a specific action. With respect to final design, agencies may discuss such measures generally in the EIS. Further, agencies have decades of experience analyzing proposed actions before final design, and agencies can do so similarly for risk reduction, resiliency, or adaptation measures.

Another commenter asserted that the term ''relevant'' is subjective and suggested that CEQ define it to include peer-reviewed science and data made available by independent sources. CEQ declines to add this specificity in the final rule and leaves it to agency judgment to identify what is relevant for a particular proposed action.

One commenter supported proposed paragraph (a)(10) but requested the regulations clarify that the language does not require an agency to gather new data, consistent with NEPA. Another commenter also supported the proposal, but suggested that CEQ remove the mandate to use accurate and up-to-date information from proposed § 1502.21. CEQ considers it important to specifically reference science and data on the affected environment and expected future conditions in this paragraph because they are essential to determine what resiliency and adaptation measures are relevant. CEQ declines to specify that agencies do not need to gather new data as this is addressed in § 1502.21, regarding incomplete or unavailable information as well, as § 1506.6, regarding methodology and scientific accuracy. Therefore, CEQ adds proposed paragraph (a)(10) at § 1502.16(a)(9) in the final rule.

In the final rule, CEQ revises § 1502.16(a)(5) and adds § 1502.16(a)(6) and (a)(9) to clarify that agencies must address both the effects of the proposed action and alternatives on climate change, and the resiliency of the proposed action and alternatives in light of climate change.[93] These revisions are consistent with what NEPA has long required: using science to make decisions informed by an understanding of the effects of the proposed action and of its alternatives. In particular, understanding how climate change will affect the proposed action and the various alternatives to that action is necessary to understanding what constitutes ''a reasonable range of alternatives'' and which alternatives are ''technically and economically feasible'' and ''appropriate,'' *see* 42 U.S.C. 4332(2)(C)(iii), (F), (H). Moreover, the effects that climate change will have on the proposed action and its alternatives may in turn alter the effects that the action has on the environment. For example, an increase in extreme weather events may affect the amount of stream sedimentation that results from a new road or the risk that an industrial facility will experience a catastrophic release. Therefore, considering the effects of climate change on the action and its alternatives is necessary to understand the ''reasonably foreseeable environmental effects'' of the proposed action and its alternatives, 42 U.S.C. 4332(2)(C)(i). These revisions also align with the definition of ''effects'' to encompass reasonably foreseeable indirect and cumulative effects, which are integral to NEPA analyses.

Tenth, to accommodate the newly proposed paragraphs (a)(7) and (a)(10), CEQ proposed to redesignate paragraphs (a)(6) and (a)(7) of 40 CFR 1502.16 (2020) as paragraphs (a)(8) and (a)(9), respectively. In the final rule, CEQ redesignates these paragraphs as § 1502.16(a)(7) and (a)(8). CEQ also proposed to redesignate paragraphs (a)(8) through (a)(10) of 40 CFR 1502.16 (2020) as paragraphs (a)(11) through (a)(13), respectively. In the final rule, CEQ redesignates these paragraphs as § 1502.16(a)(10) through (a)(12).

Eleventh, CEQ proposed to add a new paragraph (a)(14) to require agencies to discuss any potential for disproportionate and adverse health and environmental effects on communities with environmental justice concerns, consistent with sections 101, 102(2)(A), 102(2)(C)(i), and 102(2)(I) of NEPA. *See* 42 U.S.C. 4331, 4332(2)(A), 4332(2)(C)(i), 4332(2)(I). CEQ proposed this paragraph to clarify that EISs generally must include an environmental justice analysis to ensure that decision makers consider disproportionate and adverse effects on these communities.

A few commenters expressed general support for proposed paragraph (a)(14), with some stating that the inclusion of disproportionate effects on communities with environmental justice concerns is long overdue. Some of these supportive commenters requested CEQ provide additional clarity in the regulations or through guidance on what constitutes a robust environmental justice analysis. One commenter suggested the final rule include additional text to emphasize welfare effects and to state that the evaluation should not offset positive effects on one community with environmental justice concerns against

[93] Such analysis is not new, and CEQ has issued guidance consistent with these proposed provisions for nearly a decade. *See generally* CEQ, Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews, 81 FR 51866 (Aug. 8, 2016), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/nepa_final_ghg_guidance.pdf,* and CEQ, 2023 GHG Guidance, *supra* note 10.

negative effects on another community with environmental justice concerns.

Multiple commenters opposed proposed paragraph (a)(14) for reasons similar to the opposition to including climate change-related effects, asserting that it is inappropriate to single out these types of effects. One commenter suggested the proposed paragraph will allow consideration of remote and speculative environmental justice concerns and is in conflict with case law. Another commenter stated the proposed paragraph requires agencies to consider effects that are not ''reasonably foreseeable.'' Further, another commenter requested that the regulations clarify that not all environmental effects will be ''disproportionate and adverse.''

In the final rule, CEQ adds proposed paragraph (a)(14) at § 1502.16(a)(13) and modifies the text from the proposal to replace ''[t]he potential for'' with ''[w]here applicable'' before ''disproportionate and adverse human health and environmental effects on communities with environmental justice concerns.'' As discussed earlier in this section, CEQ adds the ''where applicable'' qualifier to make clear that not all proposed actions will have such effects. The final rule also omits ''potential,'' given the changes to paragraph (a) to clarify that all effects in the list must be reasonably foreseeable.

Multiple commenters grouped their general concerns on proposed § 1502.16(a)(7), (a)(10), and (a)(14) together, expressing overall concern regarding the inclusion of climate change and environmental justice-related provisions in § 1502.16. These commenters asserted that these proposed additions are contrary to the purpose of NEPA and inappropriately elevate climate change and environmental justice over other issues, such as water quality, waste management, and air quality. Other commenters expressed concern over the addition of policy priorities to the regulations. As CEQ has discussed in this section and elsewhere in this preamble and the Phase 2 Response to Comments, CEQ considers these additions consistent with the text of NEPA, longstanding practice, and case law and finds it appropriate to recognize the importance of climate change and environmental justice effects to inform agency decision making and the public about a proposed action. CEQ notes that the list of effects in § 1502.16(a) is not exhaustive, and that agencies must determine on a case-by-case basis which effects are relevant to address in an EIS.

Finally, in paragraph (b), which addresses economic or social effects, CEQ proposed to strike ''and give appropriate consideration to'' from paragraph (b). CEQ proposed this revision to remove unnecessary language that could be read to require the decision maker to make consideration of such effects a higher priority than other effects listed in this section.

One commenter expressed support for the proposed change in paragraph (b) but requested that the final rule include language requiring specific analyses of housing affordability, availability, and quality. CEQ declines to add this language because, while these considerations may be appropriate for some projects, this level of specificity is unnecessary in the regulations, as housing-related effects are a subset of social and economic effects. Another commenter requested that the final rule include cultural effects in the second sentence. CEQ declines to add cultural effects to paragraph (b) because historic and cultural resources are included in § 1502.16(a)(10), and agencies also may address effects to cultural resources consistent with § 1502.16(a)(5).

CEQ did not receive comments specific to its proposed edits to paragraph (b). In the final rule, CEQ strikes the phrase ''and give appropriate consideration to,'' as proposed, from § 1502.16(b).

16. Summary of Scoping Information (§ 1502.17)

CEQ proposed to revise § 1502.17 and retitle it ''Summary of scoping information'' to more accurately reflect the proposed revisions to this section and align it with the common practice of what many agencies produce in scoping reports. CEQ proposed other changes in this section to simplify and remove unnecessary or redundant text and clarify requirements. Commenters were generally supportive of CEQ's proposal and provided a few suggested edits to the regulatory text, as discussed in this section. A few commenters expressed concern about the additional burden of preparing a summary of scoping information.

CEQ finalizes this section as proposed with a few additional edits. Agencies have long collected the information addressed in this section as part of the scoping process and provided it in various formats, such as in scoping reports or by integrating it into the EIS itself. Transparency about this information is valuable to the NEPA process because it demonstrates what agencies have considered in preparing an EIS. Further, CEQ disagrees that preparing a summary of such information is a significant burden on agencies because the regulations do not require a lengthy, detailed summary and provide agencies sufficient flexibility to exercise their discretion in what to prepare.

CEQ proposed to revise paragraph (a) to require agencies to include a summary of the information they receive from commenters during the scoping process in draft EISs, consistent with the revisions to §§ 1500.4, 1501.9, and 1502.4. CEQ proposed to replace ''State, Tribal, and local governments and other public commenters'' with ''commenters'' because this phrase is all encompassing. CEQ also proposed to clarify that a draft EIS should include a summary of information, including alternative and analyses, that commenters submitted during scoping.

At least one commenter inquired whether an agency could meet the requirements of paragraph (a) by including a summary in an appendix to the draft EIS. CEQ did not intend its proposal to limit where agencies provide the summary of scoping information. To make clear that agencies have the flexibility on where to place this section in their EISs, CEQ has added ''or appendix'' after ''draft environmental impact statement.'' Another commenter asked whether inserting the word ''draft'' before the second instance of ''environmental impact statement'' in paragraph (a) precluded agencies from considering such information in the final EIS. This was not CEQ's intent, so the final rule text does not include the word ''draft'' as CEQ proposed. CEQ otherwise revises paragraph (a) as proposed. This change provides agencies flexibility to develop a broader summary of information received during scoping. While agencies should still summarize alternatives and analyses, this provision does not require them to provide a specific summary of every individual alternative, piece of information, or analysis commenters submit during scoping.

CEQ proposed to redesignate paragraph (a)(1) as paragraph (b) and modify it to clarify that agencies can either append comments received during scoping to the draft EIS or otherwise make them publicly available. CEQ proposed this modification to clarify that the requirements of this paragraph can be met through means other than an appendix, such as a scoping report, which is common practice for some Federal agencies. CEQ proposed a conforming edit in paragraph (d) of § 1502.19, ''Appendix,'' for consistency with this language.

CEQ received a comment questioning why CEQ would change ''publish'' to ''otherwise make publicly available all

comments,'' which could suggest an agency could make comments publicly available by providing them in response to a FOIA request rather than by affirmatively providing them. This was not the intent of CEQ's proposed change. Therefore, CEQ is not making this change in the final rule. With these modifications, CEQ amends this provision as proposed.

Finally, CEQ proposed to delete 40 CFR 1502.17(a)(2) and (b) (2020) because the requirements of these paragraphs are redundant to the requirements in part 1503 for Federal agencies to invite comment on draft EISs in their entirety and review and respond to public comments. CEQ makes this change in the final rule.

17. Incomplete or Unavailable Information (§ 1502.21)

CEQ proposed one revision to paragraph (b) of § 1502.21, which addresses when an agency needs to obtain and include incomplete information in an EIS. CEQ proposed to strike ''but available'' from the sentence, which the 2020 rule added, to clarify that agencies must obtain information relevant to reasonably foreseeable significant adverse effects when that information is essential to a reasoned choice between alternatives, where the overall costs of doing so are not unreasonable, and the means of obtaining that information are known. CEQ proposed to remove the phrase ''but available'' because it could be read to significantly narrow agencies' obligations to obtain additional information even when it is easily attainable and the costs are reasonable. During the development of the proposed rule, agency NEPA experts indicated that this qualifier could be read to say that agencies do not need to collect additional information that could and should otherwise inform the public and decision makers.

Some commenters supported the proposed deletion of ''but available'' in paragraph (b), reasoning that this edit will ensure agencies obtain necessary information regarding reasonably foreseeable significant adverse effects that is essential to a reasoned choice among alternatives rather than dismissing the information as unavailable. Another commenter supported the change because it better ensures agencies obtain high quality information to inform their analyses. Other commenters opposed the change, asserting it unduly expands agencies' obligations to obtain additional information. One commenter stated the change removes a bright-line requirement to rely on existing information and another commenter agreed, stating the inclusion of ''but available'' helped to focus the scope of the inquiry on available information. Without this limitation, the commenter asserted agencies could face litigation over the subjective reasonableness of failing to obtain new information. Some commenters expressed concern that the proposed change broadens the circumstances when agencies must obtain new information and increases the risk of reliance on poor quality information developed quickly to meet the statutory timeframes.

One commenter provided that if CEQ finalizes the proposed change, it should clarify that agencies should not delay the NEPA process by obtaining non-essential information. This commenter also requested that CEQ clarify that agencies only need to produce new information where the agencies would not be able to make an informed decision about the reasonably foreseeable effects of a project otherwise. Similarly, another commenter stated that if finalized, CEQ should clarify that new agency research is required only in limited circumstances and is the exception, not the rule.

CEQ makes the change to remove ''but available'' from § 1502.21(b) in the final rule. CEQ has reconsidered its position in the 2020 rule and now considers it vital to the NEPA process for agencies to undertake studies and analyses where the information from those studies and analyses is essential to a reasoned choice among alternatives and the overall costs are not unreasonable, rather than relying solely on available information. In particular, CEQ notes its longstanding interpretation of ''incomplete information'' as articulated in the 1986 amendments to this provision. CEQ defined ''incomplete information'' as information that an agency cannot obtain because the overall costs of doing so are exorbitant and ''unavailable information'' as information that an agency cannot obtain it because ''the means to obtain it are not known.'' [94] In response to comments in 1986, CEQ further explained that the phrase '' 'the means to obtain it are not known' is meant to include circumstances in which the unavailable information cannot be obtained because adequate scientific knowledge, expertise, techniques or equipment do not exist.'' [95] The 2020 rule disregarded this longstanding interpretation and instead suggested that new scientific or technical research is ''unavailable information.'' Upon further consideration, CEQ disagrees with the interpretation in the 2020 rule and re-adopts its longstanding interpretation that the phrase ''incomplete information'' applies only to information from new scientific or technical research, the cost of which are unreasonable.

Removing the phrase ''but available'' also is consistent with section 106(b)(3) of NEPA, which was added by the recent NEPA amendments and states that in determining the level of NEPA review, agencies are only required to undertake new scientific or technical research where essential to a reasoned choice among alternatives and the overall costs and time frame of obtaining it are not unreasonable. 42 U.S.C. 4336(b)(3). While section 106(3) only directly applies to determining the level of NEPA review, the provision's limitation on when agencies need to undertake new scientific or technical research in that context refutes an interpretation of NEPA as limiting agencies to considering available information. 42 U.S.C. 4336(b)(3). Establishing a consistent standard to address incomplete information in the NEPA review process that is consistent with the text of section 106(3) will lead to a more orderly and predictable environmental review process. 42 U.S.C. 4336(b)(3). Similarly, CEQ considers it appropriate to require agencies to ensure professional integrity, including scientific integrity, and use reliable data and resources, as well as other provisions in the regulations emphasizing the importance of relying on high-quality and accurate information throughout implementation of NEPA. *See, e.g.,* §§ 1500.1(b), 1506.6.

CEQ disagrees that this change will unduly expand agencies' obligations to obtain additional information. CEQ is reverting to the longstanding approach in the regulations that will ensure agencies appropriately gather information when it is necessary to inform the decision maker and the public. CEQ considers the bounding language of reasonable costs and necessity to make a reasoned choice to be the appropriate cabining so that agencies are reasonably gathering any additional information needed for a sufficient NEPA analysis without creating undue burden or facilitating a boundless collection of information. With respect to litigation risk, as with many other aspects of a NEPA review, agencies should explain in their documents their rationale when they determine it is unreasonable or

[94] CEQ, National Environmental Policy Act Regulations; Incomplete or Unavailable Information, *supra* note 32, at 15621.

[95] *Id.* at 15622.

unnecessary to obtain new information. Finally, CEQ acknowledges the potential tension between the time it takes to gather new information and statutory deadlines. CEQ encourages agencies to identify incomplete information as early as possible in the process to ensure they have time to gather the information necessary to satisfy their NEPA obligations during the statutory timeframes. CEQ also notes that where an agency cannot obtain incomplete information within the statutory timeframes, but the costs are reasonable, the agency could conclude that it is necessary to set a new deadline that allows only as much time as necessary to obtain the information so long as the costs of obtaining the information, including any cost from extending the deadline and delaying the action, are reasonable.

Finally, CEQ removes the modifier ''adverse'' from ''significant adverse effects'' throughout this section because the final rule defines ''significant effects'' to be adverse effects. CEQ makes this change for clarity and consistency with the definition.

18. Methodology and Scientific Accuracy (Proposed § 1502.23)

In the proposed rule, CEQ proposed updates to § 1502.23, ''Methodology and Scientific Accuracy,'' which requires agencies to ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents. CEQ proposed revisions to promote use of high-quality information; require agencies to explain assumptions; and, where appropriate, incorporate projections, including climate change-related projections, in the evaluation of reasonably foreseeable effects.

CEQ received a number of comments expressing confusion regarding the applicability of this provision. In particular, since 1978, the provision has used the term ''environmental documents,'' making it broadly applicable. However, it is included in part 1502, which addresses requirements for EISs. Additionally, the amendments to NEPA make clear that agencies must ensure the professional integrity, including scientific integrity, of the discussion and analysis in their NEPA documents, not just in EISs, and make use of reliable data and resources in carrying out NEPA. To address the confusion amongst commenters and for consistency with the NEPA statute, CEQ moves this provision to part 1506, specifically § 1506.6, which addresses other requirements of NEPA.

For the discussion of the specific proposed changes and comments on those changes as well as a description of the final rule, refer to section II.H.4.

E. Revisions To Update Part 1503, Commenting on Environmental Impact Statements

CEQ is making substantive revisions to all sections of part 1503, except § 1503.2, ''Duty to comment.'' While CEQ invited comment on whether it should make any substantive changes to this section, CEQ did not receive any specific comments recommending such changes to § 1503.2. Therefore, CEQ finalizes § 1503.2 with the non-substantive edits proposed in the NPRM (spelling out EIS and fixing citations).

1. Inviting Comments and Requesting Information and Analyses (§ 1503.1)

CEQ did not propose substantive changes to § 1503.1 except to delete paragraph (a)(3) of 40 CFR 1503.1 (2020), requiring agencies to invite comment specifically on the submitted alternatives, information, and analyses and the summary thereof, for consistency with the proposed changes to the exhaustion provision in § 1500.3 and the corresponding revisions to § 1502.17. CEQ discusses the comments on removal of the exhaustion provisions generally in section II.B.3, and CEQ did not receive any comments specific to the proposed deletion of 40 CFR 1503.1(a)(3) (2020). CEQ deletes this paragraph in the final rule because CEQ is revising § 1500.3 to remove the exhaustion provision in this final rule as discussed in section II.B.3. Therefore, this requirement to invite comment is unnecessary and redundant as Federal agencies invite comment on all sections of draft EISs, including any appendices, and thus need not invite comment on one specific section of an EIS.

2. Specificity of Comments and Information (§ 1503.3)

CEQ proposed edits to § 1503.3 to clarify the expected level of detail in comments submitted by the public and other agencies to facilitate consideration of such comments by agencies in their decision-making processes. CEQ proposed these edits to remove or otherwise modify provisions that could inappropriately restrict public comments and place unnecessary burden on public commenters.

Multiple commenters expressed support for the proposed rule's edits to § 1503.3 to remove language in the 2020 rule and argued that the language impeded public participation and unlawfully sought to limit access to the courts. Commenters asserted that the 2020 language impeded participation in the NEPA process by members of the public with valuable information and perspective on the proposed action. Specifically, the commenters supported the removal of the requirement for the public to provide as much detail as necessary in paragraph (a), along with the proposed clarification that commenters do not need to describe their data, sources, or methodologies. Commenters further stated that the requirement to provide as much detail as necessary was ambiguous and could have been interpreted to establish an unjustified barrier to public comment to those who do not have access to technical experts or consultants. As discussed further in this section, CEQ is finalizing all but one of its proposed changes.

CEQ proposed to remove language from § 1503.3(a), which the 2020 rule added, that requires comments to be as detailed ''as necessary to meaningfully participate and fully inform the agency of the commenter's position'' because this requirement could lead commenters to provide unnecessarily long comments that will impede efficiency. Commenters generally supported this proposal. In support of the proposed removal, one commenter asserted that the ambiguity of the requirement to provide as much detail as necessary would prompt unnecessary litigation over whether particular comments were sufficient to ''fully inform'' the agency.

CEQ strikes this language in the final rule. Paragraph (a) of § 1503.3 has always required comments to be ''as specific as possible,'' *see* 40 CFR 1503.3(a) (2019); 40 CFR 1503.3(a) (2020), and the language CEQ is removing could be read to require commenters to provide detailed information that either is not pertinent to the NEPA analysis or is about the commenter's position on the proposed action, the project proponent, the Federal agency, or other issues. For example, the text could be read to require a commenter to provide a detailed explanation of a moral objection to a proposed action or a personal interest in it if those inform the commenter's position on the project. The text also could imply that commenters must either be an expert on the subject matter or hire an expert to provide the necessary level of detail. Further, the text could be read to imply that commenters are under an obligation to collect or produce information necessary for agencies to fully evaluate issues raised in comments even if the commenters do not possess that information or the skills necessary to produce it.

As CEQ explained in the proposed rule, some commenters on the 2020 rule

raised this issue, expressing concerns that this language could be read to require the general public to demonstrate a level of sophistication and technical expertise not required historically under the CEQ regulations or consistent with the NEPA statute.[96] Commenters also expressed concern that the requirement would discourage or preclude laypersons or communities with environmental justice concerns from commenting.[97] Other commenters on the 2020 rule expressed concern that the changes would shift the responsibility of analysis from the agencies to the general public.[98] Finally, CEQ is removing this language because the requirements that comments provide as much detail as necessary to ''meaningfully'' participate and ''fully inform'' the agency are vague and put the burden on the commenter to anticipate the appropriate level of detail to meet those standards.

CEQ also proposed to delete from the second sentence in paragraph (a) language describing certain types of impacts that a comment should cover, including the reference to economic and employment impacts as well as the phrase ''and other impacts affecting the quality of the human environment'' because it is unnecessary and duplicative of ''consideration of potential effects and alternatives,'' which appears earlier in the sentence. CEQ proposed to delete the reference to economic and employment impacts because this language imposes an inappropriate burden on commenters by indicating that comments need to explain why an issue matters for economic and employment purposes. NEPA requires agencies to analyze the potential effects on the human environment and does not require that these effects be specified in economic terms or related specifically to employment considerations. Therefore, it is inappropriate to single out these considerations for special consideration by commenters and unduly burdensome to expect every commenter to address economic and employment impacts.

A few commenters opposed the deletion, expressing concerns that removal of this language would discourage agencies from considering economic or employment impacts, or indicate that agencies are not interested in considering such information. CEQ disagrees with the commenters' assertions. This provision addresses the role of commenters, who are in the best position to assess the appropriate scope of their comments. CEQ broadens the language in the final rule, consistent with the proposal, to invite and welcome comments on effects of all kinds. The revision in the final rule will not have the effect of limiting commenters from addressing economic or employment impacts in their comments but would avoid the implication that members of the public are welcome to comment only if they address those issues. Further, the removal of this language in the provisions on public comments for an EIS does not affect potential consideration of these effects during the environmental review process. Specifically, § 1501.2(b)(2) requires agencies to identify environmental effects and values in adequate detail so the decision maker can appropriately consider such effects and values alongside economic and technical analyses. For these reasons, CEQ makes the edits as proposed to the second sentence of § 1503.3(a) in the final rule.

Finally, in paragraph (a), CEQ proposed changes to the last sentence to clarify that, only where possible, the public should include citations or proposed changes to the EIS or describe the data, sources, or methodologies that support the proposed changes in their comments. While such information is helpful to the agency whenever it is readily available, CEQ had concerns that this could be construed to place an unreasonable burden on commenters. CEQ did not receive any comments specific to this change and makes these edits as proposed in the final rule.

CEQ proposed to strike paragraph (b) of 40 CFR 1503.3 (2020) and redesignate paragraphs (c) and (d) as § 1503.3(b) and (c), respectively. CEQ proposed to delete paragraph (b) for consistency with the proposed removal of the exhaustion requirement from 40 CFR 1500.3 (2020) and corresponding changes to § 1502.17. CEQ also proposed to remove this paragraph because it is unrelated to the subject addressed in § 1503.3, which addresses the specificity of comments, rather than when commenters should file their comments. Finally, CEQ proposed to remove this paragraph because agencies have long had the discretion to consider special or unique circumstances that may warrant consideration of comments outside those time periods.

While most commenters were supportive of the deletion of the provisions related to exhaustion, a few commenters specifically requested CEQ retain paragraph (b) of 40 CFR 1503.3 (2020) in the final rule. These commenters expressed concern about increased litigation and commenters raising issues at the last minute or in litigation for the first time.

CEQ removes paragraph (b) of 40 CFR 1503.3 (2020) in the final rule. The CEQ regulations have long encouraged the identification of issues early in the NEPA process by providing multiple opportunities for the public to engage—first through the scoping process and then through the public comment period on the draft EIS. As CEQ explains in section II.B.3, CEQ has determined it is appropriate to remove the exhaustion provisions in 40 CFR 1500.3 (2020), which CEQ considers related to general principles of administrative law applied by courts rather than to principles specific to NEPA. Therefore, CEQ removes this paragraph for the reasons set forth in the NPRM, the Phase 2 Response to Comments, and the preamble of this final rule.

Next, CEQ proposed to strike ''site-specific'' from 40 CFR 1503.3(d) (2020) in proposed paragraph (c) to clarify that cooperating agencies must identify additional information needed to address significant effects generally. CEQ proposed this change to enhance efficiency because it ensures that cooperating agencies have the information they need to fully comment on EISs, averting potential delay in the environmental review process. CEQ did not receive any comments specific to this proposed change. CEQ makes this change for clarity in the final rule.

Finally, CEQ proposed to strike the requirement for cooperating agencies to cite their statutory authority for recommending mitigation from 40 CFR 1503.3(e) (2020). The NPRM explained that this requirement is unnecessary since, at this stage in development of an EIS, those agencies with jurisdiction by law have already established their legal authority to participate as cooperating agencies. Two commenters opposed this change, suggesting that requiring cooperating agencies to provide this additional detail to the lead agency will help the lead agency and applicants assess the reasonableness of such recommendations. Upon further consideration, CEQ has decided not to remove this requirement in the final rule. CEQ revises the beginning of the sentence from ''When a cooperating agency with jurisdiction by law specifies'' to ''A cooperating agency with jurisdiction by law shall specify'' to clarify the requirement to identify mitigation measures. Then, in the last clause, CEQ replaces ''the cooperating agency shall'' with ''and'' to retain the requirement for a cooperating agency to cite to its applicable statutory authority.

[96] CEQ, 2020 Response to Comments, *supra* note 69, at 326–27.

[97] *Id.*at 327.

[98] *Id.* at 328.

CEQ agrees that identifying the statutory authorities for mitigation is useful information. CEQ encourages cooperating agencies to identify such information as early as practicable in development of the EIS, but no later than at the time of their review of a draft EIS. CEQ also proposed in paragraph (d) to replace the reference to ''permit, license, or related requirements'' with ''authorizations'' because the definition of ''authorization'' in § 1508.1(d) is inclusive of those terms. CEQ makes this change as proposed for clarity and consistency in the final rule.

3. Response to Comments (§ 1503.4)

CEQ proposed to revise paragraph (a) of § 1503.4 to clarify that agencies must respond to comments but may do so either individually, in groups, or in some combination thereof. CEQ proposed to change ''may'' to ''shall,'' which would revert a change made in the 2020 rule, because the change created ambiguity that could be read to mean that agencies have discretion in whether to respond to comments at all, not just in the manner in which they respond, *i.e.,* individually or in groups. CEQ did not indicate that it intended to make responding to comments voluntary when it made this change in the 2020 rule, and CEQ has determined that amending the regulations to avoid this ambiguity improves the clarity of the regulations.

CEQ received a few comments on paragraph (a). A commenter suggested that the rule provide greater latitude to agencies to summarize and respond to comments of a similar nature or decline to respond to comments that the agency determines provide no substantive information applicable to the EIS. CEQ agrees that Federal agencies should have flexibility to summarize and respond to similar comments or decline to respond to non-substantive comments where appropriate. The proposed language provides this flexibility, and CEQ makes this change in the final rule. Restoring ''shall'' in place of ''may'' removes any ambiguity created by revisions to the paragraph in the 2020 regulations and is consistent with the longstanding requirement and expectation for agencies to respond to comments received on an EIS, while also clarifying that agencies have discretion on how to respond to comments to promote the efficiency of the NEPA process.

A couple of commenters requested that CEQ define ''substantive comments;'' modify the last sentence of paragraph (a) to make the list of means by which an agency may respond in the final EIS to be a required list by changing ''may respond'' to ''will respond;'' and modify paragraph (a)(2) to clarify that the only alternatives an agency should develop and evaluate following public comments are those that are consistent with the purpose and need and are technically and economically feasible. CEQ declines to make these changes in the final rule. Agencies have extensive experience assessing whether a comment is substantive and should have the flexibility to do so—CEQ is concerned that a definition would be unnecessarily restrictive. Similarly, CEQ declines to make the list of means by which an agency responds to comments mandatory, as unnecessarily prescriptive; paragraph (a) lists the key ways agencies may address comments, but as long as agencies respond to individual comments or groups of comments, as required by the second sentence of paragraph (a), they should have flexibility to determine the appropriate means of response. Lastly, CEQ does not consider the proposed change to paragraph (a)(2) necessary because alternatives already must be consistent with the purpose and need consistent with § 1502.14.

In paragraph (c), CEQ proposed changes to clarify that when an agency uses an errata sheet, the agency must publish the entire final EIS, which would include the errata sheet, a copy of the draft EIS, and the comments with their responses. CEQ proposed these edits to reflect typical agency practice and to reflect the current requirement for electronic submission of EISs rather than the old practice of printing EISs for distribution. One commenter suggested that proposed edits would eliminate the errata sheet. The intent of CEQ's edits is to ensure that the public can access the complete analysis in one place. CEQ disagrees with the commenter's interpretation of the proposed text, but to remove any ambiguity, CEQ has revised the provision in the final rule to make clear that the final EIS includes the errata sheet and ''a copy of the draft statement.''

F. Revisions To Update Part 1504, Dispute Resolution and Pre-Decisional Referrals

In the NPRM, CEQ proposed to revise part 1504 to add a new section on early dispute resolution and reorganize the existing sections. As discussed further in this section, CEQ makes the changes in the final rule with some additional edits that are responsive to commenters. One commenter noted that CEQ did not propose to revise the title of part 1504 to reflect this approach. Therefore, in this final rule, CEQ revises and simplifies the title of part 1504 to ''Dispute resolution and pre-decisional referrals'' for consistency with the revisions to this part. CEQ notes that the criteria and procedures for agencies to make a referral apply to agencies that make a referral under the NEPA regulations and do not apply to EPA when exercising its referral authority under section 309 of the Clean Air Act, 42 U.S.C. 7609.

1. Purpose (§ 1504.1)

CEQ proposed in § 1504.1(a) to add language encouraging agencies to engage early with each other to resolve interagency disagreements concerning proposed major Federal actions before such disputes are referred to CEQ. CEQ also proposed to add language clarifying that part 1504 establishes procedures for agencies to submit requests to CEQ for informal dispute resolution, expanding the purpose to reflect the changes proposed in § 1504.2 and described in section II.F.2. While CEQ did not receive any comments on the language of this specific provision, CEQ revises the proposed language to make clear that agencies need not engage in dispute resolution before a referral. At least one commenter interpreted the optional early dispute resolution provision in § 1504.2 as a required precursor to a referral. Therefore, in the final rule, CEQ revises the first sentence as proposed to encourage agencies to engage with one another to resolve interagency disputes and adds the proposed new sentence indicating that part 1504 establishes the procedures for early dispute resolution, but does not include the clause referencing the referral process. As discussed further in section II.F.2, these revisions are consistent with CEQ's ongoing role in promoting the use of environmental collaboration and conflict resolution,[99] and serving as a convener and informal mediator for interagency disputes. CEQ strongly encourages agencies to resolve disputes informally and as early as possible so that referrals under part 1504 are used only as a last resort. Early resolution of disputes is essential to ensuring an efficient and effective environmental review process.

In paragraph (b), which notes EPA's role pursuant to section 309 of the Clean Air Act, 42 U.S.C. 7609, CEQ proposed to strike the parenthetical providing the

[99] *See* OMB & CEQ, Memorandum on Environmental Collaboration and Conflict Resolution (Sept. 7, 2012), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/OMB_CEQ_Env_Collab_Conflict_Resolution_20120907.pdf;* OMB & CEQ, Memorandum on Environmental Conflict Resolution (Nov. 28, 2005), *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/OMB_CEQ_Joint_Statement.pdf.*

term ''environmental referrals,'' as this term is not used elsewhere in part 1504. CEQ notes that EPA's section 309 authority is distinct from the ability of an agency to make a referral pursuant to § 1504.3, and therefore part 1504 does not apply to EPA when it is exerting its section 309 authority. Finally, CEQ proposed to revise the second sentence in paragraph (c) to eliminate the passive voice to improve clarity. CEQ did not receive any specific comments on its proposed changes to paragraphs (b) and (c). Consistent with the NPRM, this final rule removes the parenthetical in paragraph (b) and revises paragraph (c) to add the second sentence as proposed. Additionally, the final rule strikes ''similar'' from the first sentence of paragraph (c) because the bases for referral under NEPA and section 309 are distinct.

2. Early Dispute Resolution (§ 1504.2)

As discussed further in section II.F.3, CEQ proposed to move the provisions in 40 CFR 1504.2 (2020) to § 1504.3(a) and to repurpose § 1504.2 for a new section on early dispute resolution. CEQ proposed to add this section to codify agencies' current and longstanding practice of engaging with one another and enlisting CEQ to help resolve interagency disputes. While CEQ did not receive many comments on this provision, the vast majority of those it did receive supported the new provision, and some recommended CEQ make the language in the provision stronger and more directive. On the other hand, one commenter suggested dispute resolution would slow the environmental review process. CEQ is finalizing the provision as proposed because CEQ considers a flexible, informal, and non-binding approach rather than a mandatory and prescriptive process to strike the right balance to advance early resolution of interagency disputes. CEQ does not consider this provision to abrogate CEQ's authorities, as one commenter suggested, but rather to encourage agencies to resolve disputes early amongst themselves and elevate issues to CEQ when doing so will help advance resolution. Making the language in the regulations discretionary rather than mandatory does not affect CEQ's authorities.

CEQ revises § 1504.2 as proposed. Specifically, new paragraph (a) encourages agencies to engage in interagency coordination and collaboration within planning and decision-making processes and to identify and resolve interagency disputes. Further, paragraph (a) encourages agencies to elevate issues to appropriate agency officials or to CEQ in a timely manner that is consistent with the schedules for the proposed action established under § 1501.10.

Paragraph (b) allows a Federal agency to request that CEQ engage in informal dispute resolution. When making such a request to CEQ, the agency must provide CEQ with a summary of the proposed action, information on the disputed issues, and agency points of contact. This provision codifies the longstanding practice of CEQ helping to mediate and resolve interagency disputes outside of and well before the formal referral process (§ 1504.3) and to provide additional direction to agencies on what information CEQ needs to mediate effectively.

Paragraph (c) provides CEQ with several options to respond to a request for informal dispute resolution, including requesting additional information, convening discussions, and making recommendations, as well as the option to decline the request.

3. Criteria and Procedure for Referrals and Response (§ 1504.3)

As noted in section II.F.2, CEQ proposed to move the criteria for referral set forth in 40 CFR 1504.2 (2020) to a new paragraph (a) in § 1504.3 and redesignate paragraphs (a) through (h) of 40 CFR 1504.3 (2020) as § 1504.3(b) through (i), respectively. Because of this consolidation, CEQ proposed to revise the title of § 1504.3 to ''Criteria and procedure for referrals and response.''

At least one commenter supported the move of 40 CFR 1504.2 (2020) to proposed § 1504.3(a) to facilitate the addition of the informal dispute resolution process. A few commenters requested that CEQ make additional changes to § 1504.3 to restore language from the 1978 regulations allowing public comment during CEQ's deliberations on whether to accept a particular referral and, if CEQ accepts a referral, during CEQ's consideration of recommendations to resolve the dispute.

In the final rule, CEQ adds an additional factor, ''other appropriate considerations,'' at § 1504.3(a)(8) to clarify that the list of considerations for referral is not an exclusive list. Additionally, CEQ revises paragraph (f) to allow ''other interested persons'' to provide views on the referrals because CEQ agrees with the commenters that the opportunity to provide views should not be limited to applicants. Relatedly, CEQ clarifies in paragraph (g)(3) that CEQ may obtain additional views and information ''including through public meetings or hearings.'' While the language in 40 CFR 1504.3(f)(3) (2020) and the proposed rule would not preclude CEQ from holding public meetings or hearings, CEQ considers it important to provide this clarification in the regulations to respond to comments. CEQ otherwise finalizes this provision as proposed.

G. Revisions to NEPA and Agency Decision Making (Part 1505)

1. Record of Decision in Cases Requiring Environmental Impact Statements (§ 1505.2)

The proposed rule included proposed modifications in § 1505.2 to align this section with other proposed changes to the regulations relating to exhaustion and to clarify which alternatives agencies must identify in RODs. CEQ also proposed to modify the provision on mitigation. As discussed further in this section, CEQ proposed to strike paragraph (b) of 40 CFR 1505.2 (2020), make paragraph (a) of 40 CFR 1505.2 (2020) the undesignated introductory paragraph in § 1505.2, and redesignate paragraphs (a)(1) through (a)(3) of 40 CFR 1505.2 (2020) as § 1505.2(a) through (c), respectively. CEQ makes these reorganizational changes in the final rule.

In proposed paragraph (b), CEQ proposed to restructure the first sentence—by splitting it into two sentences and reframing it in active voice—to improve readability and clarify that an agency must identify the alternatives it considered in reaching its decision and also specify one or more environmentally preferable alternatives in the ROD, consistent with proposed changes to § 1502.14(f) requiring an agency to identify one or more environmentally preferable alternatives in the EIS. CEQ makes these changes as proposed in the final rule.

CEQ received a number of comments on the ''environmentally preferable alternative'' generally, which are discussed in detail in sections II.D.13 and II.J.10. CEQ notes that it did not intend a substantive change to the longstanding requirement to identify which alternative (or alternatives) considered in the EIS is the environmentally preferable alternative(s). Some commenters suggested that the ''environmentally preferable alternative'' could be an alternative other than the proposed action, no action, or reasonable alternatives (which must be technically and economically feasible and meet the definition of purpose and need). However, this is incorrect because the environmentally preferable alternative is one of the alternatives included in the analysis, which consist of the proposed action, no action, or reasonable

alternatives. CEQ is revising § 1502.14(f) in the final rule, to which § 1505.2(b) cross references, to make this clear. CEQ revises § 1505.2 as proposed in the final rule.

Another commenter suggested CEQ require an agency to specify if it selected the environmentally preferable alternative and if not, why not. CEQ declines to make this change in the final rule because it is overly prescriptive. The regulations have long required agencies to discuss myriad factors and considerations that agencies balance in making their decisions without specifically requiring an agency to explain why it did not select the environmentally preferable alternative, and CEQ does not consider a change from this longstanding practice to be warranted.

In the third sentence of proposed § 1505.2(b), CEQ added environmental considerations to the list of example relevant factors upon which an agency may base discussion of preferences among alternatives. CEQ did not receive any specific comments on this proposed change to § 1505.2(b) and makes the changes in the final rule consistent with its proposal.

In proposed § 1505.2(c), CEQ proposed to change ''avoid or minimize'' to ''mitigate'' in the first sentence for consistency with the remainder of the paragraph. One commenter opposed this change, arguing that it would impose a burdensome requirement on agencies to consider mitigation for each of the effects of the proposed action and explain in a ROD why each impacted resource will not be replaced with a substitute. CEQ disagrees with the commenter's interpretation of the proposed revision. This provision has never required agencies to discuss avoidance or minimization at this level of detail, *i.e.,* for each resource category. Rather, it requires an agency to discuss generally whether it has ''adopted all practicable means'' and if not, the reasons for not doing so. CEQ makes this change in the final rule to clarify that agencies should discuss generally whether they have adopted practicable mitigation to address environmental harms from the selected alternative. Agencies need not do so on an impact category-by-impact category basis.

Additionally, CEQ proposed to clarify in proposed § 1505.2(c) that any mitigation must be enforceable, such as through permit conditions or grant agreements, if an agency includes the mitigation as a component of the selected action in the ROD, and the analysis of reasonably foreseeable effects in the EISs relies on effective implementation of that mitigation. CEQ also proposed to require agencies to identify the authority for enforceable mitigation. Lastly, CEQ proposed to replace the requirement to adopt and summarize a monitoring and enforcement program for any enforceable mitigation requirements or commitments, with a requirement to adopt a monitoring and compliance plan consistent with proposed § 1505.3(c).

CEQ received a large number of comments both supporting and opposing the proposed requirement to ensure that mitigation is enforceable in certain cases and to identify the authority for the enforceable mitigation. Supporters of the proposed change generally expressed concerns that mitigation incorporated in RODs or FONSIs is often not carried out, undermining the evaluation of effects required by NEPA. By contrast, opponents of the proposed change expressed concern that the provision would require enforceable mitigation in every case, and that the requirement for enforceability would discourage project proponents from proposing voluntary mitigation. These commenters also stated that NEPA does not require mitigation of adverse effects or give agencies the authority to require or enforce mitigation measures. They expressed concern that to the extent that the authority to require or enforce mitigation comes from other statutes, the requirement in proposed § 1505.2(c) would be duplicative. Finally, commenters noted that ''enforcement'' may be the responsibility of an agency other than the lead agency and may consist of suspension or revocation of an authorization under terms and conditions included in the authorization rather than direct civil or administrative enforcement actions.

In the final rule, CEQ retains the requirement to make mitigation enforceable in those circumstances in which agencies rely upon that mitigation as part of its analysis. CEQ has revised the sentence in § 1505.2(c) to enhance readability and to address some of the confusion raised by commenters by specifying that mitigation must be enforceable by a lead, joint lead, or cooperating agency when the ROD incorporates mitigation and the analysis of the reasonably foreseeable effects of the proposed action is based on implementation of that mitigation. The final rule further revises the second sentence of proposed § 1505.2(c) by breaking it into two sentences. The first identifies when mitigation must be enforceable. The second requires agencies to identify the authority for enforceable mitigation, provides examples of enforceable mitigation—specifically, permit conditions, agreements, or other measures—and requires agencies to prepare a monitoring and compliance plan. CEQ received a number of comments on the monitoring and compliance plan proposal, which are discussed in detail in section II.G.2. For the reasons discussed in that section, as well as the Phase 2 Response to Comments and NPRM, CEQ revises the last sentence of § 1505.2(c) to require agencies to prepare a monitoring and compliance plan consistent with § 1505.3.

Section 1505.2(c) does not require agencies to include enforceable mitigation measures in every decision subject to NEPA or require them to adopt mitigation in any circumstance; rather, the provision reinforces the integrity of environmental reviews by ensuring that if an agency assumes as part of its analysis that mitigation will occur and will be effective, the agency takes steps to ensure that this assumption is correct, including by making the mitigation measures enforceable.

This provision does not prohibit agencies from approving proposals with unmitigated adverse environmental effects or from approving proposals that include unenforceable mitigation measures so long as the agency does not rely on the effective implementation of those measures to determine the potential reasonably foreseeable effects of the action. Rather, the provision only prohibits an agency from basing its environmental analysis on mitigation that the agency cannot be reasonably sure will occur. If an agency treats the proposal's unmitigated effects as ''reasonably foreseeable,'' and analyzes them in its environmental review, then the rule does not require the agency to make the mitigation measures discussed in the environmental document enforceable or to identify the authority for those measures.

The text in the final rule is consistent with CEQ's longstanding position that agencies should not base their NEPA analyses on mitigation measures that they lack the authority to carry out or to require others to carry out. CEQ agrees with the commenters that enforcing mitigation measures will generally rely on authorities conferred on the agency (or other participating agencies) by statutes other than NEPA. Rather than duplicating work done under those other statutes, however, the requirement to identify those authorities will help integrate NEPA with other

statutory processes and promote efficiency and transparency.

Finally, CEQ proposed to strike paragraph (b) of 40 CFR 1505.2 (2020), requiring a decision maker to certify in the ROD that the agency considered all of the submitted alternatives, information, and analyses in the final EIS, consistent with paragraph (b) of 40 CFR 1502.17 (2020), and stating that such certification is entitled to a presumption that the agency considered such information in the EIS. CEQ proposed to strike this paragraph because such certification is redundant—the discussion in the ROD and the decision maker's signature on such document have long served to verify the agency has considered the entirety of the EIS's analysis of the proposed action, alternatives, and effects, as well as the public comments received. As a result, the certification that this paragraph required could have the unintended consequence of suggesting that the agency has not considered other aspects of the EIS, such as the comments and response to comments, in making the decision. CEQ also proposed this change because agencies are entitled to a presumption of regularity under the tenets of generally applicable administrative law, rather than this presumption arising from NEPA; therefore, CEQ considers it inappropriate to address in the NEPA regulations.

CEQ also proposed to strike paragraph (b) for consistency with its proposal to remove the exhaustion provision in 40 CFR 1500.3 (2020), as discussed in section II.B.3. As CEQ discussed in that section, CEQ now considers it more appropriately the purview of the courts to make determinations regarding exhaustion. Therefore, to the extent that the certification requirement was intended to facilitate the exhaustion provision in 40 CFR 1500.3 (2020), it is no longer necessary.

As discussed in section II.B.3, CEQ considered the comments regarding the exhaustion-related provisions and is removing them in this final rule. While most commenters discussed the provisions collectively, at least one commenter recommended removing this certification provision because it created an additional compliance burden on agencies without improving efficiency or reducing litigation risk. CEQ agrees that the certification provision does not increase efficiency or reduce litigation risk, and that this is an additional reason to remove this provision. For the reasons discussed here and in section II.B.3, CEQ removes this paragraph in the final rule. As noted in this section, CEQ considers such certification to be redundant to the decision maker's signature on a ROD, which indicates that the decision maker has considered all of the information, including the public comments.

2. Implementing the Decision (§ 1505.3)

CEQ proposed to add provisions to § 1505.3 for mitigation and related monitoring and compliance plans. To accommodate the changes, CEQ proposed to designate the undesignated introductory paragraph of 40 CFR 1505.3 (2020) as paragraph (a) and redesignate 40 CFR 1505.3(a) and (b) (2020) as § 1505.3(a)(1) and (a)(2), respectively. CEQ makes these reorganizational changes in the final rule with two clarifying edits to § 1505.3(a). First, CEQ adds an introductory clause in § 1505.3, ''[i]n addition to the requirements of paragraph (c) of this section,'' to distinguish the discussion of monitoring in paragraph (a) from the new monitoring and compliance plans provided for in paragraph (c). Second, CEQ deletes ''lead'' before agency in the last sentence for consistency with the prior sentence, stating that the lead or other appropriate consenting agency shall implement mitigation committed to as part of the decision.

CEQ proposed to add new § 1505.3(b) to encourage lead and cooperating agencies to incorporate, where appropriate, mitigation measures addressing a proposed action's significant adverse human health and environmental effects that disproportionately and adversely affect communities with environmental justice concerns. CEQ proposed this addition to highlight the importance of considering environmental justice and addressing disproportionate effects through the NEPA process and the associated decision. CEQ proposed this addition based on public and agency feedback received during development of this proposed rule requesting that this rule address mitigation of disproportionate effects. Additionally, CEQ proposed this change to encourage agencies to incorporate mitigation measures to address disproportionate burdens on communities with environmental justice concerns.

Numerous commenters opposed CEQ's proposed addition of § 1505.3(b), pointing to the Supreme Court's decision in *Robertson* v. *Methow Valley Citizens Council,* 490 U.S. 332 (1989). These commenters stated that as a procedural statute, NEPA does not empower CEQ to require agencies to adopt mitigation measures. In contrast, other commenters supported CEQ's inclusion of the proposed new language in § 1505.3(b), and in some cases, encouraged CEQ to go further to require agencies to mitigate adverse effects to communities with environmental justice concerns.

CEQ finalizes § 1505.3(b) as proposed with two edits. The final rule includes ''into its decision'' after ''incorporate'' to clarify where agencies incorporate mitigation measures and does not include ''adverse'' after ''significant'' since ''significant effects'' is defined to only be adverse effects. CEQ has long encouraged agencies, as a policy matter, to adopt mitigation measures that will reduce the adverse environmental effects of their actions.[100] The addition of the language in § 1505.3(b) is consistent with this approach without imposing new legal requirements on Federal agencies.

CEQ recognizes the Supreme Court's holding in *Methow Valley* that NEPA does not require ''that a complete mitigation plan be actually . . . adopted,'' 490 U.S. at 352, and has not changed its longstanding position that ''NEPA in itself does not compel the selection of a mitigated approach.'' [101] Accordingly, this provision does not impose any binding requirements on agencies, but rather codifies a portion of CEQ's longstanding position that agencies should, as a policy matter, mitigate significant adverse effects where relevant and appropriate, in particular for ''actions that disproportionately and adversely affect communities with environmental justice concerns.'' The encouragement to agencies to mitigate disproportionate and adverse human health and environmental effects on communities with environmental justice concerns is grounded in NEPA, which, while not imposing a requirement to mitigate adverse effects, nonetheless does ''set forth significant substantive goals for the Nation.'' See *Vt. Yankee,* 435 U.S. at 558. Specifically, NEPA declares that the purposes of the statute are ''to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of [people]''; establishes ''the continuing policy of the Federal Government'' to ''assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings'' and to ''preserve important historic, cultural, and natural aspects of our national heritage''; and ''recognizes that each person should

[100] *See, e.g.,* CEQ, Mitigation Guidance, *supra* note 10, at 3847 (''CEQ encourages agencies to commit to mitigation to achieve environmentally preferred outcomes, particularly when addressing unavoidable adverse environmental impacts'').

[101] *See id.* at 3844.

enjoy a healthful environment.'' 42 U.S.C. 4321, 4331(a), (b)(2), (b)(4), (c).

CEQ's policy guidance has long ''encourage[d] agencies to commit to mitigation to achieve environmentally preferred outcomes, particularly when addressing unavoidable adverse environmental impacts.'' [102] CEQ's choice to encourage agencies in § 1505.3(b) to mitigate, ''where relevant and appropriate,'' the significant effects of ''actions that disproportionately and adversely affect communities with environmental justice concerns,'' reflects the particular importance of addressing environmental justice. CEQ does not intend the codification of its encouragement to mitigate this category of effects to imply that CEQ does not also continue to encourage agencies to commit to mitigation more broadly as set forth in CEQ's guidance. Rather, CEQ has determined to focus the regulation on mitigation where actions disproportionately and adversely affect communities with environmental justice concerns, due to its heightened policy concern when actions further burden communities that already experience disproportionate burdens.

Next, CEQ proposed to revise the text in paragraph (c) regarding mitigation and strike 40 CFR 1505.3(d) (2020) regarding publication of monitoring results, and replace them with new language in § 1505.3(c) regarding the contents of a monitoring and compliance plan. As proposed, this provision would require agencies to prepare a monitoring and compliance plan in certain circumstances when the agency commits to mitigation in a ROD, FONSI, or separate document. CEQ proposed to require agencies to prepare a plan for any mitigation committed to and adopted as the basis for analyzing the reasonably foreseeable effects of a proposed action, not just mitigation to address significant effects. In the NPRM, CEQ explained that it views such plans as necessary in order for an agency to conclude that it is reasonably foreseeable that a mitigation measure will be implemented, and, therefore, that the agency does not have to analyze and disclose the effects of the action without mitigation because they are not reasonably foreseeable. The proposal would not require a monitoring and compliance plan where an agency analyzes and discloses the effects of the action without the mitigation measure because, in that circumstance, the agency would not base its identification of reasonably foreseeable effects on the mitigation measure.

[102] *See id.* at 3847.

CEQ received many comments both supporting and opposing the requirement for mitigation monitoring and compliance plans under prescribed circumstances. Supporters of the proposed changes generally expressed concerns that without monitoring and compliance plans, agencies' assumptions regarding the ability of mitigation to reduce the adverse effects of the proposed action may be speculative. Opponents of the changes, meanwhile, raised similar concerns to those raised in connection with the language in § 1505.2(c) regarding the enforceability of mitigation, as discussed in section II.G.1. Specifically, commenters expressed concern that enforceable mitigation would be required in every case, and that the requirement for enforceability would discourage project proponents from proposing voluntary mitigation. These commenters also noted that NEPA does not require or authorize CEQ to require detailed mitigation plans and expressed concern that preparing monitoring and compliance plans would be duplicative and burdensome. Commenters also suggested that CEQ require monitoring plans in a broader range of cases; require plans to include more detailed information regarding effectiveness and uncertainty; require agencies to engage the public in connection with mitigation plans; and provide guidance on topics including interagency coordination and mitigation funding.

In the final rule, CEQ strikes paragraph (d) of 40 CFR 1505.3 (2020) and revises § 1505.3(c) to require the lead or cooperating agency to prepare and publish a monitoring and compliance plan for mitigation in certain circumstances identified in § 1505.3(c)(1) and (c)(2)—the final rule subdivides the text from proposed paragraph (c) to improve readability. The final rule clarifies that an agency must publish the plan. While publication is implied in the proposed rule, since such plans would be completed in or with the ROD or FONSI, and these documents must be published, commenters requested CEQ address this explicitly in the final rule, and CEQ has done so to avoid any confusion over whether agencies must publish these plans.

CEQ revises the language from the proposed rule to make clear that agencies must prepare such plans when the following conditions are met. First, the analysis of the reasonably foreseeable effects of a proposed action in an EA or EIS is based on implementation of mitigation. Second, the agency incorporates the mitigation into its ROD, FONSI, or separate decision document.

As with the requirements related to mitigation enforceability in § 1505.2(c), this provision does not require agencies to include mitigation monitoring and compliance plans for every action subject to NEPA or even for every decision that includes mitigation. Rather, the final rule requires the agency to prepare and publish a mitigation monitoring and compliance plan when an agency bases its identification of the reasonably foreseeable effects of the action, as required by section 102(2)(C) of NEPA, on implementation of mitigation. Specifically, the statutory text requires an agency to identify the ''reasonably foreseeable environmental effects'' of the proposed action; to the extent that identification assumes the implementation of mitigation measures to avoid adverse effects, it follows, in turn, that implementation of mitigation must also be reasonably foreseeable. The preparation of a monitoring and compliance plan therefore provides the agency with reasonable certainty that the mitigation measures upon which it has based its effects analysis will be implemented, and therefore, that the effects of the action in the absence of mitigation do not need to be analyzed and disclosed to satisfy the requirements of the NEPA statute. For example, if an agency concluded that issuing a permit allowing fill of five acres of wetlands would not have a significant effect based on the applicant's agreement to restore five acres of comparable wetlands in the same watershed, then the agency has based its conclusion that the action to grant the permit does not have significant effects on implementation of the mitigation measure and would need to prepare a monitoring and compliance plan. The same would be true if the agency's analysis in its EA or EIS found that authorizing the filling of five acres of wetlands would not have a reasonably foreseeable effect on the availability of wetlands habitat in the watershed based on the implementation of the wetlands restoration measure.

The language in § 1505.3 builds on CEQ's longstanding positions regarding the information that agencies must include in NEPA documents when agencies choose to base their effects analysis on the implementation of mitigation measures. To the extent that other authorities may require monitoring and compliance plans, agencies should leverage those existing plans to comply with the requirements of the rule, rather than duplicating efforts.

CEQ proposed paragraphs (c)(1) and (c)(1)(i) through (c)(1)(vi) of § 1505.3 to describe the contents of a monitoring and compliance plan and provide agencies flexibility to tailor plans to the complexity of the mitigation that the agency has incorporated into a ROD, FONSI, or other document. Contents should include a description of the mitigation measures; the parties responsible for monitoring and implementation; how the information will be made publicly available, as appropriate; the anticipated timeframe for implementing and completing the mitigation; the standards for compliance with the mitigation; and how the mitigation will be funded.

A commenter suggested that CEQ require in § 1505.3(c)(1)(v) that the standards address effectiveness of the mitigation. CEQ declines to make this change in the final rule. The goal of this provision is to ensure that agencies have reasonable certainty that mitigation measures that serve as the basis for the effects analysis will be implemented, and therefore, that the effects of the action in the absence of implementation of mitigation are not reasonably foreseeable and can be excluded from the analysis. Agencies appropriately evaluate the effectiveness of mitigation measures as part of the NEPA process and rely on various techniques, such as adaptive management plans, to address circumstances where there is substantial uncertainty over effectiveness, for example where a mitigation measure is new or novel.

CEQ finalizes these paragraphs in § 1505.3(d) and (d)(1) through (d) as proposed, with an addition to § 1505.3(d) to reference the monitoring and compliance plan required by paragraph (c). Agencies may tailor monitoring and compliance plans to the particular action, but they should contain sufficient detail to inform the participating and cooperating agencies and the public about relevant considerations, such as the magnitude of the environmental effects that would be subject to mitigation, the degree to which the mitigation represents an innovative approach, any technical or other challenges with implementation, the time frame for implementation and monitoring, and other relevant facts that support a determination that the mitigation will be implemented. Where a proposed action involves more than one agency, the lead and cooperating agencies should collaboratively develop a monitoring and compliance plan that clearly defines agency roles and avoids duplication of effort.

Requiring agencies to prepare a monitoring and compliance plan for mitigation in the circumstances identified in paragraph § 1505.3(c) is intended to address concerns that mitigation measures included in agency decisions are not always carried out. If it is reasonably foreseeable that a mitigation measure will not be implemented, then the agency cannot appropriately base its analysis of the effects of the action on the implementation of the mitigation measure. A monitoring and compliance plan will address this concern and support an agency relying on mitigation for purposes of analyzing and disclosing the reasonably foreseeable environmental effects of a proposed action, as required by section 102(2)(C) of NEPA, and, in some circumstances, concluding that a FONSI is appropriate.

Finally, CEQ proposed to add a new paragraph (c)(2) to provide that any new information developed through the monitoring and compliance plan would not require an agency to supplement its environmental documents solely because of this new information. CEQ proposed this provision to clarify that the existence of a monitoring and compliance plan by itself would not mean that the action to which it relates is an ongoing action if it would otherwise be considered completed.

CEQ received comments supporting, opposing, and asking CEQ to clarify proposed § 1505.3(c)(2). In the final rule, CEQ includes proposed paragraph (c)(2) at § 1505.3(e) with some revisions to the proposal. CEQ revises the beginning of the first sentence to clarify that where an action is incomplete or ongoing, the information developed through the monitoring and compliance plan itself cannot induce the requirement to supplement or revise environmental documents. CEQ includes this provision to avoid perverse incentives that could lead agencies to adopt less effective monitoring and compliance plans, or forgo commitments to mitigation entirely, to avoid revision and supplementation. This clarification is also consistent with the purpose of the monitoring and compliance plan, which is to ensure that the agency has a reasonable basis for assessing environmental effects at the time that it makes its decision, rather than creating a new obligation for ongoing NEPA analysis after a decision is made. Second, CEQ adds an additional sentence at the end of the paragraph to clarify that the ongoing implementation of a monitoring and compliance plan by itself is not an incomplete or ongoing Federal action that induces supplementation under §§ 1501.5(h) or 1502.9(d).

The changes to § 1505.3 are consistent with the final rule's revisions to § 1505.2(c), which direct agencies to adopt and summarize a monitoring and enforcement program for any enforceable mitigation requirements or commitments for a ROD, and to § 1501.6(a) to clarify the use of mitigated FONSIs. The changes also provide more consistency in the content of monitoring and compliance plans, increase transparency in the disclosure of mitigation measures, and provide the public and decision makers with relevant information about mitigation measures and the process to comply with them.

H. Revisions to Other Requirements of NEPA (Part 1506)

CEQ proposed multiple revisions to part 1506, as described in this section. As noted in section II.C.8, CEQ proposed to move 40 CFR 1506.6 (2020), ''Public involvement,'' to § 1501.9, ''Public and governmental engagement.'' CEQ did not propose changes to § 1506.2, ''Elimination of duplication with State, Tribal, and local procedures;'' § 1506.4, ''Combining documents;'' or § 1506.8, ''Proposals for legislation,'' but invited comments on whether it should make changes to these provisions in the final rule.

CEQ received several general comments of support on § 1506.2 regarding elimination of duplication with State, Tribal, and local procedures, and one commenter suggested the final rule change § 1506.2(d) to require rather than recommend that EISs describe how the agency will reconcile an inconsistency between the proposed action and an approved State, Tribal, or local plan or law. CEQ declines to make this change to this longstanding language from the 1978 regulations. As also noted in this provision, NEPA does not require such reconciliation.

CEQ did not receive any recommendations to amend § 1506.4 regarding combining documents, though one commenter requested additional guidance on use of this and other provisions to facilitate sound and efficient decision making and avoid duplication. Finally, CEQ received one comment on § 1506.8 regarding legislative EISs, requesting CEQ include public notification and participation requirements for legislative EAs/EISs in § 1506.8(b). CEQ notes that consistent with § 1506.8(c), agencies must provide for public notice and seek comment like any other draft EIS. After considering these comments, CEQ has determined to finalize the rule without making changes to §§ 1506.2, 1506.4, or 1506.8.

1. Limitations on Actions During NEPA Process (§ 1506.1)

CEQ proposed to edit § 1506.1(b) to provide further clarity on the limitations on actions during the NEPA process to ensure that agencies and applicants do not take actions that will adversely affect the environment or limit the choice of reasonable alternatives until an agency concludes the NEPA process.

CEQ proposed to amend the last sentence in paragraph (b), which provides that agencies may authorize certain activities by applicants for Federal funding while the NEPA process is ongoing. To better align this provision with NEPA's requirements, CEQ proposed to add a clause to the sentence clarifying that such activities cannot limit the choice of reasonable alternatives, and the Federal agency must notify the applicant that the agency retains discretion to select any reasonable alternative or the no action alternative regardless of any potential prior activity taken by the applicant prior to the conclusion of the NEPA process. CEQ also proposed this revision to provide additional clarity consistent with § 1506.1(a) and the 2020 Response to Comments, which state that this provision allows certain activities to proceed, prior to a ROD or FONSI, so long as they do not have an adverse environmental impact or limit the choice of reasonable alternatives.[103] The NPRM also noted that the proposed change is responsive to comments received on the 2020 rule expressing concern that the existing language could allow pre-decisional activities to proceed that would inappropriately narrow the range of alternatives considered by an agency.

A few commenters expressed support for the proposed changes to § 1506.1(b), including commenters who also requested additions to the list of examples of potentially permissible activities. Several other commenters opposed the proposed language, pointing to sector-specific reasons; citing cases where courts issued preliminary injunctions predicated on a ruling that limiting reasonable alternatives before the NEPA analysis is complete is irreparable harm; citing cases where courts ruled that undertaking project actions before NEPA is completed undermines the law; and asserting that allowing any economic investment in an action before completing the NEPA process undermines confidence in agency decisions.

Some commenters opposed the examples of activities an agency could authorize, asserting that land rights acquisition and long lead time equipment purchases are apt to bias agency decision making and recommended CEQ revise the list to prohibit acquisition of interests in land, purchase of long lead-time equipment, and purchase options made by applicants before NEPA review.

One commenter asserted that the proposed revisions to paragraph (b) undermine the value of an agency authorization and recommended the provision state that project applicants may proceed at their own risk without agency authorization. Another commenter requested that CEQ add language to paragraph (b) to provide Tribes with more flexibility to undertake interim actions.

CEQ considered the comments and finalizes § 1506.1(b) as proposed with two additional revisions. Specifically, CEQ changes the phrase ''non-Federal entity'' to ''applicant'' in the first sentence of paragraph (b) for consistency with the definition of ''applicant'' added to § 1508.1(c) and does not include the phrase ''potential prior'' before the word ''activity,'' so that the provision requires notification that the agency retains discretion regardless of any activity taken by the applicant prior to the conclusion of the NEPA process. CEQ has deleted this phrase because, upon further consideration, it considers it to be confusing because the sentence refers to activity taken prior to the conclusion of the NEPA process, and, therefore, the earlier use of ''prior'' is redundant and the use of ''potential'' is unnecessary because such activity would be actual and not potential at the conclusion of the NEPA process. CEQ considers the provision as revised to strike the right balance between preserving the integrity of the NEPA process, including preserving an agency's right to select no action or a reasonable alternative, and providing applicants sufficient flexibility to make business decisions. This approach is consistent with the fact that NEPA applies to Federal agencies and does not directly regulate applicants (unless the applicants are themselves Federal agencies). This approach is also consistent with longstanding practice under § 1506.1. Further, applicants are in the best position to assess and determine their tolerance for risk, and agencies should never be unduly influenced by these decisions in their NEPA processes.

CEQ also proposed to strike ''required'' in paragraph (c). This edit is consistent with § 1501.11, which encourages, but does not require, the use of programmatic environmental reviews.

A few commenters opposed the proposed change to paragraph (c), asserting that it is contrary to NEPA and multiple other laws by restricting actions during discretionary or non-required programmatic environmental reviews. One commenter stated that the proposal would authorize agencies to suspend programs like Federal coal leasing while environmental studies are ongoing, and that NEPA does not provide agencies with authority for such action. The commenter asserted that expanding proposed § 1506.1 beyond required programmatic environmental reviews is arbitrary and capricious because CEQ has failed to describe a valid purpose for the deletion.

CEQ has reviewed this provision in response to comments and retains ''required'' in the final rule. CEQ also revises ''programmatic environmental review'' to ''environmental review for a program'' to revert to the approach in the 1978 regulations. The 2020 rule changed ''program'' EIS to ''programmatic environmental review'' stating that ''programmatic'' is the term commonly used by NEPA practitioners.[104] However, paragraphs (c) and (c)(1) continue to refer to ''program,'' and the definition of ''programmatic environmental document'' in § 1508.1(ee) is not limited to reviews of programs, but extends other reviews such as reviews of groups of related actions. To resolve any ambiguity, the final rule is using ''program'' throughout these paragraphs and changes ''existing programmatic review'' to ''environmental document.'' CEQ also notes that the longstanding principles set forth in paragraph (c)—that agencies must comply with NEPA for specific Federal actions before taking the action and that agencies cannot engage in activities that prejudice the outcome of the NEPA process—apply to programmatic environmental reviews irrespective of whether a programmatic review is required.

2. Adoption (§ 1506.3)

CEQ proposed changes to § 1506.3 in the NPRM to facilitate an agency's adoption of the EISs, EAs, and CE determinations of another agency in an appropriate and transparent manner. As CEQ noted in the proposed rule, the 2020 regulations expanded § 1506.3 to codify longstanding agency practice of adopting EAs and explicitly allowed for adoption of other agencies' CE determinations. CEQ proposed

[103] CEQ, 2020 Response to Comments, *supra* note 69, at 356.

[104] CEQ, 2020 Final Rule, *supra* note 39, at 43327.

modifications to § 1506.3 to improve clarity, reduce redundancy, and ensure that when an agency adopts an EIS, EA, or CE determination, the agency conducts an independent review to determine that the EIS, EA, or CE determination meets certain basic standards. CEQ also proposed to add new requirements regarding the adoption of another agency's CE determination to increase public transparency.

Comments on the proposed changes to § 1506.3 expressed both opposition and support for adoption in general, the approach to enabling adoption taken in the proposed rule, and its application to EISs, EAs, and CE determinations. Commenters who supported the adoption provisions as proposed point to the efficiencies gained in reducing time. Commenters who opposed CEQ's proposed changes asserted that the proposed rule went beyond the intended goal of NEPA and that adoption limits public engagement. Additionally, one commenter requested that throughout this section, CEQ replace ''substantially the same'' with ''the same'' to strengthen the requirements for adoption.

CEQ finalizes the proposed changes to § 1506.3 as discussed in this section. CEQ disagrees that adoption goes beyond NEPA's intended goals. Because actions must be substantially the same, the public will have had the opportunity to engage during the preparation of the original document to the extent engagement is required or appropriate for that particular action; and, where the actions are not substantially the same, additional public engagement may be required consistent with the requirements for the document type. Additionally, the CEQ regulations have provided for adoption since 1978 and included the ''substantially the same'' standard. Such language is critical to facilitating adoption because agency actions are often not the same, but relate to the same overall project. For example, one agency's funding decision is not the same action as another agency's decision to issue a permit. However, if the underlying activity analyzed in the NEPA document is the same project, then adoption is appropriate.

In paragraph (a), which provides that an agency may adopt EISs, EAs or CE determinations, CEQ proposed to strike the language requiring an EIS, EA, or CE determination to meet relevant standards and instead articulate the standards in paragraphs (b) through (d), which address adoption of EISs, EAs, and CE determinations, respectively. CEQ proposed to replace this clause with language that requires adoption to be done ''consistent with this section.'' CEQ proposed to remove ''Federal'' before the types of documents an agency may adopt as unnecessary and to make clear that agencies can adopt NEPA documents prepared by non-Federal entities that are doing so pursuant to delegated authority from a Federal agency. *See, e.g.,* 23 U.S.C. 327. CEQ makes these changes in the final rule as proposed.

In paragraph (b), CEQ proposed to add text after the heading ''Environmental impact statements'' to provide that an agency may adopt a draft or final EIS, or a portion of a draft or final EIS, if the adopting agency independently reviews the statement and concludes it meets the standards for an adequate statement pursuant to the CEQ regulations and the adopting agency's NEPA procedures.

A commenter opposed the proposed requirement for agencies to confirm that an adopted EIS, as well as an EA under paragraph (c), meets the standards of the adopting agency's NEPA procedures. The commenter asserted that this requirement is burdensome and can cause delays. One commenter also asserted that paragraph (b) requires standards for EIS adoption in agency NEPA procedures and that because agencies have a year to adopt new procedures, this will set adoption back by a year.

CEQ finalizes the changes to paragraph (b) as proposed but replaces ''a draft or final'' EIS with ''another agency's draft or final'' EIS to respond to commenters' requests for additional clarity and for consistency with the existing phrasing in paragraph (d). CEQ disagrees that requiring adopting agencies to assess consistency with their procedures will add substantial additional burden. Ensuring consistency with the adopting agency's procedures is a codification of longstanding agency practice and is necessary so that an agency can ensure that the adopted document satisfies the requirements applicable to the adopting agency. CEQ also disagrees that agencies must update their procedures to address adoption before they can make use of this tool. While agencies may consider including the adoption process in their procedures, § 1507.3 does not require agencies to do so and does not preclude an agency from using adoption before its procedures are updated. Therefore, CEQ disagrees with the commenter's assertion that agencies cannot adopt EISs until their agency NEPA procedures are updated.

In paragraph (b)(1), which addresses adoption of an EIS for actions that are substantially the same, CEQ proposed to insert ''and file'' after ''republish'' to improve consistency with § 1506.9 and because agencies must both publish the EIS and file it with EPA. Further in paragraph (b)(1), CEQ proposed to add text to clarify that agencies should supplement or reevaluate an EIS if the agency determines that the EIS requires additional analysis.

One commenter questioned if the phrase ''or reevaluate it as necessary'' means an agency could adopt an EIS through an EA and FONSI. Another commenter requested that CEQ more clearly require agencies to supplement an EIS, interpreting the proposed rule text to encourage, rather than require, supplementation when there is new or updated data. Similarly, the commenter also requested that CEQ define when it is necessary to supplement or reevaluate an EA in paragraph (c). CEQ finalizes this provision with an additional revision to change ''the statement requires supplementation'' to ''the statement may require supplementation consistent with § 1502.9 of this subchapter,'' which adds a cross-reference to the section of the regulations addressing supplementation and reevaluation. CEQ includes these revisions to clarify that agencies can conduct additional analysis to determine whether the supplementation criteria of § 1502.9(d) are met or document why supplementation is not required. This revised provision codifies agency practice and provides agencies more flexibility to use the efficiency mechanism of adoption while also ensuring that the analysis included in an adopted document is valid and complete. For example, if an agency is adopting an EIS that was prepared several years prior, and there is more recent data or updated information available on one of the categories of effects, the agency may need to do additional analysis if the supplementation standard in § 1502.9(d) is met, or document in a reevaluation, consistent with § 1502.9(e), why the supplementation standard is not met. Similarly, if an action is not substantially the same, and the adopting agency determines that the EIS requires supplemental analysis, the agency would treat the EIS as a draft, prepare the additional analysis, and publish the new draft EIS for notice and comment. Where a proposed action is not substantially the same, an agency must, at minimum, supplement the adopted EIS to ensure it adequately covers its proposed action.

In paragraph (b)(2), which addresses adoption of an EIS by a cooperating agency, CEQ proposed to clarify that this provision is triggered when a

cooperating agency does not issue a joint or concurrent ROD consistent with § 1505.2. In the proposed rule, CEQ explained that this provision covers instances when a cooperating agency adopts an EIS for an action the cooperating agency did not anticipate at the time the EIS was issued, such as a funding action for a project that was not contemplated at the time of the EIS. In such instances, the cooperating agency may issue a ROD adopting the EIS of the lead agency without republication of the EIS. CEQ proposed to strike the text at the end of paragraph (b)(2) regarding independent review because CEQ proposed to capture that standard in paragraph (b).

CEQ did not receive comments on its proposed changes to paragraph (b)(2). Therefore, CEQ finalizes this provision consistent with its proposal.

In paragraph (c), CEQ proposed to add language to clarify the standard for adopting an EA, which mirrors the standard for adoption of an EIS. CEQ similarly proposed edits to align the process with the processes for EISs by clarifying that the adopting agency may adopt the EA, and supplement or reevaluate it as necessary, in its FONSI.

A few commenters opposed the adoption of EAs, in particular expressing opposition to the adoption of draft EAs or EAs that are the subject of formal dispute resolution or litigation, and suggested these should instead be incorporated by reference pursuant to § 1501.12. One commenter requested that CEQ revise paragraph (c) to align it with paragraph (d) to require agencies to document the reasons for its adoption and make its reasoning publicly available.

In the final rule, CEQ finalizes the text as proposed in paragraph (c) with an additional revision to replace ''an environmental assessment'' with ''another agency's environmental assessment'' to respond to commenters' requests for additional clarity and for consistency with the same change to paragraph (b) and the existing language in paragraph (d). For the reasons articulated with respect to EISs, CEQ revises the language that if an agency determines an EA ''may require supplementation consistent with § 1501.5(h) of this subchapter,'' it may adopt and supplement or reevaluate the EA as necessary and issue its FONSI. CEQ agrees that an agency may only adopt a final EA, and that use of a draft EA through incorporation by reference is appropriate. However, CEQ interprets the proposed text as precluding adoption of a draft EA and, therefore, does not consider additional revisions necessary to address this comment. The reference to EAs in this section necessarily means final EAs, since the regulations do not require a draft and final EA; therefore, the reference to EA without specification means a final EA.

For additional clarity, CEQ proposed to add ''determinations'' to the title of paragraph (d). CEQ also proposed to revise this paragraph to improve readability and clarify that the adopting agency is adopting another agency's determination that a CE applies to a particular proposed action where the adopting agency's proposed action is substantially the same. As CEQ noted in the proposed rule, this provision does not allow an agency to unilaterally use another agency's CE for an independent proposed action; rather, the process for such reliance on another agency's CE is addressed in § 1501.4(e).

To ensure that there is public transparency for adoption of CE determinations, like adoption of EAs and EISs, CEQ proposed new paragraphs (d)(1) and (d)(2) to require agencies to document and publish their adoptions of CE determinations, such as on their website. CEQ proposed in paragraph (d)(1) to specify that agencies must document a determination that the proposed action is substantially the same as the action covered by the original CE determination, and there are no extraordinary circumstances present requiring preparation of an EA or EIS. Because agencies typically already make such determinations in the course of adopting CE determinations for actions that are substantially the same, CEQ has concluded that this documentation requirement will not be onerous or time consuming. In paragraph (d)(2), CEQ proposed to require agencies to publicly disclose when they are adopting a CE determination. CEQ stated in the proposed rule that this proposed change was intended to increase transparency on use of CEs to respond to feedback from stakeholders that they often do not know when an agency is proceeding with a CE. This adds a standard to adoption of CE determinations that is similar to the practice for adoption of EAs and EISs. Agencies, however, have flexibility to determine how to make this information publicly available, including through posting on an agency's website.

One commenter requested that CEQ require an agency to both publish a determination on its website and make it publicly available in other ways, as opposed to one or the other. CEQ declines to require agencies to publish CE adoption determinations in multiple places as unnecessarily burdensome on agencies. However, CEQ notes that the language in paragraph (d)(2) does not preclude agencies from both publishing an adoption of a CE determination on its website and making it publicly available in other ways when they determine doing so is appropriate. CEQ finalizes these paragraphs as proposed with one clarifying change to add introductory language at the end of paragraph (d)—''In such circumstances the adopting agency shall''—to make clear that paragraphs (d)(1) and (d)(2) apply when adopting another agency's CE determination to distinguish this process from the adoption process under § 1501.4(e).

3. Agency Responsibility for Environmental Documents (§ 1506.5)

CEQ proposed modifications and additions to § 1506.5 to clarify the roles and responsibilities for agencies, applicants, and agency-directed contractors in preparing environmental documents and to make the provision consistent with section 107(f) of NEPA, which requires agencies to prescribe procedures to allow project sponsors to prepare EAs and EISs under the agencies' supervision and to independently evaluate and take responsibility for such documents. 42 U.S.C. 4336a(f). The 2020 rule amended § 1506.5 to allow an applicant to prepare EISs on behalf of the agency; however, the 2023 amendments to NEPA make clear that agencies themselves must establish procedures for project sponsors to prepare EAs and EISs, not the CEQ regulations. As noted in the NPRM, CEQ understands the 2023 amendments to NEPA to use the terms ''applicant'' and ''project sponsor'' interchangeably and, therefore, CEQ proposed to use the term ''applicant'' and, in the final rule, CEQ uses and defines the term ''applicant.'' See section II.J.1. However, as discussed further in this section, CEQ notes that the 2023 NEPA amendments' requirement that agencies establish procedures for project sponsors to prepare EAs and EIS does not affect the ability of applicants and project sponsors to provide information to agencies to assist agencies or their agency-directed contractors in the preparation of environmental documents consistent with § 1506.5(c).

CEQ received multiple comments that generally supported the proposed changes to allow applicants to prepare EAs and EISs, as well as multiple commenters who generally opposed the provision and opposed section 107(f) of NEPA, 42 U.S.C. 4336a(f). CEQ discusses these comments and responses in section II.I.3 of this final rule, which addresses the statutory

requirement for agencies to prescribe applicant procedures.

In paragraph (a), CEQ proposed to clarify that regardless of who prepares an environmental document—the agency itself, a contractor under the direction of the agency, or the applicant pursuant to agency procedures—the agency must ensure the document is prepared with professional and scientific integrity using reliable data and resources, consistent with sections 102(2)(D) and (2)(E) of NEPA, 42 U.S.C. 4332(2)(D)–(E), and exercise its independent judgment to review, take responsibility for, and briefly document its determination that the document meets all necessary requirements and standards related to NEPA, the CEQ regulations, and the agency's NEPA procedures.

A few commenters provided suggestions for CEQ to consider regarding the changes in paragraph (a). These commenters asked CEQ to define what ''under the supervision of the agency'' means; require agencies to fully rather than briefly document its determination that an environmental document meets the standards of NEPA, the CEQ regulations, and the agency's NEPA procedures; and adopt a clearer standard for guaranteeing professional and scientific integrity to ensure all EISs and EAs receive the same level of scrutiny regardless of who prepares them.

Multiple commenters also provided feedback on the language in paragraph (a) referring to agency procedures adopted pursuant to § 1507.3(c)(12), which are discussed in section II.I.3 of this final rule.

In the final rule, CEQ makes a few clarifying updates to the proposed text in paragraph (a). Specifically, CEQ revises the paragraph heading to ''agency responsibility'' to clarify that this paragraph addresses agency responsibility for environmental documents generally. CEQ adds ''and direction'' after ''supervision'' to better distinguish contractors under the supervision of the agency from applicant-directed contractors. This provision addresses contractors hired directly by the agency and third-party contractors where the applicant pays for the contractor but otherwise has no role in directing that contractor during the preparation of the document; rather, the agency supervises and provides the direction. Contractors hired by the applicant and supervised by the applicant directly are covered by the language in the regulation addressing applicant-prepared EAs and EISs pursuant to § 1507.3(c)(12).

CEQ declines to specifically define ''supervision'' as this is a commonly understood term, and CEQ considers the addition of the word ''direction'' in this paragraph to capture the appropriate role of agencies, which have decades of experience with supervising the work of contractors preparing NEPA documents. CEQ also declines to require agencies to do more than briefly document their determination that an environmental document meets the standards under NEPA, the regulations in this subchapter, and the agency's NEPA procedures. In general, NEPA documents themselves demonstrate that they meet these standards; the determination required by this paragraph merely requires that an agency documents that it has also made this determination.

Lastly with respect to paragraph (a), CEQ declines to include standards for scientific and professional integrity. These concepts have been in the regulations since 1978, and the final rule further clarifies these concepts by moving 40 CFR 1502.23 (2020) to § 1506.6 as discussed further in section II.H.4.

In the NPRM, CEQ proposed in the second sentence of paragraph (b) to remove text providing that agencies may direct an applicant to prepare an environmental document and also replace the phrase ''environmental document'' with specific reference to EAs or EISs. CEQ also proposed to add a clause to allow agencies to authorize a contractor to draft a FONSI or ROD, while also providing that the agency is nevertheless responsible for the accuracy, scope, and contents of contractor-drafted FONSIs and RODs. CEQ proposed to add this clause because a FONSI or ROD represents an agency's conclusions regarding potential environmental effects and other aspects of a proposed action. CEQ also proposed these changes to exclude applicants from directly preparing EAs and EISs under this section, given the direction in section 107(f) of NEPA that a lead agency must prescribe procedures to allow a project sponsor to prepare an EA or EIS, 42 U.S.C. 4336a(f), and CEQ proposed to require agencies to include these procedures as part of their agency NEPA procedures in § 1507.3(c)(12). CEQ also proposed these edits to clarify the role of contractors because finalizing and verifying the contents of FONSIs and RODs is appropriately the responsibility of the Federal agency and is consistent with longstanding agency practice.

CEQ received comments expressing confusion regarding this paragraph given the reference to applicants in the first sentence. CEQ also received multiple comments interpreting this provision to allow applicants to prepare draft FONSIs or RODs. Some of these commenters objected to this perceived allowance asserting that applicants should not be allowed to draft decision documents because they are biased and have a conflict of interest. Conversely, three commenters supported the ability of applicants, contractors, or project sponsors to prepare FONSIs and RODs, pointing to time and cost savings, with one commenter specifically interpreting section 107(f) of NEPA, 42 U.S.C. 4336a(f), to allow applicants to prepare all environmental documents. One commenter suggested CEQ edit the beginning of the second sentence of proposed paragraph (b) to address conflict of interest by adding a qualifier that would limit the applicability of the paragraph to circumstances in which an agency has established the absence of any conflict of interest.

In the final rule, CEQ addresses the confusion around this provision by separating the provisions related to applicants from provisions related to agency-directed contractors. First, CEQ revises the paragraph heading for paragraph (b) to read ''applicant information'' and retains the first sentence allowing agencies to require applicants to submit environmental information for agency use in preparing an environmental document. The CEQ regulations have long allowed agencies to collect information from applicants to help them prepare NEPA documents, and CEQ considers this allowance essential to an efficient environmental review process because in many cases, the applicant will already have obtained or be in the best position to obtain information that an agency needs.

Second, in paragraphs (b)(1) through (b)(3) of the final rule, CEQ includes the provisions that provide directions related to applicant-provided information. Paragraph (b)(1) retains the first sentence from paragraph (b)(1) of the proposed rule, which provides that agencies should outline the information that the agency needs from the applicant to prepare an environmental document.

Paragraph (b)(2) retains the requirement in the current regulations and proposed paragraph (b)(2) that the agency independently evaluate the environmental information provided by an applicant and be responsible for the accuracy, scope, and contents of any applicant-provided environmental information included in the environmental document. CEQ does not require agencies to specifically document their evaluation of this information since the agencies are

responsible for preparing the NEPA document, and therefore any applicant-provided environmental information included in the NEPA document becomes the agency's responsibility. While paragraph (a) requires agencies to briefly document its determination that a contractor-prepared environmental document meets the standards under NEPA, the CEQ regulations, and the agency's NEPA procedures, requiring an agency to specifically address each piece of information or analysis provided by an applicant that the agency has incorporated into an environmental document would be burdensome. Under this provision, agencies have discretion to integrate applicant-provided information in environmental documents as the agency sees fit, and the agency is responsible for the accuracy of that information, just as it is responsible for the accuracy of information from other sources that the agency relies upon. And, as with all NEPA documents, the agencies are responsible for ensuring their documents are appropriately scoped and satisfy all legal requirements including compliance with these regulations and their agency NEPA procedures. Lastly, CEQ includes a new paragraph (b)(3) to note that an agency may allow applicants to prepare EAs or EISs consistent with agency procedures issued pursuant to section 107(f) of NEPA, 42 U.S.C. 4336a(f), and § 1507.3(c)(12).

Third, the second sentence of proposed § 1506.5(b) becomes paragraph (c) in the final rule, and CEQ adds a paragraph heading, ''Agency-directed contractor,'' to clarify that this provision addresses contractors where the agency supervises and directs their work. CEQ adds ''and direction'' after ''supervision'' for consistency with its edit in paragraph (a) and to clarify that this provision does not apply to contractors hired and overseen by applicants. In the final rule, CEQ does not revise ''environmental document'' to be ''environmental assessment or environmental impact statement'' or include the language allowing an action to authorize a contractor to draft a FONSI or ROD. Since this provision is specific to agency-directed contractors, and an agency may direct a contractor in helping to draft any environmental document, these limitations are unnecessary.

Fourth, paragraph (c)(1) of the final rule contains the second sentence of proposed § 1506.5(b)(1) and requires agencies to provide their contractors guidance, and participate in and supervise the environmental document's preparation. Fifth, paragraph (c)(2) of the final rule addresses proposed § 1506.5(b)(2) and requires agencies to independently evaluate contractor-prepared environmental documents, be responsible for their accuracy, scope, and contents, and document the evaluations in the environmental documents themselves. As discussed earlier in this section, CEQ addresses applicant-submitted information in paragraph (b)(2).

One commenter requested that CEQ add in proposed paragraph (b)(2), which is § 1506.5(c)(2) in the final rule, a requirement for agencies to explain how it independently evaluated the information prepared by the contractor and upon what basis the agency is able to vouch for the accuracy, scope, and contents of the information or documents submitted. This comment aligns with other commenters who requested that CEQ strengthen agency responsibility for the accuracy, scope, and contents of environmental documents.

CEQ declines to add greater specificity about how agencies must evaluate and document their evaluations. Such evaluations may vary greatly depending on what the agency is evaluating and setting a regulatory standard would be inappropriate and inefficient. Further, the level of evaluation needed may vary depending on the guidance and direction agencies provide to the contractors in the first place.

Fifth, paragraph (c)(3) of the final rule requires agencies to include the names and qualifications of the persons preparing and independently evaluating the contractor-prepared environmental documents, such as in the list of preparers for EISs, consistent with § 1502.18. This provision is identical to proposed § 1506.5(b)(3), in which CEQ proposed to remove the reference to applicants as discussed earlier in this section.

Next, CEQ proposed to revise paragraph (b)(4) of 40 CFR 1506.5 (2020) to clarify that the Federal agency is responsible for preparing a disclosure statement for the contractor to execute, specifying that the contractor does not have any financial or other interest in the outcome of the proposed action.

CEQ received multiple comments regarding the proposed changes to paragraph (b)(4). One commenter expressed that the paragraph provides for less disclosure than the 1978 regulations did. One commenter expressed direct support for the paragraph and encouraged CEQ to retain the disclosure requirement. Another commenter requested that CEQ delete ''where appropriate'' interpreting the clause to modify ''shall prepare'' instead of ''cooperating agency'' and arguing deletion of this clause will minimize conflicts of interest. One commenter opposed paragraph (b)(4), asserting that it is not workable for a contractor to have no financial or other interest in the outcome of an action because it is common for a firm that assists with preparing the NEPA documents to perform subsequent engineering and design work if a project moves forward.

CEQ finalizes this provision in § 1506.5(c)(4) as proposed, but adds ''where appropriate'' to precede rather than follow (as proposed) ''a cooperating agency'' to make it clear that the clause modifies ''cooperating agency.'' CEQ makes this change in the final rule to address commenters' concerns that the provision, as drafted in the proposed rule, would have given agencies the discretion whether to prepare a disclosure statement. The revised language is generally consistent with the approach in the 1978 regulations, and CEQ disagrees that it provides for less disclosure than the 1978 regulations. CEQ does not consider the potential for a contractor to perform future engineering and design work to present a conflict of interest in the outcome of an action. Instead, a conflict of interest would exist if a contractor possessed a direct financial interest in the project, for example if it entered into a contingency fee arrangement that provided for an additional payment if an agency authorized an action. However, CEQ encourages agencies to disclose this information to the public in their contractor disclosure statements.

Finally, CEQ proposed to change ''any agency'' to ''an agency'' in paragraph (b)(5). In the final rule, CEQ redesignates paragraph (b)(5) of 40 CFR 1506.5 (2020) to be paragraph (d) as this paragraph is a general statement about the operations of § 1506.5 and is not specific to agency-directed contractors. CEQ adds a paragraph heading, ''Information generally'' for consistency with the paragraph headings added throughout.

4. Methodology and Scientific Accuracy (§ 1506.6)

As discussed in section II.D.18, in the final rule, CEQ moves the provision on methodology and scientific accuracy, from proposed § 1502.23 to § 1506.6, because this provision is generally applicable to NEPA reviews. As discussed further in this section, CEQ finalizes the text from proposed § 1502.23 with additional clarifying edits.

CEQ proposed to separate 40 CFR 1502.23 (2020) into paragraphs (a) and (b), with some modification, and add a new paragraph (c). In the final rule, CEQ further subdivides these paragraphs for additional clarity.

First, the first sentence of proposed § 1502.23(a), which is the opening sentence of 40 CFR 1502.23 (2020), requires agencies to ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents. This sentence has been in the regulations unchanged since 1978, is consistent with section 102(2)(D) of NEPA, 42 U.S.C. 4332(2)(D), and CEQ did not propose any revisions to this sentence in the proposed rule. CEQ finalizes this sentence in a standalone paragraph, § 1506.6(a), in the final rule.

Second, CEQ proposed to use the term high-quality information, which the 1978 regulations required agencies to use, *see* 40 CFR 1500.1 (2019), in the second sentence of proposed § 1502.23(a). CEQ proposed to clarify that such information includes best available science and reliable data, models, and resources.

Some commenters requested that CEQ add definitions for ''high-quality information'' and ''best available science.'' One commenter expressed that ''high-quality information'' is ambiguous and recommended CEQ remove it. Other commenters interpreted the example best available science to set a standard and asserted that this conflicts with the direction in section 102 of NEPA to establish information quality standards. Some commenters opposed the use of best available science and stated that the high-quality information standard is sufficient to ensure scientific integrity.

A few commenters pointed to case law to support their opinion that NEPA does not require agencies to use the best scientific methodology available. These commenters expressed concerns that a best available science standard could result in increased costs and delays that may not be justified and instead supported the high-quality information standard. Another commenter asserted that a best available science standard could be inconsistent with the rule of reason, which is supported by case law, and result in agencies unreasonably gathering information to meet a best available science standard. Conversely, another commenter stated that the reference to best available science and data is consistent with the rule of reason and relevant case law.

In § 1506.6(b) of the final rule, CEQ makes the change in the second sentence of proposed § 1502.23(a) to require agencies to use high-quality information. For clarity, CEQ replaces the last clause of the sentence, ''to analyze effects resulting from a proposed action and alternatives,'' with a more general clause at the beginning of the first sentence of § 1506.6(b) to avoid an ambiguity in the proposed text that could be read to imply that agencies do not need to rely on high-quality information for aspects of their environmental documents other than analyzing the effects of a proposed action and alternatives. CEQ did not intend to suggest that agencies can rely on anything other than high-quality information in their decision making, and the revision in the final rule makes clear that agencies must use high-quality information ''[i]n preparing environmental documents.'' Given the more general language in the NEPA statute and the general applicability of this provision, CEQ considers this phrasing to more accurately reflect the standard. CEQ includes, with minor reorganization, three of the proposed examples of high-quality information in the final rule: ''reliable data,'' ''models,'' and ''resources.'' The final rule uses the combined phrase ''reliable data and resources'' as one example to directly track the provision in section 102(2)(E) of NEPA, 42 U.S.C. 4332(2)(E), with ''models'' being another example. CEQ also notes that the Information Quality Act (Pub. L. 106–554, 44 U.S.C. 3516 note) and other authorities establish requirements for the quality, utility, objectivity, and integrity of the information that agencies disseminate, including, in some cases, requirements for peer review, and agencies should ensure compliance with those authorities as applicable.[105]

In the final rule, CEQ does not include ''best available science'' as an example of high-quality information. While CEQ considers ''best available science'' to be one example of high-quality information, CEQ agrees with commenters that NEPA does not require use of ''best available science'' in order to meet the statute's requirement for professional integrity, including scientific integrity. While CEQ did not intend for the inclusion of ''best available science'' as one example of ''high quality information'' in the proposed rule to require agencies to use the best available science, based on the comments, CEQ is concerned that this text could be misconstrued by agencies and potential litigants to require use of best available science in all cases. Therefore, CEQ does not include this example in the final rule to avoid any confusion.

Third, in the preamble to the proposed rule, CEQ provided Indigenous Knowledge as an example of high-quality information. Several commenters recommended CEQ include this as an example in the regulatory text to make clear that Indigenous Knowledge can constitute high-quality information upon which agencies could rely consistent with the regulations. One commenter expressed concern about the addition of Indigenous Knowledge in the preamble because the commenter worried that agencies may weigh Indigenous Knowledge more heavily than other sources of scientific expertise. Another commenter requested that CEQ define ''Indigenous Knowledge'' and explain how agencies can best use it as high-quality information. Some commenters provided a suggested definition, while others opposed CEQ defining ''Indigenous Knowledge'' in the rule.

In the final rule, CEQ includes Indigenous Knowledge as an example of high-quality information in the regulatory text. CEQ disagrees with the concern that identifying Indigenous Knowledge as an example of high-quality information—whether in the preamble or regulatory text—requires agencies to weigh this knowledge more heavily than other sources of scientific expertise. The regulations require agencies to rely on high-quality information and provide several examples, one of which is Indigenous Knowledge, and do not create a preference for one kind of high-quality information over others. CEQ declines to define Indigenous Knowledge in the regulations as it did not receive sufficient input from commenters or through its Tribal consultation for it to develop an appropriate definition that could apply to all of the contexts in which Federal agencies operate governed by the CEQ regulations. Additionally, while some Tribes provided feedback on a definition, others expressed concerns about a regulatory definition. While CEQ is not including a definition in the final rule, CEQ notes that agencies may look to the CEQ/OSTP guidance as a resource, and CEQ will consider whether additional guidance is needed to help agencies incorporate Indigenous Knowledge into its NEPA reviews.

[105] *See* OMB, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 FR 8452 (Feb. 22, 2002); OMB, Final Information Quality Bulletin for Peer Review, 70 FR 2664 (Jan. 14, 2005); and OMB, M–19–15, Improving Implementation of the Information Quality Act (2019), *https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-15.pdf.*

Fourth, CEQ proposed to include a clause in the second sentence of proposed § 1502.23(a) to reference that high-quality information includes existing sources and materials. This proposed change moved the word ''existing'' in the second sentence of 40 CFR 1502.23 (2020) to the end of the sentence. CEQ proposed these changes to clarify that while agencies must use reliable data and resources, which can include existing data and resources, they are not limited to using existing sources and materials. CEQ proposed these changes in response to public commenters on the 2020 rule and Federal agency experts who raised concerns that the 2020 language could limit agencies to ''existing'' resources and preclude agencies from undertaking site surveys and performing other forms of data collection, which have long been standard practice when analyzing an action's potential environmental effects and may be necessary for agencies to adequately understand particular effects.

Some commenters stated the removal of the word ''existing'' in proposed paragraph (a) is in conflict with section 106(b)(3) of NEPA, 42 U.S.C. 4336(b)(3), because it suggests agencies have the discretion to undertake new, non-essential scientific or technical research without regard for whether the information to be obtained is essential to a reasoned choice among alternatives or for the cost or time considerations under NEPA. Another commenter requested that CEQ amend this statement to specify that where project-specific data is available, agencies should rely on that information rather than theoretical models. One commenter suggested that CEQ clarify that while new research may not be required, agencies must consider new information in their analyses.

In the final rule, CEQ replaces the proposed clause in the second sentence of proposed § 1502.23(a), ''including existing sources and materials,'' with a new sentence, ''Agencies may rely on existing information as well as information obtained to inform the analysis,'' to make clear that agencies can and should rely on existing information, but may also undertake new or additional information gathering as needed to adequately analyze their proposed actions. For example, in the context of analyzing historical, cultural, or biological effects, agencies may need to conduct survey work or reassess existing survey work periodically. Requiring an agency to rely on outdated data would not comport with sections 102(2)(D) through (F) of NEPA, 42 U.S.C. 4332(2)(D)–(F). While there are numerous reliable data sources for a variety of resources analyzed in NEPA documents, and the CEQ regulations encourage the use of existing information wherever possible, *see* § 1501.12, agencies should be permitted to exercise their judgment in determining when additional data and analyses are necessary for their analyses and decision making.

Fifth, CEQ moves the third sentence of 40 CFR 1502.23 (2020), which allows agencies to use any reliable data sources, such as remotely gathered information or statistical models to be the third sentence of § 1506.6(b) in the final rule and makes the clarifying edits consistent with the proposal.

Sixth, CEQ proposed to add a new sentence at the end of proposed § 1502.23(a) to encourage agencies to explain their assumptions and any limitations of their models and methods. CEQ proposed this addition to support this section's overall purpose of ensuring the integrity of the discussions and analyses in environmental documents. Additionally, CEQ proposed this addition to codify typical agency practice to explain relevant assumptions or limitations of the information in environmental documents.

A commenter recommended CEQ change the proposed new sentence from a recommendation to a requirement, stating that it is necessary for agencies to explain relevant assumptions or limitations of any models or methodologies on which they rely for their analyses to adequately inform the public and the agency decision makers. CEQ agrees that disclosing this information is necessary in order for the decision maker and the public to assess the reliability of the information. Therefore, CEQ includes the proposed sentence at the end of § 1506.6(b), but changes ''should'' to ''shall'' in the final rule.

Seventh, in proposed § 1502.23(b), CEQ proposed to strike the statement that agencies are not required to undertake new research to inform their analyses, consistent with the proposed change to proposed § 1502.23(a) regarding existing information. Some commenters opposed the proposed deletion of this language in proposed § 1502.23(b) and disagreed with CEQ's rationale for the deletion, stating that the existing language could not be reasonably read to prohibit agencies from undertaking additional analyses. One commenter opposed the proposed deletion, expressing concern that without the language, agencies may feel compelled to complete new research, which could interfere with agencies' ability to provide services, not just analysis, in contravention of NEPA's broad purposes in sections 101(a) and (b) of NEPA, 42 U.S.C. 4331(a)–(b) to balance other national priorities, including conserving agency resources. Another commenter suggested that CEQ clarify that while new research may not be required, agencies must consider new information in their analyses. Other commenters opposed to the proposed deletion stated that the proposed change conflicts with other provisions of the proposed rule, such as the intent of proposed § 1506.5(b)(3) for acceptable work to not be redone and proposed § 1506.4 to reduce duplication and paperwork. Multiple commenters expressed concern that deleting this language could result in additional litigation risk and delays by encouraging agencies to conduct additional analyses. One commenter also suggested that the deletion is unnecessary because agencies already know that they are not limited to existing materials.

CEQ strikes this sentence in the final rule. In order for agencies to meet the requirements of the NEPA statute to analyze the effects of their proposed actions and, where appropriate, study alternatives, while ensuring professional integrity, including scientific integrity, CEQ considers it necessary to remove this statement because in some instances, in order to meet the statutory requirements, agencies will need to undertake research. CEQ disagrees that agencies will read this deletion to mean they need to do so in all cases, even where unnecessary or unreasonable. As one commenter noted, the CEQ regulations have long encouraged agencies to rely on existing information and analyses, and incorporate them by reference, *see, e.g.,* §§ 1501.12, 1506.2, and 1506.3.

A few commenters stated that the deletion of this text conflicts with section 106(b)(3) of NEPA, 42 U.S.C. 4336(b)(3), by implying agencies have discretion to undertake new, non-essential scientific or technical research without regard to whether the information to be obtained is essential to a reasoned choice among alternatives. CEQ disagrees with this assertion because section 106(b)(3) expressly applies only to an agency's determination of the level of NEPA review it needs to perform for an action, and does not apply to the analysis in an environmental document. Further, these comments suggest conflict with the statute because deleting this sentence disregards direction to make use of reliable data and resources. CEQ disagrees that section 102(2)(E) of NEPA, 42 U.S.C. 4332(2)(E), refers only to existing reliable data and resources,

because such a reading of 102(2)(E) would be inconsistent with the provision of section 106(b)(3) indicating that agencies are only required to undertake new scientific or technical research in determining the level of NEPA review in certain circumstances. Rather, section 102(2)(E) does not address whether agencies can conduct new research or gather new data, but only provides that any data or resources an agency relies upon, whether existing or new, must be reliable. As noted in this section, it is common practice for agencies, when necessary or appropriate, to engage in additional research and create new data based on an action's particular circumstances (such as the affected environment) when analyzing proposed actions under NEPA. By striking the sentence added in 2020, CEQ is not imposing a new requirement for agencies to undertake new research in all cases, but rather is allowing agencies to continue to exercise their judgment and expertise in determining whether and when to undertake new research.

Eighth, CEQ strikes the last sentence in 40 CFR 1502.23 (2020), which the NPRM proposed to retain as the second sentence in proposed § 1502.23(b) regarding continued compliance with other statutory requirements related to scientific and technical research. In the 2020 rule, CEQ added this sentence to clarify the preceding sentence that agencies are not required to undertake new scientific and technical research to inform their analyses. Because the final rule strikes that sentence, it is unnecessary to retain the sentence that follows. Therefore, the final rule removes the last sentence of 40 CFR 1502.23 (2020) because it is unnecessary.

Some commenters suggested additional items be added to proposed § 1502.23(b). One commenter requested that CEQ incorporate the language from section 106(b)(3) of NEPA, 42 U.S.C. 4336(b)(3), to establish a clear standard for when new scientific research is needed. As CEQ noted earlier in this section, section 106(b)(3) applies only to determining the level of NEPA review. Another commenter requested CEQ add language to address information quality standards and transparency requirements for modeling. CEQ does not consider this level of detail appropriate for the regulations but will consider whether additional guidance on this topic could assist agencies in carrying out their NEPA responsibilities.

Ninth, CEQ moves to § 1506.6(c) the first and second sentences in proposed § 1502.23(b), which are the fourth and fifth sentences in 40 CFR 1502.23 (2020), requiring agencies to identify any methodologies used and make explicit reference to the scientific and other sources relied upon for conclusions in the environmental document, which agencies may place in an appendix. This change improves the organizational clarity of the section and is non-substantive.

Finally, CEQ proposed to add a new paragraph (c) to proposed § 1502.23 to require agencies to use projections when evaluating reasonably foreseeable effects, including climate change-related effects, where appropriate. CEQ also proposed to clarify that such projections may employ mathematical or other models that project a range of possible future outcomes, so long as agencies disclose the relevant assumptions or limitations. CEQ proposed this addition for consistency with the other proposed amendments to this section.

Some commenters expressed support for proposed § 1502.23(c) but recommended that CEQ provide guidance on how to support agencies in evaluating climate modeling projects or add additional language to address localized impacts of climate change on a project along with global impacts of the project on climate change. Another commenter requested that CEQ recommend, rather than require, use of projections, while another commenter expressed that the rule strikes an appropriate balance between allowing modeling necessary to project future effects and providing transparency for public viewing of the modeling on which agencies rely.

One commenter opposed the changes in paragraph (c) to require the use of projections because they interpret the language to be referring to the social cost of greenhouse gases and argued that this is inappropriate for project-specific NEPA reviews. They also offered the opinion that social cost of greenhouse gas models is not best available science. Another commenter requested CEQ remove the reference to climate-change related effects in paragraph (c) because it elevates climate change effects over other potential effects. Another commenter also expressed concern about the requirement to use projections because they asserted it may encourage agencies to attempt to model relationships between incremental greenhouse gas emissions from a particular project with actual environmental impacts, which is impossible, or use metrics like social cost of greenhouse gas emissions, which are not suited to environmental reviews. Another commenter also expressed concern that the project effects of climate change are too difficult to model and that the proposed language could create delays and increase litigation risk.

CEQ includes proposed § 1502.23(c) in the final rule at § 1506.6(d). CEQ notes that projections are required only where an agency considers them appropriate. CEQ disagrees that including the example of climate-change related effects elevates these above other effects; it is an example, and agencies may determine projections are appropriate in analyzing a variety of other effects such as water or air quality, or effects on endangered species or historic properties. CEQ also disagrees that this language is intended to require agencies to use the social cost of greenhouse gases. As discussed in CEQ's 2023 GHG guidance, agencies may use this as a proxy to compare alternatives, but the regulations and the guidance do not require agencies to use this tool.

As CEQ noted in the proposed rule, based on existing agency practice and academic literature, agencies can and do use reliable projections to analyze reasonably foreseeable effects, including climate change-related effects. Where available and appropriate, agencies also can use or rely on projections that are scaled to a more targeted and localized geographic scope, such as land use projections, air emissions, and modeling, or to evaluate effects, including climate effects, experienced locally in relation to the proposed action. When doing so, agencies should explain the basis for relying on those projections and their underlying assumptions. In particular, climate projections can vary based on different factors and assumptions such as geography, location, and existing and future GHG emissions, and agencies should disclose the assumptions and limitations underlying any projection upon which the agency relies. Agencies can use models that analyze a range of possible future outcomes, but again agencies must disclose the underlying relevant assumptions or limitations of those models.

CEQ expects that modeling techniques will continue to improve in the future, resulting in more precise projections. To be consistent with § 1506.6, as modeling techniques advance, agencies should continue to rely on high-quality information when evaluating reasonably foreseeable effects.

5. Further Guidance (§ 1506.7)

CEQ proposed to simplify § 1506.7(a) by deleting references to Executive orders that have been revoked. CEQ will continue to provide guidance

concerning NEPA and its implementation on an as-needed basis. Any such guidance will be consistent with NEPA, the CEQ regulations, and any other applicable requirements. Future guidance could include updates to existing CEQ guidance [106] or new guidance. CEQ also proposed to update paragraph (b) to reflect the date upon which the final rule is effective. If there is a conflict between existing guidance and an issued final rule, the final rule will prevail after the date upon which it becomes effective. CEQ did not receive any comments on these proposed changes and finalizes this section as proposed.

6. Proposals for Regulations (40 CFR 1506.9)

CEQ proposed to strike 40 CFR 1506.9 (2020), ''Proposals for regulations.'' The 2020 rule added this provision to allow agencies to substitute processes and documentation as part of the rulemaking process for corresponding requirements in these regulations.[107] Since 1978, the CEQ regulations have encouraged agencies to combine environmental documents with any other agency document to reduce duplication and paperwork (40 CFR 1506.4 (2019)), and agencies also may combine procedural steps, for example, to satisfy the public comment requirements of a rulemaking process and NEPA. *See* § 1507.3(c)(5). As such, CEQ concluded that the provision at 40 CFR 1506.9 (2020) was unnecessary to achieve the desired effect of improved efficiency.

CEQ received one comment on this proposed change expressing support for the removal of the section. CEQ removes this section as proposed. Removing this section avoids confusion and controversy over whether the procedures of a separate process meet the requirements of CEQ's regulations. Further, courts have questioned whether separate regulatory processes can be a substitute for NEPA in some cases. *See e.g., Sierra Club v Fed. Energy Regul. Comm'n,* 867 F.3d 1357, 1375 (D.C. Cir. 2017) (''[T]he existence of permit requirements overseen by another [F]ederal agency or [S]tate permitting authority cannot substitute for a proper NEPA analysis.''). Additionally, CEQ does not consider it appropriate to single out one particular type of action—rulemaking—for combining procedural steps. Indeed, one of the key objectives of agency NEPA procedures is to integrate the NEPA process into other agency processes. Therefore, the more prudent approach is for agencies to combine NEPA reviews with other reviews for rulemaking, similar to longstanding agency practice to combine NEPA documents with other review processes, such as compliance with section 106 of the National Historic Preservation Act or section 7 of the Endangered Species Act, or set out processes in their NEPA procedures to comply concurrently with multiple legal requirements.

7. Filing Requirements (§ 1506.9)

CEQ proposed to redesignate 40 CFR 1506.10 (2020) as § 1506.9, which would restore the same numbering for this and subsequent sections used in the 1978 regulations. CEQ proposed to replace the acronym for EPA with the full name ''Environmental Protection Agency'' here and in § 1506.10, consistent with the format in the rest of the CEQ regulations. CEQ also proposed to add a new paragraph (c) to clarify that agencies must notify EPA when they adopt an EIS consistent with § 1506.3(b). CEQ proposed this change to codify common practice and guidance from EPA.[108] EPA notification ensures initiation of the appropriate comment or review period. Such notification, even where a cooperating agency is adopting an EIS without public comment consistent with § 1506.3(b)(1), improves transparency to the public regarding the status of the EIS and also helps track the status of EISs across the Federal Government.

One commenter provided feedback on this proposed change, asking CEQ to insert the word ''timely'' or more clearly specify a period within which agencies must notify EPA when they adopt EISs. CEQ declines the commenter's suggested edit because the language specifies that the agency must notify EPA when they adopt the EIS; therefore, notification must occur at the same time as adoption. CEQ adds paragraph (c) in the final rule to require agencies to file an adoption of an EIS with EPA consistent with current practice and agency guidance. CEQ modifies the text from the proposal to cross reference to § 1506.3(b)(1) rather than require the notice be consistent with § 1506.3(b). It is only an adoption made pursuant to § 1506.3(b)(1) that requires agencies to file their adoption notices with EPA.

8. Timing of Agency Action (§ 1506.10)

To accommodate the change in numbering described in section II.H.6, CEQ proposed to renumber 40 CFR 1506.11 (2020), ''Timing of agency action,'' to § 1506.10. CEQ proposed in paragraph (b) to change ''may not'' to ''shall not'' to eliminate a potential ambiguity and make clear that the minimum periods between a draft EIS and ROD as set forth in paragraph (b)(1) and between a final EIS and ROD as set forth in paragraph (b)(2) are mandatory. CEQ did not receive any comments specific to this proposal and revises the final rule consistent with the proposal.

Two commenters requested that CEQ remove the minimum time periods prescribed in paragraphs (b)(1) and (2) as well as the minimum 45-day public comment period for draft EISs prescribed in paragraph (d), asserting that these timing requirements conflict with the statutory timeframes. The commenters suggested that CEQ instead allow agencies more flexibility for public engagement and comment within the statutory timeframes. Another commenter requested that CEQ expand the minimum comment period for a draft EIS to 90 days because commenters are often not notified of an open comment period until midway through.

CEQ considered the commenters' suggested changes but declines to revise the final rule to adopt them. Agencies and the public have worked within these timeframes since issuance of the 1978 regulations. CEQ intends these provisions to facilitate a transparent and open process that ensures agencies are taking the time to carefully consider public input and analyze alternatives prior to making a decision. CEQ is concerned that shortening these periods will significantly impede the public's ability to engage in the NEPA process. Further, CEQ notes that the minimum timeframe between a final EIS and ROD does not implicate the statutory deadlines because the statutory timeframe ends upon completion of the EIS, not issuance of the EIS.

Finally, with respect to the concern raised about the delay in notification to the public regarding open comment periods, CEQ intends the revisions to § 1501.9 regarding public engagement to better facilitate notification to interested parties, and considers improving notification to be the more appropriate mechanism to address the concern that interested parties sometimes do not receive notice until partway through a comment period, rather than extending

[106] *See* CEQ, *CEQ Guidance Documents, https://www.energy.gov/nepa/ceq-guidance-documents.*

[107] CEQ, 2020 Final Rule, *supra* note 39, at 43338–39.

[108] EPA must be notified when a Federal agency adopts an EIS to commence the appropriate comment or review period. If a Federal agency chooses to adopt an EIS written by another agency, and it was not a cooperating agency in the preparation of the original EIS, the EIS must be republished and filed with EPA. *See* EPA, *Environmental Impact Statement Filing Guidance, https://www.epa.gov/nepa/environmental-impact-statement-filing-guidance.*

the comment period. Agencies must notify the public of opportunities for public comment, and CEQ encourages agencies to consider effective and efficient ways to do so, such as providing opportunities for the public to sign up for distribution lists to be notified of an ongoing review and opportunities for engagement.

CEQ proposed changes to paragraph (c)(1), addressing appeals processes, to update this provision to reflect current practices within Federal agencies. Specifically, CEQ proposed to change references to ''appeal processes'' to ''administrative review processes'' and add examples, which can include processes such as appeals, objections, and protests. CEQ further proposed updates to the text to provide flexibility in timing to agencies that use these administrative review processes and clarify that such a process may be initiated either prior to or after the filing and publication of a final EIS with EPA, depending on the specifics of the agency's authorities. Depending on the agency involved and its associated authorities, administrative review processes generally allow other agencies or the public to raise issues about a decision and make their views known. CEQ proposed to clarify that the period for administrative review of the decision and the 30-day review period prescribed in paragraph (b)(2) for when a ROD can be issued may run concurrently. CEQ proposed these changes to reflect changes in Federal agency regulations and procedures since this text was promulgated in 1978 and to allow for greater efficiency.

CEQ did not receive comments on these proposed changes and makes the changes as proposed in the final rule to better accommodate existing agency practices. For example, the U.S. Department of Agriculture's Forest Service has an objections process outlined at 36 CFR part 218 whereby the public can object to a draft decision; these regulations replaced the prior appeal process formerly used by the agency. To initiate the objections process, Forest Service regulations require that the final EIS and a draft ROD be made available to the public, but the Forest Service does not have to publish the final EIS with EPA until the conclusion of the objections process. *See* 36 CFR 218.7(b). The objections process can take 120 to 160 days, during which the agency makes the final EIS available to the public. Allowing the agency to file the final EIS with EPA and issue a ROD at the same time as the conclusion of the objections process rather than waiting an additional 30 days following the official filing will avoid inefficiency. These changes also will accommodate similar administrative review procedures maintained by other agencies. *See e.g.,* 43 CFR 1610.5–2 (outlining the Bureau of Land Management (BLM) protest procedures).

CEQ also proposed minor edits in paragraphs (d) and (e) for clarity and readability. CEQ did not receive comments on the proposed changes. CEQ has made an additional revision to paragraphs (c)(2) and (e) to correct the reference to § 1506.9 to § 1506.10.

Finally, one commenter requested that CEQ remove the language in paragraph (e), arguing that the failure to file timely comments is not a sufficient reason for extending a timeframe because the public often does not find out about the draft EIS until late in the 45-day comment period. The commenter stated that CEQ should recognize that agencies do not notify the public about when an EA or EIS is released and therefore commenters may be late in providing comments because they did not receive adequate, proper, timely notification. CEQ declines to make this change. As discussed in II.C.8 and II.E.I, § 1501.9 identifies requirements for how and when agencies must notify the public of an action and § 1503.1 requires agencies to request comments from the public on an EIS. Further, agencies have long had the discretion to consider special or unique circumstances that may warrant consideration of comments outside the public comment period.

9. Emergencies (§ 1506.11)

Consistent with changes in the preceding sections, CEQ proposed to renumber 40 CFR 1506.12 (2020), ''Emergencies,'' to § 1506.11. CEQ proposed to strike the last sentence, stating other actions remain subject to NEPA review because it erroneously implies that actions covered by § 1506.11 are not subject to NEPA review. Instead, CEQ proposed to replace the sentence with language clarifying that alternative arrangements are not a waiver of NEPA; rather, they establish an alternative means for NEPA compliance.

Commenters recommended CEQ make it a requirement rather than a recommendation for agencies to consult with CEQ about alternative arrangements. Additionally, commenters disagreed with CEQ's deletion of the statement that other actions remain subject to NEPA, expressing concern that the revised provision would rely on negative implication as a substitute for this clear statement.

In the final rule, CEQ has revised this provision to change ''should'' to ''shall'' to make clear that agencies must consult with CEQ on alternative arrangements for an action with significant effects. CEQ agrees with commenters' suggestion, which is consistent with longstanding agency practice. Such consultation ensures that the agency is limiting the scope of such arrangements to those actions that are necessary to address the emergency and that the public is appropriately notified and involved in the process. CEQ is also revising ''will'' to ''shall'' in the second sentence to clarify that this is a regulatory requirement rather than a statement of fact. Upon further consideration, CEQ retains the clause ''other actions remain subject to NEPA review'' and adds the clause ''consistent with this subchapter'' to make clear that agencies and CEQ are required to limit such arrangements, and that any remaining actions not covered by the alternative arrangements must comply with the regulations.

Finally, CEQ adds the last sentence as proposed to address confusion [109] as to whether, during emergencies, agency actions are exempted from NEPA. This addition clarifies that the regulations do not create a NEPA exemption; rather, they provide a pathway for compliance with NEPA where the exigencies of emergency situations do not provide sufficient time for an agency to complete an EIS in conformity with the CEQ regulations for an action with significant environmental effects.

CEQ does not have the authority to exempt agency actions from NEPA, regardless of whether an emergency exists. The changes to § 1506.11 clarify that CEQ does not offer ''alternative arrangements'' to circumvent appropriate NEPA analysis but rather to enable Federal agencies to establish alternative means for NEPA compliance to ensure that agencies can act swiftly to address emergencies while also meeting their statutory obligations under NEPA. CEQ's revisions clarify that when emergencies arise, § 1506.11 allows agencies to adjust the means by which they achieve NEPA compliance. This approach is also consistent with CEQ's guidance on NEPA and emergencies, updated in 2020.[110]

Finally, CEQ notes that, consistent with longstanding practice, agencies have discretion to determine how to proceed with actions to respond to

[109] *See* CEQ, 2020 Response to Comments, *supra* note 69, at 417–19.

[110] *See* CEQ, Emergencies and the National Environmental Policy Act Guidance (Sept. 14, 2020), *https://ceq.doe.gov/docs/nepa-practice/emergencies-and-nepa-guidance-2020.pdf.*

emergencies that do not have significant environmental effects, which agencies would ordinarily analyze through an EA. Agencies may continue to consult with CEQ where they are unsure whether alternative arrangements or an EA is the appropriate course of action. And, as discussed in section II.I.3, some agencies include procedures for addressing such situations in their agency NEPA procedures, and CEQ encourages agencies to do so where appropriate for their programs and activities.

10. Innovative Approaches to NEPA Reviews (Proposed § 1506.12)

CEQ proposed to add a new section to the regulations in § 1506.12 to allow CEQ to grant a request for modification to authorize Federal agencies to pursue innovative approaches to comply with NEPA and the regulations in order to address extreme environmental challenges. CEQ proposed this new concept to be distinct from the emergency provisions in § 1506.11 with different considerations and criteria.

Commenters generally opposed this proposed provision. Some commenters thought it was unnecessary, and CEQ did not receive concrete examples of situations where commenters thought agencies could successfully use such approaches. Other commenters were concerned the proposal did not contain enough guideposts for agencies. Commenters also raised concerns that the lack of notice and comment for rulemaking could lead to uncertainty about durability of the provisions and potential litigation and delay.

Upon further consideration, including the public comments received on the proposed provision, CEQ is not including this provision in the final rule. The mechanisms provided in this final rule, including updated provisions on programmatic environmental reviews and agency NEPA procedures that should be tailored to agencies' unique programs and actions, as well as new methods of establishing or adopting CEs, provide agencies sufficient flexibility to innovate and address extreme environmental challenges.

11. Effective Date (§ 1506.12)

CEQ proposed to remove the 2020 effective date in § 1506.13 and replace it with the date upon which a final rule is effective. CEQ received a variety of comments on this provision, including one commenter requesting that it require agencies to apply the final rule to ongoing actions. Conversely, a group of commenters requested that the final rule explicitly state that agencies should follow the NEPA regulations that were effective at the time at which the agency initiated the environmental review, asserting that allowing agencies flexibility to apply the final rule to ongoing actions will cause delays, create uncertainty, and increase costs for project proponents.

Some commenters requested that CEQ revise this section to not allow the regulations to apply to a Federal agency's actions until the agency adopts new agency procedures under § 1507.3 to avoid confusion and inconsistency, and that CEQ provide additional clarity on which version of CEQ's regulations and an agency's procedures apply to each Federal action moving forward.

CEQ finalizes this section as proposed in § 1506.12. Section 1506.12 requires agencies to comply with the regulations for proposed actions begun after the effective date of the final rule. Agencies are in the best position to determine on a case-by-case basis whether applying provisions of the revised regulations to ongoing reviews will facilitate a more effective and efficient process, and CEQ declines to limit agency flexibility in this regard. Regarding potential conflict with existing agency procedures, an agency's existing NEPA procedures remain in effect until the agency revises its procedures consistent with § 1507.3; however, agencies should read their existing procedures in concert with the final rule to ensure they are meeting the requisite requirements of both wherever possible. Additionally, CEQ notes that the Fiscal Responsibility Act's amendments to NEPA were effective upon enactment, so to the extent the regulations implement provisions of the NEPA amendments, these are applicable to ongoing reviews.

For the last several years, agencies have had experience reconciling differences between their procedures and the current regulations, and CEQ is unaware of significant issues that have arisen. While certain provisions included in this final rule may be missing from agency procedures, these provisions are requirements that agencies would need to add to their procedures and are therefore less likely to pose a direct conflict or create inconsistencies. Additionally, where CEQ is restoring the regulatory text or approach from the 1978 regulations, CEQ notes that most agency procedures are consistent with the 1978 regulations, and therefore there is less likely to be conflict with those provisions. To the extent that there is conflict between an agency's procedures and CEQ's regulations, the CEQ regulations generally will apply, and CEQ is available to assist in addressing any such conflicts. Lastly, CEQ notes that Federal agencies would not need to redo or supplement a completed NEPA review (*e.g.,* where a CE determination, FONSI, or ROD has been issued) as a result of the issuance of this rulemaking.

I. Revisions to Agency Compliance (Part 1507)

1. Compliance (§ 1507.1)

CEQ proposed to add a second sentence to § 1507.1 to restore language from the 1978 regulations to state that agencies have flexibility to adapt their implementing procedures to the requirements of other applicable laws. CEQ made this proposal because restoring this language is consistent with the changes CEQ made to 40 CFR 1507.3 (2022) in its Phase 1 rulemaking to restore agency discretion to tailor their NEPA procedures to their unique missions and contexts, creating opportunity for agencies to innovate and improve efficiency.

One commenter requested that CEQ delete the first sentence of § 1507.1, which requires all agencies to comply with the CEQ regulations, and add a clause at the end of the proposed second sentence making requirements with other applicable laws dependent upon compliance with the regulations. The commenter asserted this change would allow an agency to tailor its NEPA procedures as appropriate, but make clear that the agency still must comply with these regulations.

Another commenter expressed concerns that the flexibility proposed in § 1507.1 will result in inconsistency, especially where a State agency serves as a co-lead agency or as a participating agency for a project over which multiple Federal agencies have jurisdiction. The commenter asserted that the flexibility in the proposed text in § 1507.1 undermines predictability and consistency and will result in delays in the environmental review process.

CEQ considered the commenters' suggestions and finalizes the language as proposed. With respect to the first comment, CEQ considers the language in the final rule to be consistent with the commenter's objective and longstanding practice: agencies may tailor their procedures to their unique programs, but they must also comply with NEPA and the CEQ regulations. This point is reinforced in § 1500.6, which requires agencies to fully comply with the purposes and provisions of the NEPA statute and CEQ's NEPA regulations unless an agency activity, decision, or action is exempted from NEPA by law or compliance with NEPA is impossible.

CEQ disagrees with the other commenter's assertions that this provision undermines predictability. To ensure NEPA reviews inform decision making, Federal agencies need to integrate the NEPA process into the decision-making process, and having a ''one size fits all'' approach to agency procedures would not achieve that objective. The CEQ regulations encourage agencies to engage in early coordination to prevent delays in individual NEPA reviews. Further, the regulations have long encouraged agencies to consult with other agencies with which they have similar programs or frequently take actions on the same projects, and CEQ encourages agencies to strive to reconcile their processes as they update their procedures for consistency with this rule. *See* § 1507.3(b)(1).

2. Agency Capability To Comply (§ 1507.2)

CEQ proposed edits to § 1507.2 to emphasize agencies' responsibilities under NEPA, including to incorporate the requirements added to section 102(2) of NEPA, 42 U.S.C. 4332, and to require agencies to designate a Chief Public Engagement Officer. First, CEQ proposed to move the first sentence of paragraph (a) of 40 CFR 1507.2 (2020), which requires agencies to fulfil the requirements of section 102(2)(A) of NEPA, 42 U.S.C. 4332(2)(A), to use a systematic, interdisciplinary approach, to a new § 1507.2(b). Second, CEQ proposed to require in § 1507.2(a) that in addition to designating a senior agency official responsible for overall agency NEPA compliance, agencies identify a Chief Public Engagement Officer who would be responsible for facilitating community engagement across the agency and, where appropriate, the provision of technical assistance to communities.

CEQ received multiple comments on the requirement for Federal agencies to identify a Chief Public Engagement Officer. Numerous supportive commenters expressed that this position would benefit all stakeholders, quicken public engagement processes by making the environmental review processes more accessible and transparent, facilitate consistent engagement practices, and promote a level of accountability that enhances engagement. Some supportive commenters asked CEQ to clarify expectations for the position, such as identifying a minimum level of seniority within the agency and to clarify that ''community engagement'' includes ''industry engagement.'' A couple of commenters were supportive of the general idea, but expressed concern about how agencies would define the role and whether agencies would have resources to support the Officer. A few commenters suggested that the person who serves in the position within an agency must be a neutral party and trusted expert with necessary experience to be effective in the position. Multiple commenters also provided suggestions for additional guidance regarding the duties of the Chief Public Engagement Officer.

Several commenters opposed the proposed requirement for agencies to designate a Chief Public Engagement Officer asserting that the NEPA amendments do not require it; there is lack of clarity on whether this position would help mediate resolutions to allow more efficient completion of the environmental review process; and it would create a burden on agencies because they will need to hire a Chief Public Engagement Officer.

Another commenter raised the concern that by requiring agencies to identify a Chief Public Engagement Officer, CEQ is creating a new and potentially overlapping position with the Chief Environmental Review and Permitting Officer (CERPO) that already exists to manage environmental review and authorization processes.

CEQ considered the comments and includes the requirement in § 1507.2(a) to identify a Chief Public Engagement Officer with clarifying edits. To address commenters' concerns about agency burden and the scope of the position, CEQ adds language to clarify that the regulations make the Chief Public Engagement Officer responsible for facilitating community engagement in environmental reviews and does not direct agencies to make the officer responsible for all engagement activities within an agency, though agencies have the discretion to define the role more broadly should they determine doing so is appropriate.

CEQ also adds a sentence to the end of paragraph (a) to clarify that when an agency is a department, it may be efficient for major subunits to identify senior agency officials or Chief Public Engagement Officers within those subunits. This language is consistent with the approach for agency NEPA procedures in § 1507.3(b), and the regulations provide that the department-level official or Officer would have oversight over the subunit officials or officers. CEQ adds this language to provide large departments the flexibility to effectively manage their programs while ensuring that there is also centralized, consistent coordination across the whole department. CEQ notes that a senior agency official must be ''an official of assistant secretary rank or higher (or equivalent),'' in accordance with § 1508.1(*ll*); in the case of a senior agency official designated by a major subunit, that individual must have a degree of authority and responsibility within the subunit that is equivalent to the authority and responsibility that an assistant secretary would have within a department.

CEQ notes that Federal agencies may designate current employees to serve as the senior agency official and Chief Public Engagement Officer, and need not hire new employees. Regarding the variety of comments recommending specific responsibilities for the Chief Public Engagement Officer, CEQ will consider providing guidance to agencies that addresses the role and expectations of the Officer, but CEQ considers this level of detail unnecessary for the regulations. Lastly, CEQ revises paragraph (a) to strike ''Agencies shall'' from the beginning of the paragraph because it is duplicative to the end of the introductory paragraph of § 1507.2.

Third, CEQ proposed to redesignate paragraphs (b) and (c), and (d) through (f) of 40 CFR 1507.2 (2020) as § 1507.2(c) and (d), and (h) through (j) respectively. CEQ makes these changes in the final rule.

Fourth, CEQ proposed to add a new paragraph (e) to require agencies to prepare environmental documents with professional integrity consistent with section 102(2)(D) of NEPA, 42 U.S.C. 4332(2)(D). In a new paragraph (f), CEQ proposed to require agencies to make use of reliable data and resources, consistent with section 102(2)(E) of NEPA, 42 U.S.C. 4332(2)(E). And, in a new paragraph (g), CEQ proposed to require agencies to study, develop, and describe technically and economically feasible alternatives, consistent with section 102(2)(F) of NEPA, 42 U.S.C. 4332(2)(F). Finally, in redesignated paragraph (j), CEQ proposed to delete the reference to E.O. 13807 because E.O. 13990 revoked E.O. 13807.[111]

CEQ did not receive any substantive comments on these proposed changes. CEQ finalizes these provisions as proposed.

3. Agency NEPA Procedures (§ 1507.3)

CEQ proposed several updates to § 1507.3 to reorganize paragraphs to improve readability, consolidate related provisions, restore text from the 1978 regulations, and codify CEQ guidance on CEs. First, in paragraphs (a) and (b), CEQ proposed to update the effective date to reflect the effective date of a

[111] E.O. 13990, *supra* note 43.

final rule. CEQ received several comments expressing concern about paragraph (a), which provides that CEQ determined that the CEs contained in agency NEPA procedures as of the final rule effective date are consistent with the CEQ regulations. Commenters raised concerns about the lack of evidence that all CEs are consistent with CEQ's proposal and, in some instances, identified particular CEs that the commenters stated were inconsistent. Commenters also asked about how this provision would interact with § 1507.3(c)(8) and (9) regarding the process for establishing and periodically reviewing existing CEs.

CEQ considered the comments and revises this paragraph in the final rule for clarity. CEQ's intent with this provision is to clarify that the changes made in the final rule, including revisions to the definition of ''categorical exclusion'' and § 1501.4 do not implicate the validity of existing CEs. CEQ revises the paragraph to clarify that it has determined that the revisions to its regulations made in this final rule do not affect the validity of agency CEs that are in place as of the effective date of this rule. Further, as discussed more in this section, CEQ is encouraging agencies to prioritize their older CEs for review.

Second, in § 1507.3(b), CEQ proposed to give agencies 12 months after the effective date to develop proposed procedures and initiate consultation with CEQ to implement the CEQ regulations. CEQ also proposed moving, with some modification, language from paragraph (c) of 40 CFR 1507.3 (2022) to § 1507.3(b) for clarity and to improve organization since the language is generally applicable to all agency NEPA procedures. The NPRM explained that proposed procedures should facilitate efficient decision making and ensure that agencies make decisions in accordance with the policies and requirements of NEPA.

One commenter requested that CEQ explicitly state that in the case of conflicts, an agency's NEPA procedures supersede the CEQ regulations, and that such a statement would increase certainty and reduce litigation risks. CEQ declines to add this language. Agencies and courts have extensive experience applying both CEQ's regulations and agency-specific procedures, and in CEQ's experience, this relationship has not led to uncertainty or litigation risk that would outweigh the uncertainty that could be created from a new regulatory provision on this subject.

Two commenters asserted that 12 months is not enough time for agencies to propose procedures, take public comment, and produce final procedures. CEQ declines to revise the timing provided in § 1507.3(b). While CEQ will work with agencies to update their procedures as quickly as possible, agencies only need to provide CEQ with proposed revisions within 12 months. Therefore, CEQ considers 12 months sufficient for agencies to propose procedures and finalizes § 1507.3(b) as proposed, except a grammatical change from ''agencies make'' to ''the agency makes'' for consistency with the rest of the sentence.

Third, in paragraph (b)(2), CEQ proposed to change ''adopting'' to ''issuing'' to avoid confusion with adoption under § 1506.3. CEQ also proposed to restore text from the 1978 regulations requiring agencies to continue to review their policies and procedures and revise them as necessary to be in full compliance with NEPA. The 2020 rule deleted this language as redundant to language added to paragraph (b) of 40 CFR 1507.3 (2020) requiring agencies to update their procedures to implement the final rule.[112]

One commenter opposed CEQ's proposed restoration of this language in § 1507.3(b)(2), asserting that the requirement for agencies to continually review their NEPA policies and procedures could reduce stability because agencies will be in a constant cycle of revision. CEQ disagrees with the commenter's assertions because this provision was in the 1978 regulations and has not resulted in agencies continually updating their procedures. CEQ also considers it important for agencies to review their procedures to ensure that they are meeting the intent of NEPA and are updated to address any changes to agencies' authorities or programs so that the NEPA process is effectively integrated in agencies' decision-making processes.

CEQ makes the changes to paragraph (b)(2) as proposed with one additional change in the fourth sentence to change ''to'' to ''and'' for clarity. CEQ is restoring this language because the requirement for an agency to continue to review their policies and procedures is different than the requirement in paragraph (b) to initially update procedures consistent with the final rule. Further, restoring this requirement is consistent with the requirement in § 1507.3(c)(9) for agencies to review CEs at least every 10 years.

Fourth, CEQ proposed to add a new paragraph (b)(3) to clarify that, consistent with longstanding practice, the issuance of new agency procedures or an update to existing agency procedures is not itself subject to NEPA review. CEQ did not receive comments on this paragraph and adds it with the language as proposed in the final rule.

Fifth, paragraphs (c) and (c)(1) through (c)(10) of 40 CFR 1507.3 (2022) list the items that all agency NEPA procedures must include, and CEQ proposed minor revisions to paragraphs (c)(1) through (c)(4) to improve clarity and conciseness. Specifically, CEQ proposed to modify paragraph (c)(1) to clarify that agencies should designate the major decision points for their programs and actions subject to NEPA and ensure that the NEPA process begins at the earliest reasonable time. In paragraph (c)(2), CEQ proposed to remove the reference to ''formal'' as unnecessarily limiting since agencies generally engage in informal rulemaking, and change ''or'' to ''and'' to clarify that agencies should make relevant environmental documents, comments, and responses part of the record in both rulemakings and adjudicatory proceedings. CEQ proposed to modify paragraph (c)(3) to clarify that procedures should integrate environmental review into agency decision-making processes so that decision makers use the information in making decisions. CEQ did not receive comments on these specific changes and makes the edits as proposed in the final rule.

Sixth, CEQ proposed to modify paragraph (c)(5) to emphasize that combining environmental documents should be done to facilitate sound and efficient decision making and avoid duplication. CEQ proposed to strike the language from this paragraph allowing agencies to designate and rely on other procedures or documents to satisfy NEPA compliance. As discussed further in sections II.C.1 and II.C.2 of the NPRM, CEQ had concerns about this language added by the 2020 rule to substitute other reviews as functionally equivalent for NEPA compliance, and therefore proposed to remove it.

One commenter stated that paragraph (c)(5) should implement section 107(b) of NEPA, 42 U.S.C. 4336a(b). Section 107(b) of NEPA addresses preparation of a single environmental document for lead and cooperating agencies. CEQ addresses this in § 1501.7(g) and therefore declines to make this change. The intent of paragraph (c)(5) is to ensure that agency procedures require the combination of environmental documents with other agency documents in order to facilitate sound and efficient decision making and avoid duplication where consistent with

[112] CEQ, 2020 Final Rule, *supra* note 39, at 43340.

applicable statutory requirements. CEQ makes the changes to § 1507.3(c)(5) as proposed.

Seventh, to consolidate into one paragraph—paragraph (c)—the required aspects of agency NEPA procedures, CEQ proposed to move paragraphs (e)(1), (e)(2), (e)(2)(i), and (e)(2)(iii) of 40 CFR 1507.3 (2022) to paragraphs (c)(6), (c)(7), (c)(7)(i) and (c)(7)(ii), respectively, with minor wording modification for readability. Proposed paragraph (c)(6) addressed procedures required by § 1501.2(b)(4) regarding assistance to applicants. Proposed paragraphs (c)(7), (c)(7)(i), and (c)(7)(ii) addressed criteria to identify of typical classes of action that normally require EISs and EAs.

One commenter questioned if paragraphs (c)(7)(i) and (ii) are intended to make EIS and EA thresholds more definitive. These provisions—which have been in the CEQ regulations since 1978 and to which CEQ only proposed minor, non-substantive edits for readability—require agencies to identify their common activities or decisions that typically require an EIS or EA. While not determinative for any particular action, these lists put the public on notice of the decisions agencies regularly make that require these levels of NEPA review. CEQ has not substantively changed these provisions and, therefore, does not intend for them to affect EIS and EA thresholds or otherwise change current practice. CEQ makes the changes to § 1507.3(6) and (7) as proposed.

Eighth, CEQ proposed to move with modification paragraph (e)(2)(ii) of 40 CFR 1507.3(2022), requiring agencies to establish CEs and identify extraordinary circumstances, to paragraph (c)(8). CEQ proposed in paragraphs (c)(8)(i) through (c)(8)(iii) to include more specificity about the process for establishing new or revising existing CEs, consistent with CEQ's 2010 CE guidance and agency practice. CEQ proposed to move the existing requirement that agencies identify when documentation is required for a determination that a CE applies to a proposed action from paragraph (e)(2)(i) of 40 CFR 1507.3 (2022) to proposed paragraph (c)(8)(i). CEQ proposed a new paragraph (c)(8)(ii) to require agencies to substantiate new or revised CEs with sufficient information to conclude that the category of actions does not have a significant effect, individually or in the aggregate, and make the documentation publicly available for comment. Lastly, CEQ proposed to add paragraph (c)(8)(iii) to require agencies to describe how they will consider extraordinary circumstances, a concept that was moved from paragraph (e)(2)(ii) of 40 CFR 1507.3 (2022). CEQ proposed these provisions for consistency with its 2010 guidance and CEQ's longstanding practice requiring agencies to demonstrate that agency activities are eligible for CEs.[113]

One commenter requested that CEQ revise proposed paragraph (c)(8)(i) to require agencies to provide the public with documentation of a determination that a CE applies to a proposed action. CEQ declines to require agencies to document and publish all determinations that a CE applies to an action, as many CEs are used for routine actions with no potential for environmental effects and documentation of all determinations would result in burdensome and unnecessary paperwork. CEQ considers the better approach to be for agencies to identify which CEs require documentation and whether to make that documentation publicly available.

One commenter requested that CEQ expand paragraph (c)(8)(ii) to preclude agencies from establishing CEs if similar categories of actions have historically been controversial, are known to have substantial environmental justice considerations, or have previously resulted in preparation of an EIS. Another commenter suggested that CEQ replace the use of ''or in the aggregate'' with ''cumulative,'' to use the term from the 1978 regulations.

Some commenters opposed proposed paragraph (c)(8)(iii), stating that agencies should not have to delineate the extraordinary circumstances under which an action normally excluded from further NEPA review nonetheless requires additional review. The commenters asserted that the proposed section substantially limits the breadth of extraordinary circumstances under which an action normally excluded requires further review. CEQ disagrees with the commenters' assertions. The provision clarifies that an explanation of how the agency will consider extraordinary circumstances when applying a proposed CE is a necessary component of substantiating the CE. The provision should be read in context with the definition of ''extraordinary circumstances'' in § 1508.1(o).

CEQ considers these comments but finalizes the provisions in § 1507.3(c)(8) and (c)(8)(i) through (iii) as proposed, with one change: instead of restating the process for consideration of extraordinary circumstances in paragraph (c)(8)(iii), the final rule cross-references to § 1501.4(b), which sets for the process for consideration of extraordinary circumstances, including documenting when an agency determines that a CE applies notwithstanding extraordinary circumstances. CEQ declines to make the commenters' recommended changes. When establishing CEs, agencies must provide sufficient information to CEQ and to the public to substantiate the determination that the category of actions normally does not result in significant effects. Agencies must also address how they will consider extraordinary circumstances in applying CEs. CEQ does not consider it appropriate to specify these limitations within its regulations; rather, agencies and CEQ must consider these concerns on a case-by-case basis when substantiating and reviewing proposed new CEs.

As discussed further in section II.C.3, CEQ also declines to replace ''or in the aggregate'' in the paragraph because it is consistent with § 1501.4 on establishment of CEs. CEQ considers ''individually or in the aggregate'' to have the same meaning as the 1978 regulation's definition of ''categorical exclusion'' as a category of actions that do not ''individually or cumulatively'' have significant effects. CEQ uses ''in the aggregate'' instead of ''cumulatively'' within the regulations to avoid potential confusion with the definition of ''effects,'' which includes cumulative effects.

Ninth, CEQ proposed to add a new paragraph (c)(9) to require agencies to include in their NEPA procedures a process for reviewing their CEs every 10 years to codify recommendations in CEQ's guidance on establishing CEs,[114] which encourages agencies to review CEs periodically. While the guidance recommends every 7 years,[115] CEQ proposed requiring that review occur at least every 10 years because it can take about a year to complete the steps involved to conduct such a review and revise CEs. These steps typically include conducting the analysis, developing a proposal to update procedures to reflect the review, consulting with CEQ on any proposed update to procedures, soliciting public comment, developing final procedures, and receiving a CEQ conformity determination. CEQ noted in the proposed rule that Federal agencies should review their CEs for multiple reasons, including to determine if CEs remain useful, whether they should modify them, and to determine if circumstances have changed resulting in

[113] *See* CEQ, CE Guidance, *supra* note 10.

[114] *Id.* at 15–18.

[115] *Id.* at 16.

an existing category rising the potential for significant effects.

Multiple commenters supported this requirement, with some suggesting that this review be subject to notice and public comment and others requesting the 10-year timeframe start at the time the agency issues the CE. One commenter requested that the regulations instruct agencies to take a holistic and comprehensive look at their current CEs to determine if any changes are needed, while another suggested that the periodic reviews need to account for the latest science and design practices.

CEQ declines to require agencies to provide notice and comment for their periodic review of CEs, but notes that where an agency decides to revise a CE based on the review, such revisions would require notice and comment under § 1507.3(b), for CEs established through agency procedures, or § 1501.4(c), for CEs developed through the mechanisms identified in that paragraph. CEQ declines to require agencies to comprehensively review their CEs, because allowing agencies to review their CEs on a rolling basis will provide for a more orderly and efficient review process and allow agencies to complete their review of their oldest CEs more quickly than would occur if the agency were to review all of its CEs at one time. CEQ declines to include additional requirements for the periodic review but agrees that the standard set forth in § 1501.4(d)(4) may help inform agencies as to when an agency should revise or remove a CE.

Some commenters opposed the proposed requirement to review existing CEs, asserting that it places an administrative burden on agencies that is unjustified to the extent it goes beyond how agencies currently administer CEs. While CEQ recognizes that this review process may be new for some agencies, CEQ has encouraged agencies to review CEs since the 2010 guidance. CEQ's experience with agencies that have undertaken this review is that it is a valuable process for agencies because it results in revised and new CEs that better align with the agencies' programs and experience. Such reviews are animated by the same principle as the longstanding practices to reexamine an analysis when an agency has an ongoing action, such as reevaluation and supplementation. A periodic analysis of existing CEs serves the same purpose—to ensure the underlying analysis and conclusions remain valid.

One commenter requested that the final rule add ''which does not impact projects approved under a categorical exclusion that existed at the time'' to paragraph (c)(9) to clarify that review of and changes to CEs are forward-looking and do not affect previously approved actions. CEQ agrees that any review of CEs does not have implications for prior CE determinations and does not consider the text in the final rule to raise any question that a review would require an agency to reopen the approval process for such actions. As a result, CEQ views this addition to be unnecessary.

In the final rule, CEQ adds this provision with an additional clause to clarify that agencies do not need to review all of their CEs at once and may do so on a rolling basis, but should focus on the oldest CEs first. CEQ adds this provision to clarify that agencies need not undertake a comprehensive review of all CEs but could instead break them up such that they review them in tranches on some periodic schedule but where the review of each CE occurs once every 10 years. Additionally, in response to comments on the interaction between § 1507.3(a) regarding the validity of existing CEs and this provision, CEQ clarifies that agencies should prioritize its oldest CEs first.

Tenth, CEQ proposed to move 40 CFR 1507.3(e)(3) (2020) to paragraph (c)(10) without substantive change. This provision addresses the requirement that agencies include a process for introducing a supplemental EA or EIS into its formal administrative record. CEQ did not receive comments on this provision. In the final rule, CEQ moves 40 CFR 1507.3(e)(3) (2020) to § 1507.3(c)(10) and revises the text to require agencies to include processes for reevaluating and supplementing EAs and EISs, as appropriate. CEQ has revised the text in this provision to enhance clarity by referring to ''processes for'' rather than ''a process for introducing'' and removing the reference to including supplemental materials in a formal administrative record to enable agencies flexibility to develop procedures that work with their programs consistent with longstanding agency practice. Additionally, 40 CFR 1502.9(d)(4) (2020) implicitly requires agency procedures to address reevaluation by encouraging agencies to document their findings consistent with their agency NEPA procedures. CEQ adds an explicit requirement in § 1507.3(c)(10) in the final rule for consistency with § 1502.9(e) and to make clear that agencies must include such a process in their agency procedures.

Eleventh, CEQ proposed to move the requirement for agencies to explain in their NEPA procedures where interested persons can get information on EISs and the NEPA process from paragraph (e) of 40 CFR 1506.6 (2020) to § 1507.3(c)(11) and add a reference to EAs as well. CEQ did not receive comments on this provision and makes this change as proposed in the final rule.

Twelfth, CEQ proposed to codify section 107(f) of NEPA, 42 U.S.C. 4336a(f), in a new paragraph (c)(12) requiring agencies to include procedures, where applicable, to allow a project sponsor to prepare EAs and EISs consistent with § 1506.5. Since not all agency actions involve project sponsors, CEQ proposed to include ''where applicable'' to qualify this requirement so that it applies only where agencies have actions where there is a project sponsor. The proposal included ''consistent with § 1506.5'' so that such procedures would ensure environmental documents prepared by project sponsors (or a contractor on the project sponsor's behalf) are prepared with professional and scientific integrity, and ensure that the agency independently evaluates and takes responsibility for the contents of such documents. The proposed rule also explained that this would ensure that agencies require project sponsors to execute a disclosure statement to address financial or other interests. In addition to procedures, agencies may provide project sponsors with guidance and assist in the preparation of the documents consistent with § 1506.5(b)(1).

CEQ received multiple comments that generally supported the proposed changes to allow applicants to prepare EAs and EISs, as well as multiple commenters who generally opposed the provision and opposed section 107(f) of NEPA. Some commenters who oppose the proposed changes recognized that it is not within CEQ's authority to modify section 107(f) of NEPA but stated that CEQ could provide more oversight and guardrails for how agencies carry this out and that CEQ should provide more guidance on avoiding conflicts of interest. Another group of commenters asked CEQ to provide more specificity for what agency procedures should specify regarding applicant or project sponsor-prepared EAs and EISs.

Commenters who supported the proposal pointed to time and cost savings and asserted that allowing project proponents, applicants, and contractors more opportunities to prepare EAs and EISs will help reduce inaccuracies and delays. Some supportive commenters also requested that CEQ go further, such as by allowing

a project sponsor a first right of refusal to prepare an EA or EIS.

One commenter opposed the addition of paragraph (c)(12) and the general allowance of project sponsors to prepare EAs and EISs. However, they noted that their concerns could be mitigated if there is a definition of ''project sponsor.'' Another commenter requested that CEQ add to paragraph (c)(12) a requirement for agencies to include specific public engagement requirements in their procedures when a project sponsor prepares an EA or EIS. Additionally, as discussed further in section II.H.3, commenters were confused about the applicability of this provision and § 1506.5.

In the final rule, CEQ includes § 1507.3(c)(12) to address preparation of EAs and EISs by applicants, including project sponsors. As discussed in section II.J.1, CEQ is adding a definition of ''applicant,'' which is inclusive of ''project sponsors'' to address confusion regarding the meaning of this term here and elsewhere in the regulations. CEQ also revises the ''where applicable'' language to ''where an agency has applicants that seek its action'' to address concerns that the provision could be read as discretionary. As CEQ noted in the preamble to the proposed rule, not all agencies have applicants or project sponsors; therefore, such agencies need not include procedures for non-existent applicants. This phrasing is consistent with the definition of ''applicant'' in the final rule. Additionally, CEQ adds a sentence in the final rule to clarify that such procedures will not apply to applicants when they serve as joint lead agencies. Section 107 of NEPA allows the Federal lead agency to appoint a State, Tribal, or local agency as a joint lead agency and jointly fulfill the role of the lead agency. In such cases, the joint lead agency and lead agency would work together to prepare the document, including development of the purpose and need, identification of alternatives, and preparing the FONSI or ROD.

In § 1507.3(c)(12), CEQ also revises the cross reference to § 1506.5(a) and (c). As discussed in section II.H.3, CEQ is modifying § 1506.5 for clarity, and therefore the provisions in § 1506.5 regarding applicant-provided information for a NEPA document prepared by the agency or an agency-directed contractor are inapplicable in this instance where the applicant or its contractor is preparing the EA or EIS.

In the final rule, CEQ adds paragraphs (c)(12)(i), (ii) and (iii), to set out minimum requirements for such procedures. CEQ includes these provisions to respond to comments requesting CEQ include more specificity about the agency's role with respect to applicant prepared EAs and EIS. Paragraph (c)(12)(i) requires that agency procedures provide for agency review and approval of the purpose and need and alternatives. Agency involvement in development of these key features of the environmental document is critical to ensure that applicant prepared EISs and EAs will be appropriately scoped and include the reasonable alternatives as determined by the agency. Paragraph (c)(12)(ii) requires agencies to include process for the agency to independently evaluate the applicant-prepared EA or EIS; take responsibility for its accuracy, scope, and contents; and document the agency's evaluation in the document consistent with the requirements in § 1506.5(a). CEQ adds paragraph (c)(12)(iii) to address comments requesting that CEQ clarify that applicants cannot prepare FONSIs or RODs. CEQ agrees that this is consistent with section 107(f) of NEPA and agrees that it is an important clarification to ensure that the agency's determinations and decisions are its own.

CEQ declines to add additional requirements regarding public engagement in paragraph (c)(12) because the regulations require agencies to engage the public in the preparation of an EA and EIS, which is required regardless of the preparer.

Numerous commenters expressed the view that CEQ is not fully implementing section 107(f) of NEPA because it is not specifically requiring agencies to allow project sponsors or applicants the opportunity to prepare documents in the absence of prescribed procedures. Some commenters referred to the fact that agencies have 12 months to propose procedures to CEQ following the effective date of the final rule, which means it will be more than a year before agencies have final procedures in place and be able to implement section 107(f) of NEPA. One commenter also pointed to some agencies already accepting sponsor-prepared documents for years and having a process in place to facilitate doing so and asserting that those agencies should not be prevented from continuing to accept these documents.

CEQ agrees that agencies have long allowed applicants to prepare EAs and that many agencies already have procedures in place for applicant-prepared documents. CEQ disagrees that this provision in the regulations precludes agencies from implementing applicant-prepared documents if they already have procedures that enable them to do so. Agencies are currently implementing section 107(f) of NEPA and this provision does not prevent them from continuing to do so. Rather, this provision ensures that going forward, agencies include their procedures for applicant prepared EAs and EISs in their NEPA procedures. Doing so will ensure that the procedures include the criteria set forth in this final rule and that the public has an opportunity to review and comment on the agency procedures without disrupting existing practice implementing 107(f) of NEPA.

Thirteenth, CEQ proposed to move, with revisions, paragraph (d) of 40 CFR 1507.3 (2022) to § 1507.3(d)(1) and strike the provisions in paragraphs (d)(1) through (d)(6) of 40 CFR 1507.3 (2022), which recommended agency procedures identify different classes of activities or decisions that may not be subject to NEPA. CEQ proposed to remove these provisions for consistency with its revisions to § 1501.1. *See* section II.C.1.

Instead, CEQ proposed § 1507.3(d) and its subparagraphs to provide a list of items that agencies may include in their procedures, as appropriate, which would include, at paragraph (d)(1), identifying activities or decisions that are not subject to NEPA. CEQ proposed in paragraph (d)(2) to allow agencies to include processes for emergency actions that would not result in significant environmental effects. Finally, CEQ proposed to move, without modification, paragraphs (f)(1) and (f)(2) of 40 CFR 1507.3 (2022) to paragraphs (d)(3) and (d)(4), respectively.

One commenter expressed support for the proposed § 1507.3(d), and specifically identified additional support for paragraphs (d)(1) and (d)(2) through (6). Another commenter requested that CEQ make the list of items in § 1507.3(d) required rather than optional for inclusion in agency procedures. This commenter also opposed the allowance in paragraph (d)(3) regarding classified proposals, asserting that this language invites abuse by agencies that will classify proposals that should not be classified to avoid public input and requested that there be public comment periods for classified proposals.

CEQ finalizes the list of items agencies may include in their procedures in § 1507.3(d) as proposed. It is appropriate for this list of items to be optional because the items included in the list will not always be applicable to every agency.

CEQ notes that the provision in (d)(2) regarding emergency actions is similar to CEQ's emergency process for EISs provided in § 1506.11, but relates to activities that would not require

preparation of an EIS. Some agencies have programs that focus on these types of emergency actions and may need to consider special arrangements for their EAs in these circumstances. These special arrangements could focus on the format of the documents, special distribution and public involvement procedures, and timing considerations. Some agencies have already established such processes in their procedures to ensure efficient NEPA compliance in an emergency. *See, e.g.,* 36 CFR 220.4(b); U.S. Dep't of Homeland Sec., Instruction Manual #023–01–001–01, Section VI.[116]

Regarding classified proposals, CEQ declines to further modify paragraph (d)(3), which has been in place since the 1978 regulations and is important for agencies who handle classified information. CEQ notes that the provision encourages agencies to withhold only what is necessary for the protection of classified information and structure the document such that it can easily make unclassified portions available for public comment.

Fourteenth, CEQ proposed to strike paragraph (e) of 40 CFR 1507.3 (2020) because it was unnecessary and potentially confusing. CEQ makes this change in the final rule because this provision is redundant with the regulations' longstanding requirement that agencies develop agency NEPA procedures that CEQ has determined conform to the NEPA regulations. Further, its requirement that agency procedures ''comply'' with the CEQ regulations could be read to suggest that agencies must complete a NEPA review when establishing their procedures, which is inconsistent with paragraph (b)(3).

Fifteenth, CEQ proposed to remove, as superfluous, the first sentence of paragraph (f)(3) of 40 CFR 1507.3 (2020) regarding lengthy periods between an agency's decision to prepare an EIS and actual preparation, as the regulations prescribe specific timelines for preparation of environmental documents. As discussed in section II.D.3, CEQ proposed to move the second sentence of 40 CFR 1507.3(f)(3) regarding supplemental notices when an agency withdraws, cancels, or otherwise ceases the consideration of a proposed action before completing an EIS to § 1502.4(f) with modifications. CEQ makes these changes in the final rule.

Sixteenth, CEQ proposed to remove as unnecessary paragraph (f)(4) of 40 CFR 1507.3 (2022) regarding combining the agency's EA process with its scoping process. Section 1501.5(k) clarifies that agencies can employ scoping at their discretion when it will improve the efficiency and effectiveness of EAs, including combining scoping with a comment period on a draft EA.

One commenter opposed this deletion because integrating scoping with the EA process can be an inclusive method of soliciting input and save time and money during the NEPA process. CEQ agrees that integrating scoping with an EA process can provide efficiency benefits, which §§ 1501.5(k) and 1501.9(b) address. CEQ finalizes the proposal to remove paragraph (f)(4) because it is redundant with those provisions.

Finally, as discussed in section II.C.3, CEQ proposed to strike paragraph (f)(5) of 40 CFR 1507.3 (2022) and replace it with a provision in § 1501.4(e) that is consistent with the process established by section 109 of NEPA, 42 U.S.C. 4336c, for adoption or use of another agency's CE. CEQ makes this change in the final rule.

4. Agency NEPA Program Information (§ 1507.4)

CEQ proposed revisions to § 1507.4, which describes the use of agency websites and other information technology tools to promote transparency and efficiency in the NEPA process. In paragraph (a), CEQ proposed to change ''other means'' to ''other information technology tools'' and to remove ''environmental'' before ''documents'' because ''environmental documents'' is a defined term, and the intent of the sentence is to refer to NEPA-related information and documents more broadly and not only to those documents that are included in the definition of ''environmental document.'' CEQ proposed the same edit, removing ''environmental'' before ''documents,'' in paragraph (a)(1). CEQ also proposed in paragraph (a) to require agencies to provide on their websites or through other information technology tools (to account for new technologies) their agency NEPA procedures and a list of EAs and EISs that are in development and complete. Lastly, in paragraph (a), CEQ proposed to encourage rather than allow agencies to include the information listed in paragraphs (a)(1) through (a)(4) on agency websites or other information technology tools.

CEQ proposed to revise paragraph (a)(2) to encourage agencies to post their environmental documents to their websites or other information technology tools. Finally, CEQ proposed edits to paragraph (b), which promotes interagency coordination of environmental program websites and shared databases, to provide agencies with additional flexibility and clarify that the section is not limited to the listed technology.

One commenter opposed CEQ's proposed requirement for agencies to provide a list of EAs and EISs that are in development and complete because the regulations already require publication of the NOI, draft EIS, final EIS, and ROD; require completed EISs to be publicly accessible via EPA's EIS database; encourage publication of draft EAs; and require publication of FONSIs. Combined with CEQ's proposed requirements for notification in § 1501.9(d)(2), the commenter asserted the requirement to post a list of EAs and EISs is redundant and adds another administrative burden on agencies.

CEQ makes the changes as proposed, including the requirement for agencies to provide a list of EAs and EISs that are in development and complete. During the rulemaking process, CEQ heard from multiple members of the public that it can be challenging to identify what NEPA reviews are active within an agency. CEQ considers the requirement to maintain a website or other electronic listing of EAs and EISs to be an important method of transparency that provides easily accessible information to the public. CEQ notes that the provision does not require agencies to publish the documents themselves, rather, it only requires a list of documents that are in development or completed. Agencies already routinely consolidate this type of information and can cross-reference to other repositories, such as the **Federal Register** or EPA's EIS database, on the agency website in order to reduce or avoid duplication. Agencies have discretion to determine when a NEPA review is sufficiently in development to list it on its website, and this provision does not require agencies to post publicly pre-decisional or deliberative information, including non-public information that an agency is working on an environmental document.

Regarding the proposal to encourage, rather than allow, agencies to include the information listed in paragraphs (a)(1) through (a)(4), one commenter asked CEQ to go further and make the listed items a requirement. CEQ declines to require agencies to include this information, but strongly encourages them to do so.

J. Revisions to Definitions (Part 1508)

In § 1508.1, CEQ proposed revisions to the definitions of ''categorical exclusion,'' ''cooperating agency,''

[116] DHS, 023–01–001–01, Implementation of the National Environmental Policy Act (Nov. 6, 2014), *https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf.*

''effects'' or ''impacts,'' ''environmental assessment,'' ''environmental document,'' ''environmental impact statement,'' ''finding of no significant impact,'' ''human environment,'' ''lead agency,'' ''major Federal action,'' ''mitigation,'' ''notice of intent,'' ''page,'' ''scope,'' and ''tiering.'' CEQ proposed to add definitions for ''environmental justice,'' ''environmentally preferable alternative,'' ''extraordinary circumstances,'' ''joint lead agency,'' ''participating Federal agency,'' ''programmatic environmental document,'' and ''significant effects.''

CEQ did not propose substantive edits to any other definitions, but proposed to redesignate most of the paragraphs to keep the list of terms in alphabetical order. CEQ invited comment on whether it should modify the remaining definitions or define additional terms.

Multiple commenters requested that CEQ add other definitions or edit existing definitions where no changes were proposed. Commenters requested that CEQ define a number of additional terms including ''unresolve conflicts,'' ''Tribal consultation,'' ''final action,'' ''monitoring,'' ''environmental design arts,'' ''reasonably available for inspection,'' ''substantive comments,'' ''earliest reasonable time,'' and ''issues.'' One commenter requested additional modification to the definition of ''publish'' and ''publication'' to encourage agencies to inform as broad an audience as possible. CEQ declines to make these changes in the final rule and discusses the rationale for not making these changes in the Phase 2 Response to Comments as well as in other sections of the preamble. CEQ is adding definitions for several additional terms and modifying definitions contained in the proposed rule as explained below.

1. Applicant (§ 1508.1(c))

CEQ adds a definition of ''applicant'' to § 1508.1(c). CEQ defines this term as a non-Federal entity that seeks an action by a Federal agency and clarifies that this term is inclusive of project sponsors. The CEQ regulations have long used the term ''applicant'' as well as ''non-Federal entity'' and ''project sponsor.'' The recent NEPA amendments also use both terms interchangeably. Because applicants can include project sponsors, as well as non-Federal entities that are seeking agency action for other activities that are not ordinarily referred to as projects, CEQ is electing to use the term ''applicants'' throughout these regulations. Therefore, for consistency and clarity, CEQ revises the regulations to use this term consistently throughout, replacing references to ''non-Federal entity'' and ''project sponsor'' with ''applicant.''

2. Categorical Exclusion (§ 1508.1(e))

CEQ proposed to modify the definition of ''categorical exclusion'' in proposed paragraph (d) to add a cross reference to proposed § 1501.4(c), in which CEQ proposed to establish a new way for agencies to establish CEs. CEQ also proposed minor grammatical edits to change ''the agency'' to ''an agency'' and ''normally do not'' to ''normally does not.''

A number of commenters expressed opposition to the existing term ''normally'' in the definition of ''categorical exclusion,'' which CEQ did not propose to change, and asked that the final rule clarify the meaning of the term. Commenters opposed to the term ''normally'' asserted it makes the standard for establishing a CE insufficiently rigorous. Other commenters specifically asked that the final rule specify that ''normally'' means ''in the absence of extraordinary circumstances,'' and that an agency cannot establish a CE if some actions will have significant adverse effects but will nonetheless be approved under the CE.

CEQ revises the definition of ''categorical exclusion'' as proposed in the final rule at § 1508.1(e) because it is consistent with section 111(1) of NEPA, which defines a CE in part as ''a category of actions that a Federal agency has determined *normally* does not significantly affect the quality of the human environment.'' 42 U.S.C. 4336e(1) (emphasis added). CEQ has long used the term ''normally'' to mean in the absence of extraordinary circumstances,[117] and CEQ added ''normally'' in the definition of ''categorical exclusion'' in the 2020 rule for this reason.[118] Agency-established CEs are not exemptions from the requirement of section 102(2)(C) of NEPA that an agency prepare an EIS before taking a major Federal action significantly affecting the environment. 42 U.S.C. 4332(2)(C). Instead, CEs are a mechanism for complying with this requirement for actions of a kind the agency has determined will not normally have significant effects with the extraordinary circumstances applicable to a CE serving to identify actions of the kind covered by the CE that could nonetheless have significant effects and therefore require additional analysis pursuant to the documentation requirement of § 1501.4(b)(1) or through an EA or EIS. Therefore, when developing a CE to identify categories of actions that will not normally have significant effects, an agency must also provide for the consideration of extraordinary circumstances to identify when a specific action that falls within the category is not of the normal variety that the agency has already determined will not have significant effects and, therefore, requires further analysis.

3. Communities With Environmental Justice Concerns (§ 1508.1(f))

CEQ did not propose a specific definition of ''communities with environmental justice concerns'' but invited comment on whether the final rule should define the term, and if so, how. CEQ explained in the proposed rule that it intended the phrase to mean communities that do not experience environmental justice as defined in proposed § 1508.1(k) (88 FR 49960).

Multiple commenters recommended the final rule define ''communities with environmental justice concerns.'' Some commenters recommended CEQ define it as ''communities that do not experience environmental justice as described in § 1508.1(k).'' Another commenter suggested the definition of ''environmental justice'' was ''politicized'' and therefore referring to § 1508.1(k) would do little to add clarity. One commenter asserted that CEQ's intended meaning would burden communities with raising concerns rather than a definition with ''objective measures of adverse health and environmental effects and disproportionate impacts that warrant alternatives analysis.''

Numerous commenters requested the final rule include a specific definition because it would provide consistency and clarity to Federal agencies on how they should assess environmental justice impacts and how they should define communities with environmental justice concerns. Commenters also asserted that including a definition is important because the phrase is used frequently in the proposed rule. Many commenters also requested that CEQ provide additional guidance on how to identify communities with environmental justice concerns, and some specifically asserted that a definition will only be beneficial if there is additional guidance that includes

[117] *See, e.g.,* CEQ, CE Guidance, *supra* note 10, at 2 (''Extraordinary circumstances are factors or circumstances in which a normally excluded action may have a significant environmental effect that then requires further analysis in an environmental assessment (EA) or an environmental impact statement (EIS).'').

[118] *See* CEQ, 2020 Final Rule, *supra* note 39, at 43342 (''CEQ proposed to revise the definition of 'categorical exclusion' in paragraph (d) by inserting 'normally' to clarify that there may be situations where an action may have significant effects on account of extraordinary circumstances.'').

robust public engagement with environmental justice stakeholders. Some commenters provided specific language for consideration, which CEQ describes in the Phase 2 Response to Comments.

Some commenters asserted that the final rule does not need a definition, and one commenter suggested that the regulations already account for such groups.

After considering the comments, CEQ agrees that a definition would help provide consistency and clarity for Federal agencies and adds one at § 1508.1(f). CEQ defines ''communities with environmental justice concerns'' to mean communities ''that may not experience environmental justice as defined . . . in § 1508.1(m).'' The definition also indicates that agencies may use available screening tools, as appropriate to their activities and programs, to assist them in identifying these communities and includes two examples of existing tools that agencies could use: the Climate and Economic Justice Screening Tool and the EJScreen Tool.[119] The definition also clarifies that agencies have flexibility to develop procedures for the identification of such communities in their agency NEPA procedures. CEQ considers the definition provided in paragraph (f) that connects the definition of ''communities with environmental justice concerns'' with the definition of ''environmental justice,'' alongside an indication that agencies may use available screening tools to assist them, to strike the right balance between providing additional guidance to agencies and recognizing that agencies should have flexibility to identify communities with environmental justice concerns in light of the unique circumstances associated with each action.

CEQ encourages agencies to make use of all available tools and resources in identifying communities with environmental justice concerns. CEQ notes that this definition is not intended to make such communities self-identify; it is incumbent on the agencies to proactively identify such communities. While many agencies have experience in doing so, CEQ anticipates that agencies will develop more expertise over time, which is why CEQ encourages agencies to consider further defining their methodology for identifying communities with environmental justice concerns in their agency NEPA procedures. CEQ also may provide guidance to agencies in the future as tools and methodologies for identification of communities with environmental justice concerns develop.

4. Cooperating Agency (§ 1508.1(g))

In proposed paragraph (d) of § 1508.1, CEQ proposed to revise the definition of ''cooperating agency'' for clarity and consistency with the definition of ''cooperating agency'' in sections 111(2) of and 107(a)(3) of NEPA, which provides that a lead agency may designate as a cooperating agency ''any Federal, State, Tribal, or local agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal.'' *See* 42 U.S.C. 4336a(a)(3), 4336e(2).

One commenter requested CEQ modify the definition to be more inclusive of State and local governments and Tribal entities by allowing them to serve as cooperating agencies when there are potential impacts in their communities or jurisdictions, and they are ''involved in a proposal.'' Another commenter requested CEQ add a specific exclusion of non-governmental organizations or quasi-governmental organizations from the definition.

CEQ declines to expand the definition of ''cooperating agency'' to include agencies ''involved in a proposal'' as this is overly broad. Instead, CEQ finalizes the definition in § 1508.1(g) consistent with the proposal, which incorporates the language in section 107(a)(3) of NEPA. *See* 42 U.S.C. 4336(a)(3). However, CEQ encourages agencies to invite local governments and Tribes to participate as cooperating agencies where they have special expertise about a proposed action and its environmental effects. CEQ also declines to add the recommended explicit exclusion of non-governmental organizations or quasi-governmental organizations from the definition of ''cooperating agency'' because the definition of ''cooperating agency'' sets forth the entities that are eligible to serve as cooperating agencies, and this does not include non-governmental organizations or quasi-governmental organizations.

5. Effects or Impacts (§ 1508.1(i))

In proposed paragraph (g), CEQ proposed to make clarifying edits to the definition of ''effects'' and to add and modernize examples. Paragraph (g)(4) of 40 CFR 1508.1 (2022) listed common types of effects that may arise during NEPA review. CEQ proposed to update the list to add ''disproportionate and adverse effects on communities with environmental justice concerns, whether direct, indirect, or cumulative'' and ''climate change-related effects.'' For climate change-related effects, CEQ proposed to clarify that these effects can include both contributions to climate change from a proposed action and its alternatives as well as the potential effects of climate change on the proposed action and its alternatives. CEQ proposed these changes to update the definition to include effects that have been an important part of NEPA analysis for more than a decade and will continue to be relevant, consistent with best available science and NEPA's requirements. Also, CEQ proposed these changes in response to comments received during the Phase 1 rulemaking that the definition of ''effects'' or ''impacts'' should explicitly address environmental justice and climate change.[120]

CEQ received a variety of comments on the proposed definition of ''effects'' or ''impacts.'' Some commenters supported the proposed definition generally, and specifically supported the retention of the changes made in the Phase 1 rulemaking to include direct, indirect, and cumulative effects in the definition.

Some commenters requested CEQ add additional examples of effects, including vandalism, destruction of cultural resources, and adverse effects to resources crucial to the exercise of Tribal Nations' reserved rights or the habitat such resources depend on for any part of their lifecycle.

Some commenters characterized the proposed definition of ''effects'' as an attempt to inappropriately broaden the definition, contravene NEPA, and invite litigation, delays, and complexity. These commenters primarily focused on the additions of environmental justice and climate change into proposed paragraph (g)(4), taking issue with CEQ codifying concepts that have previously only been included in guidance documents and Executive orders. One commenter generally described the proposed changes to the definition of ''effects'' as broadening the non-statutory definition of effects and asserted that it is at odds with NEPA, going beyond what the statute authorizes or requires. They also asserted the proposed changes have nothing to do with the mission of most agencies.

CEQ adds the proposed examples in § 1501.8(i)(4) of the final rule, and also adds ''effects on Tribal resources'' in response to commenters' suggestions. CEQ also revises the last sentence of the paragraph to substitute ''adverse'' for its

[119] CEQ, *Explore the Map,* Climate and Economic Justice Screening Tool, *https://screeningtool.geoplatform.gov/;* EPA, EJScreen: *Environmental Justice Screening and Mapping Tool, https://www.epa.gov/ejscreen.*

[120] CEQ, Phase 1 Response to Comments, *supra* note 52, at 87, 99.

synonym ''detrimental'' before ''effects,'' for consistency with the usage of the phrase ''adverse effects'' in other provisions in the regulations. CEQ declines to add the other proposed examples as they are overly specific. CEQ notes that this paragraph is a non-exhaustive list of examples, and that effects vary widely depending on the nature and scope of an agency action. CEQ considers it irrelevant to this rulemaking whether environmental effects, including climate-related and environmental justice effects, relate to an agency's mission. The purpose of NEPA is for agency decision makers to consider environmental effects in their decision making regardless of the agency's mission or purpose.

CEQ acknowledges that the term ''effects'' is not statutorily defined. A definition of ''effects,'' however, has been a part of CEQ's regulations since 1978, which included direct, indirect, and cumulative effects, *see* 40 CFR 1508.8 (2019), and which CEQ restored to the regulations in its Phase 1 rulemaking. Including explicit references to ''climate change-related effects'' and ''disproportionate and adverse effects on communities with environmental justice concerns'' as examples of effects is consistent with that definition of ''effects,'' and the approach the CEQ regulations have taken since 1978 of identifying examples of categories of effects that fall within the regulation's definition of ''effects.'' See 40 CFR 1508.1(g)(1) (2020); 40 CFR 1508.8 (2019). The addition of these new examples to the regulatory text provides further specificity consistent with the statutory text and do not expand the scope of the definition of ''effects.'' For example, section 2 of NEPA, 42 U.S.C. 4321, notes that in enacting NEPA Congress declared a national policy, among other things, ''to promote efforts which will prevent or eliminate damage to the environment and *biosphere*'' (emphasis added). Section 102 of NEPA, for example, directs the ''Federal Government to use all practical means'' to ensure ''for *all* Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings,'' and that ''Congress recognizes that *each person* should enjoy a healthful environment.'' 42 U.S.C. 4331(b) and (c) (emphasis added). And as section 102(2)(C)(i) of NEPA also notes, an agency's NEPA analysis must address the ''reasonably foreseeable adverse environmental effects'' of the proposed action,which has long been interpreted in CEQ's regulations (and affirmed by courts) to include direct, indirect, and cumulative effects. 42 U.S.C. 4332(2)(C)(ii). As a result, expressly identifying climate change, effects to communities with environmental justice concerns, and similar considerations simply draws attention to various categories of effects that already merit consideration.

A commenter recommended CEQ clarify that agencies focus cumulative effects analyses on ''significant'' cumulative effects to improve efficiency. The commenter also asked CEQ to recognize that a qualitative analysis is sufficient when describing potential cumulative effects. CEQ has determined not to include these suggestions in the regulatory definition because they are overly specific and prescriptive and notes that CEQ has issued guidance on cumulative effects that address these issues.

One commenter asserted that ''effects of the proposed agency action'' in section 102(2)(C) of NEPA cannot be read to include effects that are totally unrelated to the proposed agency action and therefore inclusion of cumulative effects in the definition of ''effects'' is precatory and irrelevant to the legal sufficiency of an EIS.

Some commenters asserted that the amendments to NEPA prohibit consideration of cumulative effects because they do not demonstrate a reasonably close causal relationship, and stated that Congress intentionally codified ''reasonably foreseeable'' effects rather than ''cumulative'' or ''aggregate'' effects and urged CEQ to adopt language consistent with the statutory amendments.

CEQ disagrees with the commenters' assertions. The first sentence of the definition of ''effects'' is clear—effects must be reasonably foreseeable. Direct, indirect, and cumulative effects are categories of reasonably foreseeable effects. Therefore, CEQ declines to make changes to the definition to remove ''cumulative'' from the types of effects.

Some commenters requested that CEQ restore the definition of ''effects'' from the 2020 rule, in particular emphasizing the restoration of ''reasonably close causal relationship to the proposed action,'' which CEQ removed in the Phase 1 rulemaking. CEQ declines to restore the 2020 definition for the reasons discussed in the Phase 1 rulemaking, the Phase 1 Response to Comments, and the Phase 2 Response to Comments. CEQ also notes that Congress did not include this language in the 2023 NEPA amendments, but instead used the phrase ''reasonably foreseeable effects.''

CEQ also proposed minor, non-substantive edits to paragraph (g)(3) regarding cumulative effects. Consistent with CEQ's proposal to ensure ''significant'' only modify ''effects,'' CEQ proposed to revise the phrase to read ''actions with individually minor but collectively significant effects.'' A commenter on the Phase 1 rulemaking had also noted that the word ''actions'' should be ''effects.'' CEQ did not receive any comments specific to this proposed change and makes it in the final rule in § 1508.1(i)(3).

6. Environmental Assessment (§ 1508.1(j))

CEQ proposed to update the definition of ''environmental assessment'' in proposed paragraph (h) for consistency with sections 106(b)(2) and 111(4) of NEPA, proposed § 1501.5, and longstanding agency practice. *See* 42 U.S.C. 4336(b)(2), 4336e(4). CEQ proposed to strike ''prepared by a Federal agency'' and change it to ''for which a Federal agency is responsible'' for consistency with section 107(f) of NEPA and § 1506.5, which allow a project sponsor (following agency issuance of procedures) or agency-directed contractor, respectively, to prepare an EA but requires that the agency take responsibility for the accuracy of its contents irrespective of who prepares it. *See* 42 U.S.C. 4336a(f).

To improve readability, CEQ proposed to strike ''to aid an agency's compliance with the Act'' and replace it with text from § 1501.5 clarifying that an agency prepares an EA when a proposed action is not likely to have a significant effect or the significance of the effects is unknown. CEQ also proposed to insert additional language to clarify that an EA is ''used to support an agency's'' determination of whether to prepare an EIS, add a parenthetical cross reference to part 1502, and make the cross reference to the provision on FONSIs a parenthetical to match. CEQ noted in the proposed rule that the proposed changes would not alter the intention that an EA is used to support an agency's determination whether to prepare an EIS (part 1502) or issue a FONSI (§ 1501.6).

One commenter requested that the definition of ''environmental assessment'' reference the requirements of an EA with a mitigated FONSI and clarify that an agency may incorporate mitigation to reach a FONSI determination. CEQ revises the definition of ''environmental assessment'' as proposed in § 1508.1(j). CEQ declines to make additional edits to address mitigated FONSIs because the definition already cross-references to § 1501.6, which addresses mitigated FONSIs.

7. Environmental Document (§ 1508.1(k))

CEQ proposed to add ''record of decision'' to the definition of ''environmental document'' in proposed paragraph (i) for clarity. CEQ also proposed to add a ''documented categorical exclusion determination'' to the definition to reflect the longstanding agency practice of documenting some CE determinations.

A few commenters opposed the proposed addition of a documented CE determination to the definition. One commenter opposed the definition stating that it is inconsistent with the definition of ''environmental document'' in section 111 of NEPA. Another commenter opposed the change asserting some of the regulatory requirements for environmental documents should only apply to EAs and EISs, and that the proposed definition further obscures the distinction between a CE compared to an EA or EIS. A third commenter requested confirmation that undocumented CEs are excluded from the definition and also generally opposed the inclusion of CEs in the definition of ''environmental document.''

CEQ makes the changes as proposed to the definition of ''environmental document'' in § 1508.1(k). This change is consistent with the changes to §§ 1501.4 and 1507.3 that reference CE determinations. Therefore, for clarity and efficiency, CEQ is incorporating documented CE determinations into the definition of ''environmental document.'' As CEQ acknowledged in its proposed rule, CEQ intentionally proposed a broader definition of ''environmental document'' than the definition in the NEPA statute because the CEQ regulations have long defined this term more broadly for the regulation's purposes, and narrowing the definition in the regulations would require substantial further conforming revisions that could create additional uncertainty and would disrupt existing practices. In developing the proposed and final rule, CEQ reviewed each use of the term to ensure its definition is appropriate as well as consistent with the NEPA statute. CEQ is unclear how this definition ''obscures the distinction'' between CEs and EAs or EISs, and therefore declines to make any changes in response to this comment. Lastly, CEQ agrees with the commenter that this would exclude undocumented CE determinations but declines to remove documented CE determinations as discussed earlier in this section.

8. Environmental Impact Statement (§ 1508.1(*l*))

CEQ proposed to change ''as required'' to ''that is required'' in the definition of ''environmental impact statement'' in proposed paragraph (j) for consistency with the definition of ''environmental impact statement'' in section 111(6) of NEPA. *See* 42 U.S.C. 4336e(6). CEQ did not receive comments on this proposed change. CEQ makes this change in the final rule in § 1508.1(*l*).

9. Environmental Justice (§ 1508.1(m))

CEQ proposed to add a new definition of ''environmental justice'' at proposed paragraph (k) to define ''environmental justice'' as the just treatment and meaningful involvement of all people so that they are fully protected from disproportionate and adverse human health and environmental effects and hazards, and have equitable access to a healthy, sustainable, and resilient environment. In defining ''environmental justice,'' CEQ proposed to use the phrase ''cumulative impacts,'' rather than the phrase ''cumulative effects,'' as used elsewhere in the proposed regulations because the phrase ''cumulative impacts'' has a meaning in the context of environmental justice relating to the aggregate effect of multiple stressors and exposures on a person, community, or population. *See, e.g.,* Environmental Protection Agency, Cumulative Impacts Research: Recommendations for EPA's Office of Research and Development (2022). CEQ explained in the proposed rule that it views the evolving science on cumulative impacts as sufficiently distinct from the general meaning of cumulative effects under the NEPA regulations such that using a different term could be helpful to agencies and the public. CEQ invited comment on this approach.

Multiple commenters expressed support for the proposed definition, with many saying the language is clear and comprehensive and others welcoming the inclusion of a definition, saying it is long overdue. Some commenters expressed support for specific components of the definition, such as the inclusion of Tribal affiliation. Numerous commenters suggested specific revisions to the definition or asked that the final rule include additional elements, which CEQ discusses in the Phase 2 Response to Comments.

Some commenters supported use of the phrase ''cumulative impacts'' in the definition and CEQ's rationale for doing so. One commenter asserted that ''cumulative impacts'' is a newly introduced concept and urged CEQ to clarify its meaning, expressing concern that it is open-ended and could result in agencies inaccurately interpreting the term to call for an unnecessarily expansive historical baseline in the analysis that could slow or discourage development or require projects to mitigate historical environmental burdens that go beyond the impacts of a proposed project. One commenter requested that CEQ add a separate definition for ''cumulative impacts'' as it is used in the definition of ''environmental justice'' to distinguish it from ''cumulative effects.''

Multiple commenters opposed the proposed definition of ''environmental justice'' for a variety of reasons. Commenters asserted that it was subjective, vague, difficult to implement, an impossibly high standard, politically motivated, inconsistent with § 1502.16(b), unlawful and not supported by statute, vulnerable to legal challenges, could open the door to endless project delays, and changes NEPA procedural requirements to achieve substantive goals.

In the final rule, CEQ adds a definition of ''environmental justice'' in § 1508.1(m) consistent with the proposal. Consideration of environmental justice is within the scope of NEPA's purpose to provide for the social, economic, and other requirements of present and future generations and allowing for all Americans to participate in a wide sharing of life's amenities. *See* 42 U.S.C. 4331. NEPA also recognizes that each person should have the opportunity to enjoy a healthy environment. 42 U.S.C. 4331. Consideration of environmental justice also informs an agency's analysis of reasonably foreseeable effects. Agencies have decades of experience integrating consideration of environmental justice in their NEPA reviews and incorporating a definition of ''environmental justice'' into the regulations will provide additional clarity and consistency as agencies continue to analyze environmental justice in environmental documents, as they have for many years. The definition added to the regulations is consistent with longstanding agency practice evaluating potential effects to communities that experience disproportionate and adverse human health and environmental effects and ensuring meaningful engagement with communities affected by proposed actions. The definition is also consistent with the definition of ''environmental

justice'' in section 2(b) of E.O. 14096.[121] CEQ declines to define the phrase ''cumulative impacts.'' As noted in the proposed rule, ''cumulative impacts'' has a meaning in the context of environmental justice relating to the aggregate effect of multiple stressors and exposures on a person, community, or population. The science of ''cumulative impacts'' is an evolving field, and CEQ has determined that it is premature and inappropriately limiting to establish a regulatory definition of the phrase at this time. CEQ will consider whether guidance on cumulative impacts would assist agencies conducting environmental reviews.

Some commenters asked CEQ to provide clearer direction and guidance on how to apply the definition and consideration of environmental justice to improve consistency and clarity amongst Federal agencies. CEQ will consider what additional guidance may be necessary.

10. Environmentally Preferable Alternative (§ 1508.1(n))

CEQ proposed to add a new definition of ''environmentally preferable alternative'' at § 1508.1(*l*), a concept that has been in the regulations since 1978, and define it as the alternative or alternatives that will best promote the national environmental policy in section 101 of NEPA. CEQ based its proposed definition on CEQ's Forty Questions guidance that was issued in 1981 and has remained an important resource for agencies since that time.[122]

Some commenters expressed general support for the proposed definition. Others expressed support and suggested changes, such as incorporating the phrases ''reasonable alternative'' and ''economically and technically feasible.'' Other commenters opposed the proposed definition. Multiple commenters asserted the definition conflicts with the mandates of section 101 of NEPA and asserted that because section 101 is about striking a balance, the environmentally preferable alternative should be defined as the alternative that best strikes a balance. Another commenter asserted the proposed definition is at odds with the statutory language of NEPA arguing that agencies must only consider alternatives that are technically and economically feasible and asserting that the environmentally preferable alternative may not always be technically and economically feasible.

CEQ adds the definition of ''environmentally preferable alternative'' in § 1508.1(n) as proposed. As CEQ has clarified in § 1502.14(f) and in the discussion in section II.D.9, agencies identify the environmentally preferable alternative amongst the alternatives considered in the EIS, which are the proposed action, no action, and reasonable alternatives. Therefore, the definition of ''environmentally preferable alternative'' does not require agencies to consider alternatives beyond those already identified for consideration. CEQ disagrees that it is necessary to include text indicating that the environmentally preferable alternative must be a reasonable alternative, because agencies select the environmentally preferable alternative from the alternatives analyzed in the EIS, which include the proposed action, no action, and reasonable alternatives, which is defined as a range of alternatives that are technically and economically feasible, and meet the purpose and need for the proposed action. CEQ also disagrees that the environmentally preferable alternative should be defined as the alternative that best balances competing considerations. While balance is an important part of NEPA, identifying the environmentally preferable alternative provides information to decision makers and the public, and is a longstanding part of the NEPA process. Agencies are not required to adopt the environmentally preferred alternative as its final decision. Additionally, CEQ disagrees that the definition is at odds with section 101 of NEPA because that section is incorporated into the definition.

11. Extraordinary Circumstances (§ 1508.1(o))

CEQ proposed to add a definition of ''extraordinary circumstances'' in proposed paragraph (m). While the 1978 regulations explained the meaning of extraordinary circumstances as part of the definition of ''categorical exclusion'' at 40 CFR 1508.4 (2019), which the 2020 rule moved to 40 CFR 1501.4(b) (describing how to apply extraordinary circumstances when considering use of a CE) and 40 CFR 1507.3(e)(2)(ii) (requiring agencies to establish extraordinary circumstances for CEs in their procedures),[123] CEQ proposed to create a standalone definition to improve clarity when this term is used throughout the rule.

CEQ also proposed to add several examples of extraordinary circumstances to help agencies and the public understand common situations that agencies may consider in determining whether an action normally covered by a CE falls outside the category of actions the agency has determined will not have significant effects and, therefore, additional analysis is required either under § 1501.4(b), if the agency can determine that it can rely on the CE notwithstanding the presence of the extraordinary circumstance, or through an EA or EIS. The proposed examples included effects on sensitive environmental resources, disproportionate and adverse effects on communities with environmental justice concerns, effects associated with climate change, and effects on historic properties or cultural resources. This list of examples is not exclusive, and agencies continue to have the discretion to identify extraordinary circumstances in their NEPA implementing procedures, consistent with § 1507.3, as well as through the new mechanism to establish CEs in § 1501.4(c), that are specific and appropriate to their particular actions and CEs.

Multiple commenters expressed general support for the proposed definition of ''extraordinary circumstances.'' A few commenters specifically supported the inclusion of the examples of extraordinary circumstances, including the references to climate change effects, effects on sensitive environmental resources, effects on communities with environmental justice concerns, and effects on historic properties and cultural resources.

Other commenters criticized the proposed definition, asserting it is too broad, vague, and subjective. Some commenters suggested the proposed definition is contrary to the NEPA amendments allowing expanded use of CEs. Other commenters specifically objected to the examples, specifically effects on climate change and communities with environmental justice concerns. One commenter stated the definition could result in confusion because it does not provide clarity on what agencies must evaluate. Similarly, another commenter stated this lack of clarity provides too much freedom to agencies that may not properly assess the effects of projects for the sake of efficiency.

CEQ adds a definition of ''extraordinary circumstances'' in § 1508.1(o) as proposed with minor changes. In the final rule, CEQ uses ''means'' instead of ''are'' for consistency with other definitions in § 1508.1. The final rule removes ''environmental'' from ''significant

[121] *See* E.O. 14096, *supra* note 22, at 25253.

[122] CEQ, Forty Questions, *supra* note 5, at 6.

[123] CEQ, 2020 Final Rule, *supra* note 39, at 43342–43.

environmental effects'' because ''significant effects'' is a defined term. CEQ also revises the examples of extraordinary circumstances to use the same introductory text, ''substantial'' effects as discussed further in this section. The operative language included in this definition has been in the regulations since 1978, and agencies have decades of experience analyzing proposed actions for extraordinary circumstances. CEQ disagrees that the definition is inconsistent with the recent amendments to NEPA because NEPA requires agencies to conduct an EIS for actions that will have significant effects, and extraordinary circumstances are the mechanism by which an agency assesses whether a particular proposed action may have significant effects and, therefore, that reliance on a CE is inappropriate. CEQ disagrees that the definition is overbroad and considers it to provide agencies the necessary flexibility to tailor their extraordinary circumstances consistent with their programs and authorities. CEQ also disagrees that the proposed definition impedes the ability of agencies to use CEs or apply the provisions of NEPA regarding CEs. The regulations have always required agencies to consider extraordinary circumstances when applying a CE and providing a definition within the regulations helps provide clarity to agencies, applicants, and the public.

Multiple commenters asserted that the undefined phrase ''substantial effects'' used in the examples of extraordinary circumstances may result in confusion, delays, and increased litigation risk. Another commenter questioned why ''potential substantial effects'' is used in the examples instead of ''reasonably foreseeable'' and ''significant effects.'' CEQ used this different phrasing because the purpose of extraordinary circumstances is to screen an individual action, which would normally be covered by a CE, for further analysis to assess whether the action has reasonably foreseeable significant effects requiring the preparation of an EIS. While an agency could adopt extraordinary circumstances that directly implement the reasonably foreseeable significant effects standard, doing so could degrade the efficiency of applying CEs by requiring a more complex analysis in applying its extraordinary circumstances that would consider the context and intensity factors that govern an assessment of significance. CEQ notes that many agencies have long used this phrase in their lists of existing extraordinary circumstances and that this approach has resulted in an efficient process for applying CEs.

Some commenters also questioned why the example for effects on communities with environmental justice concerns or effects on historic properties or cultural resources did not use the phrase ''substantial effects.'' CEQ revises the examples to use ''substantial'' effects for consistency with the other examples in § 1508.1(o), although CEQ notes that agencies have flexibility to design extraordinary circumstances in a manner that makes sense for their programs.

12. Finding of No Significant Impact (§ 1508.1(q))

In the definition of ''finding of no significant impact'' proposed in paragraph (o), CEQ proposed to insert ''agency's determination that and'' after ''presenting the'' for consistency with the definition of ''finding of no significant impact'' in section 111(7) of NEPA, which defines the term to mean ''a determination by a Federal agency that a proposed agency action does not require the issuance of an environmental impact statement.'' 42 U.S.C. 4336e(7).

One commenter suggested CEQ revise the definition to clarify that the proposed action will not have a significant adverse effect on any aspect of the human environment. CEQ revises the definition of ''finding of no significant impact'' in § 1508.1(q) as proposed, and CEQ declines to make additional changes to the definition. CEQ agrees that the purpose of a FONSI is to document the determination that the proposed action will not have a significant effect, which is specified in § 1501.3(d)(2)(i), and does not consider repeating that proposition here necessary. Another commenter suggested the final rule include a definition for mitigated FONSI, which CEQ declines to add because the meaning of a mitigated FONSI is conveyed in § 1501.6(a).

13. Human Environment or Environment (§ 1508.1(r))

CEQ proposed to clarify in proposed paragraph (p) that ''human environment'' and ''environment'' are synonymous in the regulations given that ''environment'' is the more commonly used term across the regulations.

A few commenters expressed support for the use of ''human environment'' and ''environment'' synonymously. A couple of commenters asked for CEQ to define ''human environment'' and ''environment'' as separate terms but did not include a rationale for doing so. One commenter was supportive but requested that CEQ expand the definition to explicitly include cultural and socio-economic conditions.

CEQ makes this change as proposed in the final rule at § 1508.1(r). CEQ declines to explicitly reference cultural and socio-economic conditions in the definition, because the definition cross-references the definition of ''effects,'' which notes that effects include ecological, aesthetic, historic, cultural, economic, social, or health.

CEQ proposed a minor edit to ''human environment'' in § 1508.1(p) to remove ''of Americans'' after ''present and future generations.'' This minor edit improves consistency with section 101(a) of NEPA, which speaks generally about the impact of people's ''activity on the interrelations of all components of the natural environment'' and the need ''to create and maintain conditions under which [humans] and nature can exist in productive harmony.'' 42 U.S.C. 4331(a).

One commenter opposed the removal of the phrase ''of Americans'' and disagreed with CEQ's characterization of the change as minor. CEQ disagrees with the commenter's assertion and makes this change in the final rule. In the 2020 rule, CEQ changed ''people'' to ''of Americans,'' explaining that this change was made to be consistent with section 101(a) of NEPA.[124] However, CEQ has reconsidered that explanation, which overlooks the context in which the phrase ''present and future generations of Americans'' is used in section 101(a). That paragraph of the Act refers to Americans at the end of the last sentence after using the broader term ''man'' three times. ''Human environment'' refers broadly to the interrelationship between people and the environment. The phrase ''present and future generations of Americans'' is used in a narrower context to ''fulfill the social, economic, and other requirements of present and future generations of Americans.'' 42 U.S.C. 4331(a). CEQ notes that it considers the removal of the phrase ''of Americans'' in the definition of ''human environment'' to be consistent with CEQ's determination to retain the phrase in the first sentence of § 1501.1(a). That sentence specifically describes section 101(a) of NEPA and does not define the undefined term ''human environment,'' which appears in NEPA section 102(2)(C). CEQ considers it appropriate to define ''human environment'' in consideration of the totality of section 101, rather than solely based on the last phrase in section 101(a). A definition of

[124] *Id.* at 43344–45.

''human environment'' that is not limited by the phrase ''of Americans'' is also consistent with the statutory exclusion in section 111(10)(b)(vi) of NEPA of activities or decisions with effects located entirely outside of the jurisdiction of the United States from the definition of ''major Federal action.'' This exclusion—consistent with decades of agency practice—requires agencies to evaluate effects that occur outside of U.S. jurisdiction as a component of the human environment because it does not limit the definition of ''effects,'' but rather excludes a narrow category of activities from the definition of ''major Federal action.'' 42 U.S.C. 4336e(10)(b)(vi).

14. Joint Lead Agency (§ 1508.1(s))

CEQ proposed to add a definition for ''joint lead agency'' to mean ''a Federal, State, Tribal, or local agency designated pursuant to § 1501.7(c) that shares the responsibilities of the lead agency'' for preparing an EA or EIS. CEQ proposed the definition for consistency with the usage of that term in section 107(a)(1)(B) of NEPA and § 1501.7(b) and (c). *See* 42 U.S.C. 4336a(a)(1)(B).

One commenter expressed that NEPA establishes two categories of joint lead agencies: Federal joint lead agencies and non-Federal joint lead agencies. The commenter requested CEQ clarify this distinction in the definition. CEQ declines to make the commenter's recommended change. CEQ reviewed the use of the term in the regulations and identified no circumstance where the term was used in a fashion that required distinguishing between Federal joint lead agencies and non-Federal joint lead agencies. Therefore, CEQ finalizes the definition of ''joint lead agency'' as proposed in § 1508.1(s).

15. Lead Agency (§ 1508.1(u))

CEQ proposed in paragraph (s) to revise the definition of ''lead agency'' as ''the Federal agency that proposes the agency action or is designated pursuant to § 1501.7(c) for preparing or having primary responsibility.'' CEQ proposed this revision for consistency with the definition of ''lead agency'' in section 111(9) of NEPA and to expand the definition ''to also include EAs, consistent with longstanding practice. CEQ did not receive any comments on its proposed revisions to the definition of ''lead agency'' and finalizes the definition of ''lead agency'' as proposed in § 1508.1(u). *See* 42 U.S.C. 4336e(9).

16. Major Federal Action (§ 1508.1(w))

CEQ proposed to revise the definition of ''major Federal action'' in proposed paragraph (u) to clarify the list of example activities or decisions that meet the definition, and revise the list of exclusions from the definition consistent with section 111(10) of NEPA. *See* 42 U.S.C. 4336e(10). First, CEQ proposed to revise the introductory paragraph to change ''activity or decision'' to ''action that the agency carrying out such action determines is'' and insert ''substantial'' before ''Federal control and responsibility'' and delete ''subject to the following'' to align the text with the language in section 111(10) of NEPA.

Some commenters requested the final rule provide further clarity and specificity regarding ''substantial Federal control and responsibility'' contending that this phrase is ambiguous and confusing. Another commenter argued that Congress made a significant change to the definition of ''major Federal action'' in section 111(10) of NEPA in using the phrase ''substantial Federal control and responsibility'' over the action the agency is carrying out, instead of adopting the definition of ''major Federal action'' from the 1978 regulations, ''actions with effects which are potentially subject to Federal control and responsibility'' or the 2020 regulations ''Federal control and responsibility.'' This commenter argued the use of ''substantial'' by Congress further limits the definition of ''major Federal action'' and therefore NEPA's applicability generally. Several other commenters agreed with this premise and suggested the intention of the NEPA amendments was to narrow the application of NEPA. Other commenters asked CEQ to define the term ''substantial'' in the context of the definition.

CEQ disagrees that ''substantial Federal control and responsibility'' applies in a more limited manner than ''Federal control and responsibility.'' Substantial modifies Federal control and responsibility and indicates that a large amount, but not complete, control and responsibility is required for an action to be a major Federal action. This interpretation is consistent with Supreme Court precedent interpreting the meaning of substantial in various statutes. *See, e.g., Ayestas* v. *Davis,* 584 U.S., 28, 45 (2018); *Life Technologies Corp.* v. *Promega Corp.,* 580 U.S. 140, 145–46 (2017); *Virginia* v. *Hicks,* 539 U.S. 113, 119–20, 122–24 (2003). CEQ interprets substantial Federal control and responsibility to mean the agency has a large amount of control and responsibility over the action the agency is carrying out but not complete control over the action or its effects. The phrase ''substantial Federal control and responsibility'' could, therefore, be interpreted to capture a broader set of actions than the phrase in the absence of the word ''substantial,'' because ''Federal control and responsibility'' unqualified could be read to require complete control and responsibility. Contrary to the commenters' assertion, the phrase ''substantial Federal control and responsibility'' does not require a narrower scope for the term major Federal action than the phrase ''Federal control and responsibility.''

CEQ notes that the phrase ''substantial Federal control and responsibility'' in section 111(10) applies to the actions an agency is carrying out. 42 U.S.C. 4336e(10)(A). In most cases, agencies exercise control and responsibility over the actions they carry out, unless those actions are non-discretionary. CEQ declines to define ''substantial'' in the final rule but will consider whether to issue guidance in the future and will assist agencies in evaluating circumstances in which the agency carries out an action but lacks complete control and responsibility for it.

CEQ revises the introductory paragraph of the definition of ''major Federal action'' in § 1508.1(w) as proposed because the text aligns with the definition of ''major Federal action'' in section 111(10) of NEPA. 42 U.S.C. 4336e(10). The determination of whether an activity or decision is a major Federal action is a fact-specific analysis that agencies have long engaged in, and they should continue to exercise judgment as they evaluate the contexts in which they operate. The regulations provide a list of example activities and decisions in § 1508.1(w)(1) to assist agencies in making these determinations.

Second, CEQ proposed to reorder and revise the definition to first list the examples of activities or decisions that may be included in the definition of ''major Federal action'' before the exclusions. To that end, CEQ proposed to move paragraph (q)(3) of 40 CFR 1508.1 (2020) to proposed paragraph (u)(1), and revise ''tend to fall within one of the following categories'' to read ''generally include.''

Several commenters opposed the proposed list of example activities or decisions that meet the definition of ''major Federal action'' and recommended the final rule retain only the exclusions set forth in section 111(10) of NEPA. The commenters argued that these examples go beyond the text of NEPA, subvert Congressional intent, and limit an agency's ability to make case-by-case determinations.

Other commenters expressed support for the list of examples.

CEQ considered the range of comments on the definition of ''major Federal action'' and determined that providing both examples of activities or decisions that typically meet the definition of ''major Federal action'' as well as exclusions from the definition strikes the right balance to help agencies as they make case-by-case factual determinations of whether an action qualifies as a major Federal action and for consistency with section 111(10). *See* 42 U.S.C. 4336e(10). To provide additionally clarity that this is a fact-specific, case-by-case determination, CEQ moves paragraph (q)(3) of 40 CFR 1508.1 (2020) to § 1508.1(w)(1) in the final rule, revises it consistent with the proposal, and adds an introductory clause, ''[e]xamples of'' before ''major Federal actions generally include'' to the beginning of the paragraph to make clear that this is a list of example activities and decisions that may meet the definition of ''major Federal action.''

Third, CEQ proposed to strike paragraph (q)(2) of 40 CFR 1508.1 (2020) and replace it with proposed paragraph (u)(1)(i) to include the granting of authorizations such as permits, licenses, and rights-of way. CEQ proposed to strike the examples in paragraph (q)(2) 40 CFR 1508.1 (2020) because the proposed example addresses regulated activities, and the other examples are redundant to those listed in proposed paragraphs (u)(1)(ii) through (u)(1)(vi). CEQ did not receive any comments specific to this proposal. CEQ strikes paragraph (q)(2) of 40 CFR 1508.1 (2020) in the final rule and replaces it in § 1508.1(w)(1)(i) with the language as proposed.

Fourth, CEQ proposed to redesignate paragraphs (q)(3)(i) through (q)(3)(iv) of 40 CFR 1508.1 (2020) as proposed paragraphs (u)(1)(ii) through (u)(1)(v). CEQ did not receive any comments specific to this proposal. In the final rule, CEQ redesignates paragraphs (q)(3)(i) through (q)(3)(iv) of 40 CFR 1508.1 (2020) as § 1508.1(w)(3)(i) through (w)(3)(iv), respectively.

Fifth, in paragraph (u)(1)(iv), CEQ proposed to change the phrase ''connected agency decisions'' to ''related agency decisions'' to clarify that the concept in this paragraph is not meant to refer to ''connected actions'' as discussed in § 1501.3. CEQ proposed this as a non-substantive, clarifying change to avoid any confusion with connected actions. CEQ did not receive specific comments on this proposed change and revises this provision as proposed in § 1508.1(w)(1)(iv).

Sixth, CEQ proposed to revise paragraph (u)(1)(v) to change ''approval of'' to ''carrying out'' specific projects to address projects carried out directly by a Federal agency. CEQ proposed to strike ''located in a defined geographic area'' from the example of management activities; while this is merely an example, CEQ is concerned it could be read as limiting. CEQ also proposed to strike the sentence regarding permits and address them in the example in proposed paragraph (u)(1)(i).

One commenter requested removal of the term ''carrying out,'' asserting that CEQ has not shown that carrying out construction activities constitutes major Federal action. In the final rule, CEQ retains the example in § 1501.8(w)(1)(v) and adds ''or carrying out'' after ''[a]pproval of'' rather than replacing it because the phrase ''carrying out'' is consistent with section 111(10) of NEPA, which includes the phrase ''the agency carrying out such action.'' 42 U.S.C. 4336e(10)(A). CEQ also adds ''agency'' before ''projects'' to distinguish this example from non-Federal projects. Because this is a list of examples and both approving or carrying out construction projects can be major Federal actions, CEQ includes both in the final rule. For example, an agency may approve construction of a Federal facility and then contract out with another entity to actually carry out that construction.

Seventh, CEQ proposed to add a new example in proposed paragraph (u)(1)(vi) to improve clarity and ensure appropriate application of NEPA by explaining when Federal financial assistance is a major Federal action. Generally, actions to provide Federal financial assistance, other than actions that provide only minimal Federal funding, are major Federal actions so long as the Federal agency has authority and discretion over the financial assistance in a manner that could address environmental effects from the activities receiving the financial assistance. In such circumstances, the agency has sufficient control and responsibility over the use of the funds or the effects of the action for the action providing financial assistance to constitute a major Federal action consistent with the definition in section 111(10) of NEPA. 42 U.S.C. 4336e(10)(A). This includes circumstances where the agency could deny the financial assistance, in whole or in part, due to environmental effects from the activity receiving the financial assistance, or could impose conditions on the financial assistance that could address the effects of such activity.

Several commenters contended that CEQ's proposal to include financial assistance as an example of a major Federal action in proposed paragraph (u)(1)(vi) is inconsistent with the statutory definition of ''major Federal action'' in section 111(10)(B) of NEPA. The commenters stated that the proposed language is overly broad and could cover too many Federal loan or grant programs. One commenter asserted that this language ''could cover virtually any Federal grant or loan program, including ones that are not currently subject to NEPA.'' Another commenter asserted that financial assistance should never be considered a major Federal action.

CEQ disagrees that the examples of how an agency may exercise ''sufficient control and responsibility'' with regard to financial assistance to meet the statutory definition of ''major Federal action'' are inconsistent with the statute. The language in paragraph (u)(1)(vi) provides examples of where financial assistance meets the definition of ''major Federal action'' and is not covered by the exclusion of ''financial assistance where a Federal agency does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effect of the action.'' 42 U.S.C. 4336e(10)(B)(iii).

CEQ adds the proposed examples in the final rule at § 1508.1(w)(1)(vi) with an additional clause to incorporate the phrase ''more than a minimal amount'' into the example to avoid any confusion about the relationship of the example to the exclusion in paragraph (w)(2)(i)(A) and NEPA section 111(10)(B)(ii). CEQ also makes two editorial corrections to add the missing word ''to'' after ''due'' and repeat the subject ''authority to'' before ''impose conditions.'' Except in circumstances in which an agency provides minimal Federal funding, where an agency has substantial control and responsibility over a recipient's environmental effects or sufficient discretion to consider the environmental effects when making decisions, the agency must comply with NEPA. While an agency can appropriately tailor the scope of its NEPA analysis to the environmental effects that it can take into account in making its decision, the agency cannot exclude such actions from NEPA review altogether.

CEQ disagrees with the assertion that the example broadens the applicability of NEPA to financial assistance that is excluded by section 111(10)(B)(ii) and § 1508.1(w)(2)(iii). Rather, the example describes circumstances in which an agency exercises sufficient control or

responsibility over the use of financial assistance or the effect of the action to fall outside the exception. In evaluating whether a particular action qualifies as a major Federal action consistent with this example and the exclusion in § 1508.1(w)(2)(iii), agencies should consider the specific circumstances and legal authorities involved. As with any NEPA review, where an agency determines that an action providing financial assistance constitutes a major Federal action, the agency should scope the NEPA review in light of the statutory and factual context presented.

Other commenters specifically questioned the inclusion of financial assistance where the agency ''otherwise has sufficient control and responsibility over the subsequent use of the financial assistance or the effects of the activity for which the agency is providing the financial assistance'' in the example. A commenter asserted that this phrase's breadth and ambiguity could lead to litigation and recommended narrowing this flexibility clause to apply only where the agency ''otherwise has authority to impose conditions on the receipt of the financial assistance to address environmental effects.''

CEQ declines to make the commenters' proposed changes. The text the commenter addresses reflects the exclusion in section 111(10)(B)(iii) of NEPA. *See* 42 U.S.C. 4336e(10)(B)(iii). CEQ agrees that authority to impose conditions to address environmental effects, along with authority to deny in whole or in part assistance due to environmental effects, would satisfy the statutory test, and those situations are identified in the sentence immediately preceding the text that is the focus of the comment. Describing these situations, along with the remainder of § 1508.1(w)(1)(vi), can assist agencies in evaluating actions providing financial assistance, in light of the relevant statutory authorities and factual context, to determine if such action falls within the exclusion in section 111(10)(B)(iii) of NEPA and § 1508.1(w)(2)(iii). In addition to reflecting the statutory exclusion, this clause recognizes the varying degrees of control and responsibility agencies have over a wide variety of financial assistance programs, as well as the agencies' responsibility to determine the proper scope of its NEPA review with regard to such programs.

Eighth, CEQ proposed to replace the exclusions in paragraphs (q)(1)(i) through (vi) of 40 CFR 1508.1 (2020) with the exclusions from the definition of ''major Federal action'' codified in the definition in section 111(10)(B) of NEPA. *See* 42 U.S.C. 4336e(10)(B). CEQ proposed to include in proposed paragraph (u)(2)(i), (u)(2)(i)(A), and (u)(2)(i)(B) the exclusion of non-Federal actions with no or minimal funding; or with no or minimal Federal involvement where the agency cannot control the outcome of the project consistent with section 111(10)(B)(i) of NEPA. CEQ proposed these exclusions to replace the exclusion in 40 CFR 1508.1(q)(1)(vi) (2020), which CEQ proposed to strike. CEQ also invited comment on whether it should add additional provisions to the regulations to implement the ''minimal Federal funding'' exclusion in proposed paragraph (u)(2)(i)(A), noting that agencies currently evaluate the provision of minimal Federal funding based on specific factual contexts. CEQ asked whether additional procedures, including thresholds related to the amount or proportion of Federal funding, could increase predictability while ensuring that Federal agencies do not disregard effects to vital components of the human environment, including the health of children and vulnerable populations, drinking water, communities with environmental justice concerns, and similar considerations.

CEQ received some comments on the exclusion for non-Federal actions with no or minimal Federal involvement where the Federal agency cannot control the outcome of the project, which mirrors the exclusion in section 111(10)(B)(i)(II) of NEPA, and in response to the request for comment. One commenter recommended against setting a threshold, given the fact-specific nature of the inquiry. The commenter expressed concern that setting a threshold for the amount or proportion of Federal funding necessary for agency action to trigger NEPA would undermine the statute's emphasis that it apply to the ''fullest extent possible.'' The commenter further asserted that the 2023 NEPA amendments, as clarified by CEQ's proposed regulations, are sufficient to provide clarity on the scope of NEPA's application, and a threshold amount is not necessary or useful.

Two commenters recommended that the regulations establish thresholds for minimal Federal funding or direct agencies to establish thresholds in their NEPA procedures, asserting that clear thresholds will improve efficiency and reduce litigation risk. Two other commenters supported establishing a threshold for minimum funding and included suggestions for what that threshold should be. A couple of commenters requested CEQ define ''minimum'' in the context of minimum funding.

CEQ strikes 40 CFR 1508.1(q)(1)(vi) (2020) and adds this exclusion in the final rule as proposed at § 1508.1(w)(2)(i), (w)(2)(i)(A), and (w)(2)(i)(B). CEQ has considered the broad range of suggestions to thresholds it received but has not identified a threshold that would be appropriate across the broad range of Federal programs or that would address CEQ's concern about the health of children and vulnerable populations, drinking water, communities with environmental justice concerns, and similar circumstances. CEQ also notes that there is limited case law as to what constitutes ''minimal Federal funding'' and that the case law that exists does not define a clear threshold that could be incorporated into the regulations. Therefore, agencies should continue to evaluate whether funding is ''minimal'' based on the specific factual context of the proposed action.

CEQ also adds the exclusion for non-Federal actions ''with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project'' in § 1508.1(w)(2)(i)(B) as proposed. This provision reinforces the general rule that major Federal actions are actions carried out by an agency, and not non-Federal actions, and that a non-Federal action does not become a Federal action due to only minimal Federal involvement. Note, this exclusion does not bear on whether an action undertaken by a Federal agency, such as issuing a regulatory authorization or deciding to provide funding assistance, is a major Federal action, because in such circumstances the agency is undertaking an action itself. There are, however, circumstances where Federal involvement in a non-Federal action does not constitute an action, for example, where an agency informally provides a non-Federal party information that the non-Federal party considers in developing the non-Federal action. The provision of the information may not qualify as an agency action and the minimal Federal involvement would not result in the non-Federal action being considered a Federal action.

Ninth, CEQ proposed to include the exclusion of funding assistance solely in the form of general revenue sharing funds consistent with section 111(10)(B)(ii) of NEPA in proposed paragraph (u)(2)(ii). *See* 42 U.S.C. 4336e(10)(B)(ii). CEQ proposed this exclusion to replace the similar exclusion in 40 CFR 1508.1(q)(1)(v) (2020), which CEQ proposed to strike. CEQ did not receive substantive comments on this proposed revision. CEQ strikes 40 CFR 1508.1(q)(1)(v)

(2020) and adds this exclusion in the final rule as proposed at § 1508.1(w)(2)(ii).

Tenth, CEQ proposed to include the exclusion of loans, loan guarantees, or other forms of financial assistance where a Federal agency does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effects of the action, consistent with section 111(10)(B)(iii) of NEPA, in proposed paragraph (u)(2)(iii). *See* 42 U.S.C. 4336e(10)(B)(iii). CEQ did not receive substantive comments on this proposed revision, although as discussed above, CEQ did receive related comments on the example about financial assistance added to paragraph (w)(1)(vi). CEQ adds this exclusion in the final rule as proposed at § 1508.1(w)(2)(iii).

Eleventh, CEQ proposed to include the exclusion of certain business loan guarantees provided by the Small Business Administration, consistent with section 111(10)(B)(iv) of NEPA, in proposed paragraph (u)(2)(iv). *See* 42 U.S.C. 4336e(10)(B)(iv). CEQ proposed this exclusion to replace the similar exclusion in 40 CFR 1508.1(q)(1)(vii) (2020), which CEQ proposed to strike. In particular, CEQ proposed to strike the example in 40 CFR 1508.1(q)(1)(vii) of farm ownership and operating loan guarantees by the Farm Service Agency (FSA) pursuant to 7 U.S.C. 1925 and 1941 through 1949 because CEQ considered it best left to agencies to identify exclusions from the definition of ''major Federal action'' absent specific statutory authority like those for the Small Business Administration loan guarantees.

Several commenters requested that CEQ retain the explicit exclusion of FSA loans and loan guarantees from the definition of ''major Federal action.'' These commenters contended that the loan amounts are low, that activities funded do not require an agency permit, and that the agency does not have sufficient control or authority over the use of the funds. These commenters disagreed with CEQ's explanation that it is best left to agencies to identify exclusions from the definition of ''major Federal action'' absent specific statutory authority like those for the Small Business Administration (SBA) loan guarantees, arguing that the FSA loans are clearly outside the statutory definition, and that CEQ did not provide sufficient justification for not retaining the explicit exclusion.

CEQ strikes 40 CFR 1508.1(q)(1)(vii) (2020) and adds this exclusion in the final rule as proposed at § 1508.1(w)(2)(iv). When Congress amended NEPA to provide a definition of ''major Federal action'' in section 111(10), it included an exclusion for one of the two loan guarantee programs identified in 40 CFR 1508.1(q)(1)(vii) (2020), excluding business loan guarantees provided by the Small Business Administration, but not farm ownership and operating loan guarantees by the FSA. 42 U.S.C. 4336e(10)(B)(iv). In light of Congress's action, CEQ does not consider it appropriate to retain the exclusion for FSA loan guarantees in the NEPA regulations. FSA, like other agencies that administer loan and loan guarantee programs, should evaluate specific actions providing loans and loan guarantees to determine if the action falls within the exclusion in section 111(10) of NEPA and § 1508.1(w)(2)(iii) and, if appropriate, could address the applicability of this exclusion to this program in its NEPA procedures.

CEQ disagrees with the assertion that providing financial assistance for a non-Federal action cannot constitute a major Federal action. As discussed earlier, section 111(10)(B)(iii) of NEPA excludes financial assistance ''where a Federal agency does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effect of the action.'' 42 U.S.C. 4336e(10)(B)(iii). This limited exclusion is inconsistent with treating actions providing financial assistance for non-Federal activities as categorically excluded from the definition of ''major Federal action.''

One commenter suggested that if CEQ does not retain the explicit exclusion for FSA loans and loan guarantees, CEQ should clearly explain in the final rule that it understands that FSA loans and loan guarantees are the types of loans and guarantees covered by proposed paragraph (u)(1)(iv), and that no additional procedures are necessary to apply proposed paragraph 1508.1(u)(1)(iv) to the FSA loans and loan guarantees. CEQ declines to make these statements. FSA is in the best position to determine whether its loans and loan guarantees meet the requirements for the exclusion established in § 1508.1 (w)(2)(iii). FSA, like other agencies administering financial assistance programs, may determine whether specific actions providing financial assistance are major Federal actions or may address such programs in their NEPA implementing procedures.

One commenter requested that CEQ explicitly indicate that farm operations funded through FSA loans or subject to loan guarantees are not excluded from the definition. Other commenters expressed support for CEQ's proposed removal of the exclusion but requested further guidance on when loans and loan guarantees are actions subject to substantial Federal control and responsibility, citing FSA and Department of Energy programs specifically.

CEQ disagrees with the commenter that farm operations by non-Federal actors are major Federal actions if they are funded by FSA loans or loan guarantees. Rather, the question that FSA, like other agencies, will need to consider is whether FSA's action to provide a loan or loan guarantee is a major Federal action in consideration of the exclusion. FSA is in the best position to determine whether an action or category of actions by the agency to provide loan or loan guarantees involve a circumstance where the agency does not exercise sufficient control and responsibility over the subsequent use of the financial assistance or the effects and, therefore are excluded.

Finally, one commenter requested additional guidance regarding the exclusion of SBA loans. While CEQ incorporates the statutory exclusion of certain business loan guarantees provided by the Small Business Administration (SBA) into § 1508.1(w)(2)(iv), CEQ considers it best left to SBA, which has expertise with the statutes it administers, to determine the applicability of the exclusion to the specific programs it administers.

Twelfth, CEQ proposed to move, without change, the exclusions in paragraphs (q)(1)(iv), (q)(1)(i), and (q)(1)(ii) of 40 CFR 1508.1 (2020) to proposed paragraphs (u)(2)(v) through (u)(2)(vii), respectively because section 111(10)(B)(v) through (vii) of NEPA codified these exclusions verbatim. *See* 42 U.S.C. 4336e(10)(B)(v)–(vii). Specifically, proposed paragraph (u)(2)(v) would exclude bringing judicial or administrative civil or criminal enforcement actions. Proposed paragraph (u)(2)(vi) would exclude extraterritorial activities or decisions. Proposed paragraph (u)(2)(vii) would exclude activities or decisions that are non-discretionary.

One commenter requested that CEQ expand the exclusion in proposed in paragraph (u)(2)(v) to exclude from NEPA applicability all judicial proceedings when an agency joins a lawsuit. CEQ declines to make this revision in the final rule, which incorporates the statutory text and is consistent with long-standing agency practice, but agrees with the commenter that the exclusion encompasses an agency's decision to join a lawsuit. In the final rule, CEQ moves, without

change, the exclusion for bringing judicial or administrative civil or criminal enforcement actions in paragraph (q)(1)(iv) of 40 CFR 1508.1 (2020) to § 1508.1(w)(2)(v).

A few commenters requested the final rule remove proposed paragraph (u)(2)(vi), arguing that it impermissibly expands the scope of NEPA and is inconsistent with the statute. CEQ declines to make this change as the language in proposed paragraph (u)(2)(vi) aligns with the text of section 111(10)(B)(vi) of NEPA, 42 U.S.C. 4336e(10)(B)(vi). In the final rule, CEQ moves, without change, the exclusion for extraterritorial activities or decisions, which refers to activities or decisions with effects located entirely outside the jurisdiction of the United States,[125] from paragraph (q)(1)(i) of 40 CFR 1508.1 (2020) to § 1508.1(w)(2)(vi).[126]

A few commenters supported the inclusion of proposed (u)(2)(ii) asserting that CEQ rightfully excluded non-discretionary actions from NEPA, as NEPA is designed to help agencies make better decisions. In the final rule, CEQ moves, without change, the exclusion for non-discretionary activities or decisions in paragraph (q)(1)(ii) of 40 CFR 1508.1 (2020) to § 1508.1(w)(2)(vii). As discussed in section II.C.2 addressing § 1501.3, some activities or decisions may be partially, but not entirely, non-discretionary, and while such actions may constitute major Federal actions under this definition, the agency may appropriately exclude the non-discretionary aspects of its decision from the scope of its NEPA analysis.

Thirteenth, CEQ proposed to move the exclusion regarding non-final agency actions from 40 CFR 1508.1(q)(1)(iii) to § 1508.1(u)(2)(viii) and make changes for consistency with section 106(a)(1) of NEPA, 42 U.S.C. 4336(a)(1). CEQ proposed this revision for consistency with longstanding case law excluding non-final agency actions from the definition of ''major Federal action.'' Therefore, CEQ proposed to include the finality of an action as a threshold consideration as well as an exclusion from the definition of ''major Federal action.'' Upon further consideration, CEQ considers finality to be adequately addressed as a threshold consideration in § 1501.3 and concludes that both the existing regulatory text and the proposed revision are confusing. Therefore, CEQ strikes 40 CFR 1508.1(q)(1)(iii) (2020) in the final rule and does not add proposed paragraph (u)(2)(viii). CEQ does not intend this deletion to have any substantive effect because § 1501.3 provides that NEPA does not apply where a proposed activity or decision is not a final agency action.

Finally, CEQ proposed a new exclusion in paragraph (u)(2)(ix) for activities or decisions for projects approved by a Tribal Nation that occur on or involve land held in trust or restricted status when the activities involve no Federal funding or other Federal involvement. CEQ proposed this exclusion in recognition of the unique circumstances facing Tribal Nations due to the United States' holding land in trust for them or the Tribal Nation holding land in restricted status. CEQ proposed to clarify that activities or decisions for projects approved by a Tribal Nation on trust lands are not major Federal actions where such activities do not involve Federal funding or other Federal involvement. CEQ proposed this exclusion because Tribal leaders raised this issue during consultations that CEQ held on its NEPA regulations and voiced concerns that the NEPA process placed Tribal Nations in a disadvantageous position relative to State and local governments because of the United States' ownership interest in Tribal lands.

A few commenters argued that the final rule should not include this exclusion because it was not included in the recent amendments to NEPA. Numerous other commenters supported the exclusion, and a large portion of those commenters asked that the final rule expand the exclusion to include additional actions, activities, or lands. One commenter asked CEQ to expand the provision to exclude all Tribal development from the definition of ''major Federal action.'' Another commenter recommended that the terminology in proposed paragraph (u)(ix) ''when no such activities or decisions involve no Federal funding'' be revised to match the language in paragraph (2)(i)(A) which states ''[w]ith no or minimal Federal funding.''

CEQ adds the exclusion in the final rule at § 1508.1(w)(2)(viii), but adds ''or minimal'' before ''involvement'' for consistency with section 111 of NEPA, 42 U.S.C. 4336e(10)(B). CEQ declines to make the exclusion broader than this because it considers the exclusion to strike the right balance in recognizing the unique circumstances facing Tribal Nations and carrying out the purposes of NEPA. CEQ notes that categories of activities on trust lands that typically will not constitute major Federal actions include the transfer of existing operation and maintenance activities of Federal facilities to Tribal groups, water user organizations, or other entities; human resources programs such as social services, education services, employment assistance, Tribal operations, law enforcement, and credit and financing activities not related to development; self-governance compacts for Bureau of Indian Affairs programs; service line agreements for an individual residence, building, or well from an existing facility where installation will involve no clearance of vegetation from the right-of-way other than for placement of poles, signs (including highway signs), or buried power/cable lines; and approvals of Tribal regulations or other documents promulgated in exercise of Tribal sovereignty, such as Tribal Energy Resource Agreements, certification of a Tribal Energy Development Organization, Helping Expedite and Advance Responsible Tribal Homeownership Act Tribal regulations, Indian Trust Asset Reform Act Tribal regulations and trust asset management plans, and Tribal liquor control ordinances.

One commenter asked CEQ to clarify if the proposed exclusion would extend to activities or projects that are approved by Tribal Nations and focused entirely on managing, accessing, or protecting resources or sites on Federal land that is not held in trust but to which the Tribe has reserved rights. CEQ declines to make this change. Because of the diversity of statutory, treaty, and factual considerations that can be involved, determining whether such circumstances involve a major Federal action is appropriately left to the administering agency.

One commenter requested the proposed provision be expanded to include any grant funding awarded to a Tribe. CEQ declines to make this change as section 111(10) of NEPA sets the standard for when actions to provide financial assistance, including grants, constitute a major Federal action. *See* 42 U.S.C. 4336e(10).

[125] CEQ notes that the jurisdiction of the United States is not limited to the United States' land territory. ''For purposes of the presumption against extraterritoriality, the territorial jurisdiction of the United States includes its land, internal waters, territorial sea, the adjacent airspace, and other places over which the United States has sovereignty or some measure of legislative control.'' Restatement (Fourth) of Foreign Relations Law § 404 cmt. d (Am. Law Inst. 2019).

[126] NEPA statutorily excludes from the definition of ''major Federal action'' ''extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside of the jurisdiction of the United States.'' 42 U.S.C. 4336e(10)(B)(vi). However, this exclusion does not change the scope of environmental effects that agencies must assess or expand the set of actions that are subject to NEPA review to extraterritorial matters that do not have effects within the jurisdiction of the United States.

Other commenters requested the proposed exclusion be expanded to include certain contracts, cooperative agreements, and similar funding vehicles authorizing the transfer of Federal funding to a Tribe for carrying out Federal programs. CEQ declines to make this change due to the complexity and numerosity of these arrangements but notes that the agencies that administer these programs could consider whether to include provisions addressing these programs in their NEPA procedures.

One commenter argued the proposed exclusion is impermissibly narrow, and the final rule should exclude entire categories of actions in the rule text. CEQ declines to make this change as agencies are in a better position to consider the legal and factual circumstances for their actions either on a case-by-case basis or through their agency NEPA procedures.

Several commenters asked for clarification of the term ''other Federal involvement.'' One commenter suggested defining it as any proposed Federal permits or other Federal approvals. Other commenters suggested ''other Federal involvement'' be defined as any proposed Federal permits or other Federal approvals on Tribal lands or ceded lands. CEQ declines to further define the term as agencies administering programs are best situated to consider the factual and legal contexts in which they operate to determine whether there is other Federal involvement that would make application of this exclusion inappropriate.

17. Mitigation (§ 1508.1(y))

CEQ proposed three edits to the definition of ''mitigation'' in proposed paragraph (w). First, CEQ proposed to change ''nexus'' to the more commonly used word ''connection'' to describe the relationship between a proposed action or alternatives and any associated environmental effects. CEQ did not receive comments specific to this proposed change and makes this revision in the final rule at § 1508.1(y).

Second, CEQ proposed to delete the sentence that NEPA ''does not mandate the form or adoption of any mitigation'' because this sentence was unnecessary and could mislead readers because it does not acknowledge that agencies may use other authorities to require mitigation or may incorporate mitigation in mitigated FONSIs (§ 1501.6) and RODs (§ 1505.2).

CEQ received comments that both supported and opposed the removal of this language from the definition of ''mitigation.'' Supportive commenters agreed with the approach CEQ proposed in the definition because it is consistent with established mitigation practices and because they were generally supportive regarding the prioritization listed. Opponents generally questioned the effect of this removal, suggesting it contradicts the Supreme Court's holding in *Robertson* v. *Methow Valley Citizens Council* that NEPA does not require agencies to mitigate adverse effects. CEQ disagrees with the commenters' assertions regarding *Methow Valley,* as discussed further in section II.G.2 and the Phase 2 Response to Comments. CEQ removes this language from the final rule consistent with the proposal.

Third, CEQ proposed to add the clause ''in general order of priority'' to the sentence, ''Mitigation includes'' which introduces the list of mitigation types. CEQ proposed this change to clarify that the types of mitigation provided in proposed paragraphs (u)(1) though (u)(5) are listed in general order of priority, consistent with the familiar ''mitigation hierarchy.'' [127] This list was prioritized in the 1978 regulations with avoidance coming before other types of mitigation and the proposed addition highlights that intent, which is consistent with longstanding agency practice.[128]

Some commenters supported the added language clarifying the general order of priority for mitigation. Supportive commenters stated this language is consistent with established mitigation practices and asserted that it will encourage agencies to avoid adverse effects rather than try to rectify or compensate for them after they have occurred. Other commenters opposed the added language, stating that agencies may not in all cases have authority to avoid adverse effects, and that providing a rigid prioritization fails to guide agencies to consider the full range of mitigation opportunities.

CEQ adds the clause ''in general order of priority'' to the definition in the final rule. CEQ uses the qualifier ''in general'' to provide flexibility and acknowledge that such prioritization will not apply to every situation. Further, the language does not prohibit agencies from applying the elements of the mitigation hierarchy out of order when they determine it is appropriate to do so, and CEQ encourages agencies to consider the full range of mitigation opportunities before deciding on an appropriate mitigation approach.

Some commenters asserted that CEQ has ''concealed'' its prioritization by placing it in the definitions section of the regulations. CEQ disagrees that placing this language in the definitions conceals it and CEQ notes that the definitions are essential elements of the NEPA regulations. Further, the definition of ''mitigation,'' including discussion of the categories of mitigation, has been in the regulations since 1978. Therefore, this is a logical place in the regulations for agencies or the public to look for text addressing the categories of mitigation.

Some commenters provided specific feedback on compensatory mitigation, including some that expressed concern that it can be ineffective. One commenter asserted that some agencies are prohibited from requiring compensatory mitigation. Another commenter requested CEQ clarify that agencies may rely on third-party mitigation or restoration providers to carry out compensatory mitigation.

CEQ declines to make additional edits to the definition of ''mitigation.'' Agencies must identify the authority for any mitigation that they rely on in their analysis, and agencies should not rely on mitigation absent the authority to ensure that the mitigation is performed. Because NEPA requires agencies to

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[127] *See e.g.,* U.S. Dep't of the Interior, A Strategy for Improving the Mitigation Policies and Practices of the Department of the Interior (Apr. 2014), *https://www.doi.gov/sites/doi.gov/files/migrated/news/upload/Mitigation-Report-to-the-Secretary_FINAL_04_08_14.pdf* at 2–3 (discussing the development of a ''mitigation hierarchy''—which starts with avoidance—in the implementation of NEPA and the Clean Water Act); Bureau of Land Mgmt., H–1794–1, Mitigation Handbook (P) (Sept. 22, 2021), *https://www.blm.gov/sites/default/files/docs/2021-10/IM2021-046_att2.pdf* at 2–1 (citing CEQ regulations and noting that the ''five aspects of mitigation (avoid, minimize, rectify, reduce/eliminate, compensate) are referred to as the mitigation hierarchy because they are generally applied in a hierarchical manner''); U.S. Env't Prot. Agency & U.S. Dep't of Def., Memorandums of Agreement (MOA); Clean Water Act Section 404(b)(1) Guidelines; Correction, 55 FR 9210, 9211 (Mar. 12, 1990) (noting that under section 404 of the Clean Water Act, the Army Corps of Engineers evaluates potential mitigation efforts sequentially, starting with avoidance, minimization, and then compensation).

[128] *See, e.g.,* 10 CFR 900.3 (defining a regional mitigation approach under NEPA as ''an approach that applies the mitigation hierarchy (first seeking to avoid, then minimize impacts, then, when necessary, compensate for residual impacts)''); Presidential Memorandum, Mitigating Impacts on Natural Resources From Development and Encouraging Related Private Investment, 80 FR 68743, 68745 (Nov. 6, 2015) (addressing five agencies and noting that, ''[a]s a practical matter, [mitigation is] captured in the terms avoidance, minimization, and compensation. These three actions are generally applied sequentially . . . .''); Fed. Highway Admin., *NEPA and Transportation Decisionmaking: Questions and Answers Regarding the Consideration of Indirect and Cumulative Impacts in the NEPA Process, https://www.environment.fhwa.dot.gov/nepa/QAimpact.aspx* (describing the importance of ''sequencing,'' which refers to the process of prioritizing avoidance and minimization of effects over replacement or compensation for NEPA mitigation efforts).

consider mitigation, not implement it, CEQ defers to agencies regarding the appropriate use of compensatory mitigation, third-party mitigation, or restoration providers.

One commenter requested that CEQ establish a preference for mitigation that is practicable, effective, and as minimally disruptive to a proposed project as possible. CEQ agrees that mitigation measures should be practicable and effective, but considers these requirements to be clear from the regulations as a whole and do not need to be reiterated in the definition.

Finally, CEQ makes two additional clarifying edits. First, CEQ adds ''adverse'' to modify ''effects'' in each instance it is used in the definition of ''mitigation'' to clarify that mitigation addresses adverse effects, not beneficial effects, and for consistency with the definition of ''significant effects,'' which is defined as adverse effects. Second, CEQ changes ''effects'' to ''the adverse effect'' in paragraph (y)(2) for consistency with paragraphs (y)(1) and (y)(3) through (y)(5), which all use the singular of effect.

18. Notice of Intent (§ 1508.1(aa))

CEQ proposed to modify the definition of ''notice of intent'' to include EAs, as applicable. CEQ proposed this change for consistency with § 1501.5(j), which provides that agencies may issue an NOI for an EA where it is appropriate to improve efficiency and effectiveness, and § 1501.10(b)(3)(iii), which sets forth one of the three potential starting points from which deadlines are measured for EAs consistent with section 107(g)(1)(B)(iii) of NEPA, 42 U.S.C. 4336a(g)(1)(B)(iii).

One commenter recommended the final rule clarify whether the addition of EA to the proposed definition requires an NOI for EAs, and if so, noted that this would be a new requirement. Another commenter similarly stated that including an EA in the definition will cause confusion over whether an NOI is required for an EA, and asserted that it clearly is not.

CEQ adds ''environmental assessment'' to the definition of ''notice of intent'' for consistency with §§ 1501.5(j) and 1501.10(b)(3), but moves the qualifier ''as applicable'' to precede ''environmental assessment'' to make clear that the regulations do not require agencies to issue an NOI for an EA, but provide them the discretion to do so.

19. Page (§ 1508.1(bb))

CEQ proposed to modify the definition of ''page'' for consistency with section 107(e) of NEPA, 42 U.S.C. 4336a(e), to exclude citations from the definition of ''page'' and therefore the page limits for EISs and EAs. To facilitate better NEPA documents, CEQ proposed to retain the exclusions for maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information from the definition of ''page.'' While agencies could move these visual representations of information to appendices, which could come at the end of an EIS or the end of EIS chapters, CEQ expressed concern that this will make the documents less understandable and useful to decision makers and the public. Further, such graphical displays themselves could be considered appendices consistent with the ordinary definition of appendix as ''supplementary material usually attached at the end of a piece of writing.'' [129]

Multiple commenters supported the proposed definition of ''page,'' specifically asserting that the listed exclusions will help agencies integrate those types of information into the body of an EA or EIS without affecting the document's page limit and asserting that inclusion of these elements in the body of an EA or EIS provide a more readable and accessible document. Conversely, several commenters opposed the exclusion of certain elements from the definition of ''page,'' except for citations and appendices as provided for in section 107(e) of NEPA. These commenters assert that the proposed exclusion of other items—maps, diagrams, graphs, and tables—circumvents Congress' intent to mandate strict page limits, and that these items should be included in the definition of ''page'' and be subject to the page limit. They also asserted that the exclusion of these elements from the page count results in environmental documents that are longer, more complex, and more difficult for the public and decision makers to understand.

NEPA does not define the term ''page,'' but rather provides, in section 107(e), that each type of environmental document ''shall not exceed [the specified number of] pages, not including any citations or appendices.'' 42 U.S.C. 4336a(e). When Congress enacted this language in 2023, it had before it the CEQ regulations, which define ''page'' as excluding ''explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information.'' Had Congress intended to eliminate these regulatory exclusions from the definition of ''page,'' it could have done so by providing a contrary definition of ''page'' in section 111 of NEPA, 42 U.S.C. 4336e. Instead, Congress chose to leave the term ''page'' undefined, therefore leaving CEQ's definition undisturbed, while separately specifying that the page limits of section 107(e) would exclude two additional elements that were *not* specifically set forth in the 2020 regulatory definition—citations and appendices. *See* 42 U.S.C. 4336a(e). Therefore, CEQ's continued use of a regulatory definition based on the one promulgated in 2020 does not circumvent, but rather complements, the statutory exclusion for citations and appendices.

CEQ disagrees that the proposed definition of ''page'' contradicts section 107(e) of NEPA or will make more documents more complex and difficult to understand. Rather, CEQ considers the flexibility to include additional visual elements in environmental documents will reduce the complexity of environmental documents by making the content easier to understand for the public and decision makers and facilitate the delivery of clearer and more useful documents. Agencies should limit the visual elements in the body of the document to those that enhance comprehensibility and place additional information in appendices, in keeping with the general principles CEQ has set forth regarding clear and concise writing in NEPA documents.

20. Participating Federal Agency (§ 1508.1(dd))

CEQ proposed to add a definition of ''participating Federal agency'' to proposed paragraph (bb) and define it to mean ''a Federal agency participating in an environmental review or authorization of an action'' consistent with the definition of the same term in section 111(8) of NEPA. 42 U.S.C. 4336e(8). CEQ did not receive any substantive comments on the definition of ''participating Federal agency'' and finalizes it in § 1508.1(dd) as proposed.

21. Programmatic Environmental Document (§ 1508.1(ee))

CEQ proposed to add a definition of ''programmatic environmental document'' to proposed paragraph (cc) and define it consistent with the definition of the same term in section 111(11) of NEPA, 42 U.S.C. 4336e(11). One commenter asserted that ''programmatic'' is not well defined in the proposed rule, stating that neither § 1501.11 or the proposed definition of ''programmatic environmental

[129] See *Appendix,* Merriam-Webster, *https://www.merriam-webster.com/dictionary/appendix.*

document'' provide a clear way to distinguish between programmatic and non-programmatic analyses. The commenter described that the essential characteristic of a programmatic document includes some aspect of the decision that is deferred.

CEQ adds a definition of ''programmatic environmental document'' at § 1508.1(ee) consistent with the proposal and declines to modify it as the commenter suggests because the uses of programmatic environmental documents are addressed in § 1501.11, as discussed in section II.C.10 and in the Phase 2 Response to Comments.

22. Reasonable Alternatives (§ 1508.1(hh))

CEQ did not propose revisions to the definition of ''reasonable alternatives'' but received comments on the existing definition. Commenters requested guidance on the meaning of ''technically and economically feasible,'' and one commenter requested the regulations direct agencies to consult with project sponsors to determine economic and technical feasibility. Some commenters requested that CEQ use the Forty Questions guidance as a starting point for additional clarity on technical and economic feasibility, specifically referencing the description that technical and economic feasibility must be based on common sense rather than a project proponent's preferences.

One commenter requested guidance on how to identify and evaluate reasonable alternatives and include clear criteria and examples for defining and selecting reasonable alternatives, such as feasibility, cost, effectiveness, and public acceptability. One commenter asserted that the regulations should not define ''reasonable alternatives'' as a ''reasonable range of alternatives'' because the language ''reasonable range'' suggests that agencies do not have to consider all reasonable alternatives. The commenter asserted that Federal courts have long held that NEPA requires agencies to consider all reasonable alternatives, and that an agency's failure to consider a reasonable alternative is fatal to an agency's NEPA analysis. The commenter further expressed that ''reasonable range of alternatives'' is ambiguous.

CEQ does not make revisions to the definition of ''reasonable alternatives'' in § 1508.1(hh). CEQ will consider whether to issue additional guidance but notes that agencies have long used the Forty Questions to assist them in identifying alternatives. With respect to the phrase ''reasonable range,'' CEQ disagrees that agencies must consider ''all'' reasonable alternatives or that the case law requires this. In some circumstances, there could be a limitless number of reasonable alternatives to a proposed action, with each alternative including slight changes to the action. NEPA does not require agencies to evaluate all such alternatives, but rather, a reasonable range of alternatives to inform decision makers and the public. Agencies must consider a reasonable range of alternatives that facilitates the comparison of effects and helps inform the decision maker and the public. Further, the regulations have long provided that agencies should discuss alternatives that they dismiss from detailed analysis and explain their rationale.

22. Reasonably Foreseeable (§ 1508.1(ii))

CEQ did not propose to revise the definition of ''reasonably foreseeable'' but received comments on the existing definition. A few commenters described the definition as vague, subject to manipulation, and inconsistent with case law and Congressional intent. Some commenters suggested edits to the definition, such as adding that an effect is ''reasonably foreseeable'' when an agency can conclude with a high degree of confidence that the effect is more likely than not to occur. Some commenters asked for more clarity on how certain industries might meet the reasonably foreseeable standard, or suggested that what constitutes reasonably foreseeable, or a person of ordinary prudence, is subjective. Relatedly, another commenter stated that agency decision makers have access to knowledge, skills, resources, and statutory duties not applicable to a person of ordinary prudence. The commenter recommended CEQ replace ''person of ordinary prudence'' with ''prudent agency decision maker.''

CEQ declines to make change to the definition of ''reasonably foreseeable'' and finalizes it in § 1508.1(ii) as proposed. Regarding additional qualifiers or concerns that the definition is subjective, CEQ declines additional changes because the application of reasonably foreseeable is influenced by the context of the proposed action. Inherent in the application of reasonably foreseeable is the concept that Federal agencies are not required to ''foresee the unforeseeable'' or engage in speculative analysis. Agencies must forecast to the extent they can do so either quantitatively or qualitatively within a reasonable range. Further, the term ''reasonably foreseeable'' is consistent with the ordinary person standard—that is, what a person of ordinary prudence would consider in reaching a decision. CEQ is unaware of any practical challenges or confusion that has arisen from connecting this definition to the ordinary person, or circumstances where an agency has excluded analysis of an effect that the agency views as reasonably foreseeable because an ordinary person would not. Changing the regulatory text could create uncertainty as agencies and courts consider what, if any, implications the change would have, and CEQ considers creating that uncertainty unnecessary.

23. Scope (§ 1508.1(kk))

CEQ proposed to expand the definition of ''scope'' to include EAs and revise the definition to include both the range and breadth of the actions, alternatives, and effects to be considered in an EIS or EA, consistent with CEQ's proposal to relocate the discussion of scope in § 1501.3(b). CEQ also proposed to strike the last sentence regarding tiering because it was not definitional language and was unnecessary because this concept is more addressed in § 1501.11.

One commenter expressed support for the proposed definition of ''scope,'' asserting it strengthens EAs and EISs. CEQ revises the definition of ''scope'' in § 1501.8(kk) as proposed. As discussed further in section II.C.2, agencies have long examined the scope of their actions to determine what alternatives and effects they must analyze. This is a fact-specific analysis that agencies undertake informed by their statutory authority and control and responsibility over the activity. Other comments regarding scope are further discussed in section II.C.2 and the Phase 2 Response to Comments.

24. Significant Effects (§ 1508.1(mm))

CEQ proposed to add a definition for ''significant effects'' to define those effects that are central to determining the appropriate level of review in the NEPA process. CEQ proposed the definition to align with the restoration of the context and intensity factors for determining significance in § 1501.3(d). CEQ proposed to define ''significant effects'' as adverse effects identified by an agency as significant, based on the criteria set forth in § 1501.3(d), to clarify that beneficial effects are not significant effects as the phrase is used in NEPA and, therefore, do not require an agency to prepare an EIS. CEQ proposed this as an alternative approach to that taken by the proposal in § 1501.3(d)(2)(i) where an action ''does not'' require an EIS when it would result only in significant

beneficial effects and invited comment on which approach is preferred.

One commenter supported a standalone definition of ''significant effects'' but expressed concern that only including adverse effects could create confusion over how agencies assess which effects are truly beneficial and from whose perspective. Other commenters asserted that the limitation of significant effects to adverse effects, in conjunction with proposed § 1501.3(d)(2)(i) to only require an EIS for significant adverse effects, is unlawful and contrary to NEPA's policy. These commenters asserted that NEPA requires an environmental review if an action's effects are significant, regardless of whether those effects are exclusively beneficial, and requested that the final rule remove ''adverse'' from the definition. A few commenters supported the proposed definition for varying reasons, including because it is straightforward and because it will help encourage streamlined processes by reducing the need for EISs.

Regarding CEQ's request for comment on the preferred approach—proposed § 1501.3(d)(2)(i) or proposed § 1508.1(kk)—one commenter recommended the final rule include both provisions because the definition serves to strengthen the concept that NEPA analyses should focus on actions with adverse effects. Another commenter preferred proposed § 1501.3(d)(2)(i), asserting it provides stronger guidance for agencies.

CEQ adds the definition of ''significant effects'' as proposed in § 1508.1(mm), and CEQ revises § 1501.3(d) for greater clarity on this approach as discussed in section II.C.2. This approach means that an agency does not need to prepare an EIS if a proposed action's effects are exclusively beneficial. However, irrespective of the level of NEPA review, agencies still need to analyze both adverse and beneficial effects in NEPA documents if they are reasonably foreseeable.

25. Tiering (§ 1508.1(oo))

CEQ proposed to revise the definition of ''tiering'' to cross reference the process as set forth in § 1501.11. CEQ proposed this revision to avoid any potential inconsistencies between the definition and the provisions of § 1501.11. CEQ did not receive any comments on the proposed definition of ''tiering'' and revises it as proposed in § 1508.1(oo). Other comments regarding the application of tiering are discussed in section II.C.10 and the Phase 2 Response to Comments.

III. Rulemaking Analyses and Notices

A. Executive Order 12866, Regulatory Planning and Review

E.O. 12866, as supplemented and affirmed by E.O. 13563 and amended by E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules.[130] This final rule is a significant regulatory action under section 3(f)(1) of E.O. 12866, as amended by E.O. 14094, that CEQ submitted to OIRA for review. The changes in the final rule will improve the CEQ regulations to benefit agencies and the public. Furthermore, an effective NEPA process can save time and reduce overall project costs by providing a clear process for evaluating alternatives and effects, coordinating agencies and relevant stakeholders including the public, and identifying and avoiding problems—including potential significant effects—that may occur in later stages of project development.[131] Additionally, if agencies choose to consider additional alternatives and conduct clearer or more robust analyses, such analyses will improve societal outcomes by facilitating improved agency decision making on the whole, even if the NEPA statute and regulations do not dictate the outcome of any specific decision. Because individual cases will vary, the magnitude of potential costs and benefits resulting from these changes are difficult to anticipate, but CEQ has prepared a qualitative analysis in the accompanying regulatory impact analysis (RIA).

CEQ received two comments on the draft RIA. One commenter stated that CEQ should include more detailed explanation of the flaws associated with the 2020 Rule's RIA and how the revised rule rectifies those flaws to produce net benefits, including by discussing evidence that suggests the NEPA process contributes to greater environmental benefits that the 2020 RIA did not consider; aligning the explanation of the alternative of retaining the 2020 Rule, as amended by the Phase I rulemaking, with guidance regarding baselines as a scenario with zero incremental benefits or costs; and removing any distinction between direct and indirect benefits or costs to avoid inadvertently downplaying the proposed rule's benefits and costs. The second commenter stated that CEQ should account for economic impacts of NEPA-related delays in project implementation in the RIA, and provided information on how labor, procurement, and material costs increase as a project is delayed.

In response to the first comment, CEQ has revised the RIA. In response to the second comment, CEQ acknowledges that project delays often result in labor, procurement, and material costs increases. The revisions to the NEPA regulations in this final rule will improve the efficiency and effectiveness of the NEPA process, and thereby save time and reduce overall project costs by providing a clear process for evaluating alternatives and effects; coordinating agencies and relevant stakeholders, including the public, more efficiently; identifying and avoiding problems that may occur in later stages of project development; and reducing litigation. CEQ provides its detailed analysis in the accompanying Regulatory Impact Analysis, which CEQ incorporates by reference into this final rule.

B. Regulatory Flexibility Act and Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking

The Regulatory Flexibility Act (RFA), as amended, 5 U.S.C. 601 *et seq.,* and E.O. 13272, *Proper Consideration of Small Entities in Agency Rulemaking,*[132] require agencies to assess the impacts of proposed and final rules on small entities. Under the RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. An agency must prepare an Initial Regulatory Flexibility Analysis unless it determines and certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). This final rule does not directly regulate small entities. Rather, the rule applies to Federal agencies and sets forth the process for their compliance with NEPA. Accordingly, CEQ hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities.

One commenter asserted that CEQ should develop an economic sustainability plan for the proposed rule. Another commenter asserted that CEQ's statement in the proposed rule that the rulemaking would not impact small businesses was insufficient and that CEQ must prepare a regulatory

[130] *See* E.O. 12866, *Regulatory Planning and Review,* 58 FR 51735, 51737 (Oct. 4, 1993); E.O. 14094, *Modernizing Regulatory Review,* 88 FR 21879, 21879–80 (Apr. 11, 2023); E.O. 13563, *Improving Regulation and Regulatory Review,* 76 FR 3821, 3822 (Jan. 21, 2011).

[131] *See generally* Cong. Rsch. Serv. R42479, *The Role of the Environmental Review Process in Federally Funded Highway Projects: Background and Issues for Congress* (2012), *https://crsreports.congress.gov/product/pdf/R/R42479.*

[132] 67 FR 53461 (Aug. 16, 2002).

flexibility plan that describes the impact of the proposed rule on small entities to comply with the Small Business Regulatory Enforcement Fairness Act. The commenter asserted that the proposed rulemaking will impact small businesses, particularly in the mining industry. For the reasons set forth in this preamble, CEQ declines to prepare the requested plan because the final rule applies to Federal agencies and does not directly regulate small businesses or other small entities.

C. National Environmental Policy Act

Under the CEQ regulations, major Federal actions may include regulations. When CEQ issued regulations in 1978, it prepared a ''special environmental assessment'' for illustrative purposes pursuant to E.O. 11991.[133] The NPRM for the 1978 rule stated ''the impacts of procedural regulations of this kind are not susceptible to detailed analysis beyond that set out in the assessment.'' [134] Similarly, in 1986, while CEQ stated in the final rule that there were ''substantial legal questions as to whether entities within the Executive Office of the President are required to prepare environmental assessments,'' it also prepared a special EA.[135] The special EA issued in 1986 supported a FONSI, and there was no finding made for the assessment of the 1978 final rule. CEQ also prepared a special EA and reached a FONSI for the Phase 1 rulemaking.

The final rule makes it explicit that a NEPA analysis is not required for establishing or updating NEPA procedures, *see* § 1507.3(b)(3), and CEQ continues to consider NEPA not to require a NEPA analysis for CEQ's NEPA regulations. *See Heartwood* v. *U.S. Forest Serv.,* 230 F.3d 947, 954–55 (7th Cir. 2000) (finding that neither NEPA or the CEQ regulations required the Forest Service to conduct an EA or an EIS prior to the promulgation of its procedures creating a CE). Nevertheless, based on past practice, CEQ developed a draft special EA, has posted it in the docket, and invited comments in the proposed rule.

CEQ received two comments on its compliance with NEPA. The commenters generally asserted that the Special EA conducted for this rulemaking was inadequate and not justified by precedent. One commenter argued that this rulemaking requires an EIS because the proposed changes can reasonably be expected to have a significant effect on the environment. The commenter asserted that provisions allowing the adoption and use of another agency's CEs, allowing agencies to modify their NEPA procedures without going through the rulemaking process; and exempting large-scale power plants from having to prepare an EIS supported their position. The commenter also argued that comments on the rulemaking were not visible to the public, and therefore did not fulfill public comment requirements.

CEQ declines to prepare an EIS for the reasons discussed earlier in this section. CEQ notes that the first proposed change noted by the commenter, related to adopting CEs, implements section 109 of NEPA, which allows such adoption and use by statute. *See* 42 U.S.C. 4336c. With respect to the second proposed change noted by the commenter, the CEQ regulations have never required agencies to conduct rulemaking for the development or revision of their implementing procedures, but have always required agencies to provide public notice and comment. Further, this final rule does not specifically address NEPA reviews for large-scale power plants. Rather the regulations set the standards for when agencies must prepare EISs and leaves the decision of whether an EIS is required to a case-by-case determination by the agencies, as has always been the case. Finally, CEQ notes that, in the interest of transparency, comments received on the proposed rule were posted to the public docket.[136]

D. Executive Order 13132, Federalism

E.O. 13132 requires agencies to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.[137] Policies that have federalism implications include regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.[138] CEQ received one comment asserting that this rulemaking would impact States, and requested that CEQ revisit its conclusion that the rulemaking does not pose federalism implications. CEQ disagrees with the commenter. This rule does not have federalism implications because it applies to Federal agencies, not States. CEQ notes that States may elect to assume NEPA responsibilities under Federal statutes,[139] but States are further governed by the regulations and agreements under those programs.

E. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

E.O. 13175 requires agencies to have a process to ensure meaningful and timely input by Tribal officials in the development of policies that have Tribal implications.[140] Such policies include regulations that have substantial direct effects on one or more Tribal Nations, on the relationship between the Federal Government and Tribal Nations, or on the distribution of power and responsibilities between the Federal Government and Tribal Nations.[141] CEQ has assessed the impact of this final rule on Indian Tribal governments and has determined that the rule does significantly or uniquely affect Tribal Nations. CEQ engaged in government-to-government consultation with Tribal Nations on the Phase 2 rulemaking. As required by E.O. 13175, CEQ held a Tribal consultation on the NEPA regulations generally on September 30, 2021, on this rulemaking on November 12, 2021, prior to the publication of the NPRM, and on September 6, 2023, and September 12, 2023, following publication of the NPRM.[142] In addition to the feedback provided during these consultation sessions, CEQ received a number of written comments from Tribal Nations during the public comment period, and considered these written comments in the development of the final rule.

Several Tribal Nations agreed with CEQ's preliminary determination that the proposed rule significantly or uniquely affects Tribal Nations. One Tribal Nation requested that CEQ acknowledge its written comments as part of the Tribal consultation process, and not only as public comments. Several Tribes also requested additional consultation with CEQ in the future.

CEQ acknowledges that the written comments it received from Tribal Nations constitute part of the Tribal consultation process in addition to the

[133] *See* CEQ, National Environmental Policy Act—Regulations: Proposed Implementation of Procedural Provisions, 43 FR 25230, 25232 (June 9, 1978); *see* E.O. 11991, *supra* note 29.

[134] *See* CEQ, National Environmental Policy Act—Regulations: Proposed Implementation of Procedural Provisions, *supra* note 133, at 25232.

[135] *See* National Environmental Policy Act Regulations; Incomplete or Unavailable Information, *supra* note 32, at 15619.

[136] *See* National Environmental Policy Act Implementing Regulations Revisions Phase 2, Docket No. CEQ–2023–0003, *https://www.regulations.gov/docket/CEQ-2023-0003.*

[137] E.O. 13132, *Federalism,* 64 FR 43255 (Aug. 10, 1999).

[138] *Id.* at 43256.

[139] *See, e.g.,* 23 U.S.C. 327.

[140] E.O. 13175, *supra* note 57, at sec. 5(a).

[141] *Id.* sec. 1(a).

[142] *Id.* sec. 5.

public comment process and considered those comments accordingly. CEQ appreciates the considerable time and effort that Tribal Nations invested in their oral and written comments, which helped illuminate many aspects of how NEPA affects Tribal Nations, their lands and legal rights, and their citizens. These comments helped CEQ to develop a better final rule. CEQ plans to continue to engage in government-to-government consultation with federally recognized Tribes and in consultation with Alaska Native Corporations on the implementation of its NEPA regulations.

F. Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All

E.O. 12898 and E.O. 14096 charge agencies to make achieving environmental justice part of their missions, as appropriate and consistent with applicable law, by identifying, analyzing, and addressing disproportionate and adverse human health and environmental effects (including risks) and hazards of Federal activities, including those related to climate change and cumulative impacts of environmental and other burdens, on communities with environmental justice concerns.[143]

CEQ has analyzed this final rule and determined that it will not cause disproportionate and adverse human health or environmental effects on communities with environmental justice concerns. This rule sets forth implementing regulations for NEPA; it is in the agency implementation of NEPA when conducting reviews of proposed agency actions where consideration of environmental justice effects typically occurs.

CEQ received one comment requesting that CEQ conduct research into the effect of immigration on environmental quality, including on communities with environmental justice concerns, and include study of immigration impacts during NEPA analysis. CEQ declines to conduct this research because this rule does not specifically address issues related to immigration or make any changes to the U.S. immigration laws or their implementing regulations. Any environmental effects resulting from specific agency actions related to immigration would be addressed by agencies with relevant authorities and requirements to do so and are not within the scope of the analysis of this rulemaking.

G. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Agencies must prepare a Statement of Energy Effects for significant energy actions under E.O. 13211.[144] CEQ has determined that this rulemaking is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

CEQ received one comment related to its compliance with E.O. 13211. The commenter disagreed with CEQ's determination that the proposed rule is not a ''significant energy action'' as described in E.O. 13211, and further stated that the proposed rulemaking is incongruous with E.O. 14008, which directs agencies to deploy their full capabilities in combating climate change. The commenter asserted that the proposed rule will have an effect on the energy supply that exceeds $100 million and would hamper efforts to achieve a clean energy transition.

For the reasons set forth in this preamble, CEQ disagrees that the rule will hamper efforts to achieve a clean energy transition or have a significant effect on the energy supply. To the contrary, the proposed rule will facilitate the responsible development of energy resources, including carbon pollution-free energy, by promoting efficient and effective environmental reviews.

H. Executive Order 12988, Civil Justice Reform

Under section 3(a) of E.O. 12988, agencies must review their proposed regulations to eliminate drafting errors and ambiguities, draft them to minimize litigation, and provide a clear legal standard for affected conduct.[145] Section 3(b) provides a list of specific issues for review to conduct the reviews required by section 3(a).[146] CEQ did not receive any comments specific to E.O. 12988. CEQ has conducted the review under E.O. 12988 and determined that this final rule complies with its requirements.

I. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531, requires Federal agencies to assess the effects of their regulatory actions on Tribal, State, and local governments, and the private sector to the extent that such regulations incorporate requirements specifically set forth in law. Before promulgating a rule that may result in the expenditure by a Tribal, State, or local government, in the aggregate, or by the private sector of $100 million, adjusted annually for inflation, in any 1 year, an agency must prepare a written statement that assesses the effects on Tribal, State, and local governments and the private sector. 2 U.S.C. 1532. CEQ did not receive any comments related to the Unfunded Mandates Reform Act.

This final rule applies to Federal agencies and will not result in expenditures of $100 million or more for Tribal, State, and local governments, in the aggregate, or the private sector in any 1 year. This action also will not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of 2 U.S.C. 1531 *et seq.*

J. Paperwork Reduction Act

This final rule will not impose any new information collection burden that would require additional review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

CEQ received one comment related to the PRA. The commenter disagreed with CEQ's preliminary determination that the proposed rule would not impose additional burden under the PRA, stating that the review of proposed changes to NEPA and future changes to agency NEPA procedures and guidelines will impose significant burdens on State agencies. The commenter also expressed concern that the proposed changes to include technical analyses in appendices does not change or limit the amount of material that must be reviewed.

CEQ disagrees with the commenter's assertions. General solicitations of public comments of the sort associated with the development of agency NEPA procedures and guidelines or the publication of a draft environmental document are not subject to the PRA. *See* 5 CFR 1320.3(h)(4), (8) (exempting from the PRA ''[f]acts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that

[143] E.O. 12898, *supra* note 8; E.O. 14096, *supra* note 22.

[144] E.O. 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,* 66 FR 28355 (May 22, 2001).

[145] E.O. 12988, *Civil Justice Reform,* 61 FR 4729, 4731 (Feb. 7, 1996).

[146] *Id.*

necessary for self-identification, as a condition of the agency's full consideration of the comment,'' and ''[f]acts or opinions obtained or solicited at or in connection with public hearings or meetings''). Furthermore, while the rule clarifies which material agencies should include in the body of an environmental document and which they should include in an appendix, it does not increase the overall amount of materials available to States or members of the public to review, or require States or members of the public to review those materials.

List of Subjects in 40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508

Administrative practice and procedure; Environmental impact statements; Environmental protection; Natural resources.

Brenda Mallory,

Chair.

■ For the reasons discussed in the preamble, the Council on Environmental Quality amends 40 CFR chapter V by revising and republishing subchapter A to read as follows:

Chapter V—Council on Environmental Quality

Subchapter A—National Environmental Policy Act Implementing Regulations

PART 1500—PURPOSE AND POLICY

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123.

§ 1500.1 Purpose.

(a) The National Environmental Policy Act (NEPA) is the basic national charter for protection of the environment. It establishes policy, sets goals, and provides direction for carrying out the policy.

(1) Section 101(a) of NEPA establishes the national environmental policy of the Federal Government to use all practicable means and measures to foster and promote the general welfare, create and maintain conditions under which humans and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. Section 101(b) of NEPA establishes the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to:

(i) Help each generation serve as a trustee of the environment for succeeding generations;

(ii) Assure for all people safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(v) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vi) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(2) Section 102(2) of NEPA establishes procedural requirements to carry out the policy and responsibilities established in section 101 of NEPA and contains ''action-forcing'' procedural provisions to ensure Federal agencies implement the letter and spirit of the Act. The purpose of the regulations in this subchapter is to set forth what Federal agencies must and should do to comply with the procedures and achieve the goals of the Act. The President, the Federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the policy goals of section 101.

(b) The regulations in this subchapter implement the requirements of NEPA and ensure that agencies identify, consider, and disclose to the public relevant environmental information early in the process before decisions are made and before actions are taken. The information shall be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most importantly, environmental documents must concentrate on the issues that are truly relevant to the action in question, rather than amassing needless detail. The regulations in this subchapter also are intended to ensure that Federal agencies conduct environmental reviews in a coordinated, consistent, predictable, and timely manner, and to reduce unnecessary burdens and delays. Finally, the regulations in this subchapter promote concurrent environmental reviews to ensure timely and efficient decision making.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on an understanding of environmental consequences and take actions that protect, restore, and enhance the environment. The regulations in this subchapter provide the direction to achieve this purpose.

§ 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decision makers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize important environmental issues and alternatives. Environmental documents shall be concise, clear, and supported by evidence that agencies have conducted the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that such procedures run concurrently rather than consecutively where doing so promotes efficiency.

(d) Encourage and facilitate public engagement in decisions that affect the quality of the human environment, including meaningful engagement with communities such as those with environmental justice concerns.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment, such as alternatives that will reduce climate change-related effects or address adverse health and environmental effects that

disproportionately affect communities with environmental justice concerns.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

§ 1500.3 NEPA compliance.

(a) *Mandate.* This subchapter is applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190, 42 U.S.C. 4321 *et seq.*) (NEPA or the Act). The regulations in this subchapter are issued pursuant to NEPA; the Environmental Quality Improvement Act of 1970, as amended (Pub. L. 91–224, 42 U.S.C. 4371 *et seq.*); and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970), as amended by Executive Order 11991, Relating to the Protection and Enhancement of Environmental Quality (May 24, 1977). The regulations in this subchapter apply to the whole of section 102(2) of NEPA. The provisions of the Act and the regulations in this subchapter must be read together as a whole to comply with the Act.

(b) *Review of NEPA compliance.* It is the Council's intention that judicial review of agency compliance with the regulations in this subchapter not occur before an agency has issued the record of decision or taken other final agency action, except with respect to claims brought by project sponsors related to deadlines under section 107(g)(3) of NEPA. It is also the Council's intention that minor, non-substantive errors that have no effect on agency decision making shall be considered harmless and shall not invalidate an agency action. It is the Council's intention that any allegation of noncompliance with NEPA and the regulations in this subchapter should be resolved as expeditiously as appropriate.

(c) *Severability.* The sections of this subchapter are separate and severable from one another. If any section or portion therein is stayed or determined to be invalid, or the applicability of any section to any person or entity is held invalid, it is the Council's intention that the validity of the remainder of those parts shall not be affected, with the remaining sections to continue in effect.

§ 1500.4 Concise and informative environmental documents.

Agencies shall prepare analytical, concise, and informative environmental documents by:

(a) Meeting appropriate page limits (§§ 1501.5(g) and 1502.7 of this subchapter).

(b) Discussing only briefly issues other than important ones (*e.g.,* § 1502.2(b) of this subchapter).

(c) Writing environmental documents in plain language (*e.g.,* § 1502.8 of this subchapter).

(d) Following a clear format for environmental impact statements (§ 1502.10 of this subchapter).

(e) Emphasizing the portions of the environmental document that are most useful to decision makers and the public (*e.g.,* §§ 1502.14, 1502.15, and 1502.16 of this subchapter) and reducing emphasis on background material (*e.g.,* § 1502.1 of this subchapter).

(f) Using the scoping process to identify important environmental issues deserving of study and to deemphasize unimportant issues, narrowing the scope of the environmental impact statement process (or, where an agency elects to do so, the environmental assessment process) accordingly (§§ 1501.9 and 1502.4 of this subchapter).

(g) Summarizing the environmental impact statement (§ 1502.12 of this subchapter).

(h) Using programmatic environmental documents and tiering from documents of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§ 1501.11 of this subchapter).

(i) Incorporating by reference (§ 1501.12 of this subchapter).

(j) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.24 of this subchapter).

(k) Requiring that comments be as specific as possible (§ 1503.3 of this subchapter).

(l) When changes are minor, attaching and publishing only changes to the draft environmental impact statement rather than rewriting and publishing the entire statement (§ 1503.4(c) of this subchapter).

(m) Eliminating duplication with State, Tribal, and local procedures, by providing for joint preparation of environmental documents where practicable (§ 1506.2 of this subchapter), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another Federal agency (§ 1506.3 of this subchapter).

(n) Combining environmental documents with other documents (§ 1506.4 of this subchapter).

§ 1500.5 Efficient process.

Agencies shall improve efficiency of their NEPA processes by:

(a) Establishing categorical exclusions to define categories of actions that normally do not have a significant effect on the human environment (§§ 1501.4 and 1507.3(c)(8) of this subchapter) and therefore do not require preparation of an environmental assessment or environmental impact statement.

(b) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (§ 1501.6 of this subchapter) and therefore does not require preparation of an environmental impact statement.

(c) Integrating the NEPA process into early planning (§ 1501.2 of this subchapter).

(d) Engaging in interagency cooperation, including with affected Federal, State, Tribal, and local agencies, before or during the preparation of an environmental assessment or environmental impact statement, rather than waiting to request or submit comments on a completed document (§§ 1501.7 and 1501.8 of this subchapter).

(e) Ensuring the swift and fair resolution of lead agency disputes (§ 1501.7 of this subchapter).

(f) Using the scoping process for early identification of the important issues that require detailed analysis (§ 1502.4 of this subchapter).

(g) Meeting appropriate deadlines for the environmental assessment and environmental impact statement processes (§ 1501.10 of this subchapter).

(h) Preparing environmental documents early in the process (§§ 1502.5 and 1501.5(d) of this subchapter).

(i) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.24 of this subchapter).

(j) Eliminating duplication with State, Tribal, and local procedures by providing for joint preparation of environmental documents where practicable (§ 1506.2 of this subchapter) and with other Federal procedures by providing that agencies may jointly prepare or adopt appropriate environmental documents prepared by another agency (§ 1506.3 of this subchapter).

(k) Combining environmental documents with other documents (§ 1506.4 of this subchapter).

(l) Using accelerated procedures for proposals for legislation (§ 1506.8 of this subchapter).

§ 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view policies and missions in the light of the Act's national environmental objectives, to the extent consistent with its existing authority. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to ensure full compliance with the purposes and provisions of the Act and the regulations in this subchapter. The phrase ''to the fullest extent possible'' in section 102 of NEPA means that each agency of the Federal Government shall comply with the Act unless an agency activity, decision, or action is exempted from NEPA by law or compliance with NEPA is impossible.

PART 1501—NEPA AND AGENCY PLANNING

Sec.

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123.

§ 1501.1 Purpose.

The purposes of this part include:

(a) Integrating the NEPA process into agency planning at an early stage to facilitate appropriate consideration of NEPA's policies, promote an efficient process, and reduce delay;

(b) Providing for early engagement in the environmental review process with other agencies, State, Tribal, and local governments, and affected or interested persons, entities, and communities before a decision is made;

(c) Providing for the swift and fair resolution of interagency disputes;

(d) Identifying at an early stage the important environmental issues deserving of study, and deemphasizing unimportant issues, narrowing the scope of the environmental review and enhancing efficiency accordingly; and

(e) Promoting accountability by establishing appropriate deadlines and requiring schedules.

§ 1501.2 Apply NEPA early in the process.

(a) Agencies should integrate the NEPA process with other planning and authorization processes at the earliest reasonable time to ensure that agencies consider environmental effects in their planning and decisions, to avoid delays later in the process, and to head off potential conflicts.

(b) Each agency shall:

(1) Comply with the mandate of section 102(2)(A) of NEPA to utilize a systematic, interdisciplinary approach, which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making that may have an impact on the human environment, as specified by § 1507.2(a) of this subchapter.

(2) Identify environmental effects and values in adequate detail so the decision maker can appropriately consider such effects and values alongside economic and technical analyses. Whenever practicable, agencies shall review and publish environmental documents and appropriate analyses at the same time as other planning documents.

(3) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources, as provided by section 102(2)(H) of NEPA.

(4) Provide for actions subject to NEPA that are planned by applicants before Federal involvement so that:

(i) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(ii) The Federal agency consults early with appropriate State, Tribal, and local governments and with interested persons and organizations when their involvement is reasonably foreseeable.

(iii) The Federal agency commences its NEPA process at the earliest reasonable time (§§ 1501.5(d) and 1502.5(b) of this subchapter).

§ 1501.3 Determine the appropriate level of NEPA review.

(a) *Applicability.* As a threshold determination, an agency shall assess whether NEPA applies to the proposed activity or decision. In assessing whether NEPA applies, Federal agencies should determine:

(1) Whether the proposed activity or decision is exempted from NEPA by law;

(2) Whether compliance with NEPA would clearly and fundamentally conflict with the requirements of another provision of Federal law;

(3) Whether the proposed activity or decision is not a major Federal action (§ 1508.1(w) of this subchapter);

(4) Whether the proposed activity or decision is not a final agency action within the meaning of such term in chapter 5 of title 5, United States Code; or

(5) Whether the proposed activity or decision is a non-discretionary action with respect to which such agency does not have authority to take environmental factors into consideration in determining whether to take the proposed action.

(b) *Scope of action and analysis.* If the agency determines that NEPA applies, the agency shall consider the scope of the proposed action and its effects to inform the agency's determination of the appropriate level of NEPA review and whether aspects of the action are non-discretionary. The agency shall use, as appropriate, the public engagement and scoping mechanisms in §§ 1501.9 and 1502.4 of this subchapter to inform consideration of the scope of the proposed action and determination of the level of NEPA review. The agency shall evaluate, in a single review, proposals or parts of proposals that are related closely enough to be, in effect, a single course of action. The agency shall not avoid a determination of significance under paragraph (c) of this section by terming an action temporary that is not temporary in fact or segmenting an action into smaller component parts. The agency also shall consider whether there are connected actions, which are closely related Federal activities or decisions that should be considered in the same NEPA review that:

(1) Automatically trigger other actions that may require NEPA review;

(2) Cannot or will not proceed unless other actions are taken previously or simultaneously; or

(3) Are interdependent parts of a larger action and depend on the larger action for their justification.

(c) *Levels of NEPA review.* In assessing the appropriate level of NEPA review, agencies may make use of any reliable data source and are not required to undertake new scientific or technical research unless it is essential to a reasoned choice among alternatives, and the overall costs and timeframe of obtaining it are not unreasonable.

Agencies should determine whether the proposed action:

(1) Is appropriately categorically excluded (§ 1501.4);

(2) Is not likely to have significant effects or the significance of the effects is unknown and is therefore appropriate for an environmental assessment (§ 1501.5); or

(3) Is likely to have significant effects and is therefore appropriate for an environmental impact statement (part 1502 of this subchapter).

(d) *Significance determination—context and intensity.* In considering whether an adverse effect of the proposed action is significant, agencies shall examine both the context of the action and the intensity of the effect. In assessing context and intensity, agencies should consider the duration of the effect. Agencies may also consider the extent to which an effect is adverse at some points in time and beneficial in others (for example, in assessing the significance of a habitat restoration action's effect on a species, an agency may consider both any short-term harm to the species during implementation of the action and any benefit to the same species once the action is complete). However, agencies shall not offset an action's adverse effects with other beneficial effects to determine significance (for example, an agency may not offset an action's adverse effect on one species with its beneficial effect on another species).

(1) Agencies shall analyze the significance of an action in several contexts. Agencies should consider the characteristics of the geographic area, such as proximity to unique or sensitive resources or communities with environmental justice concerns. Depending on the scope of the action, agencies should consider the potential global, national, regional, and local contexts as well as the duration, including short-and long-term effects.

(2) Agencies shall analyze the intensity of effects considering the following factors, as applicable to the proposed action and in relationship to one another:

(i) The degree to which the action may adversely affect public health and safety.

(ii) The degree to which the action may adversely affect unique characteristics of the geographic area such as historic or cultural resources, parks, Tribal sacred sites, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(iii) Whether the action may violate relevant Federal, State, Tribal, or local laws or other requirements or be inconsistent with Federal, State, Tribal, or local policies designed for the protection of the environment.

(iv) The degree to which the potential effects on the human environment are highly uncertain.

(v) The degree to which the action may adversely affect resources listed or eligible for listing in the National Register of Historic Places.

(vi) The degree to which the action may adversely affect an endangered or threatened species or its habitat, including habitat that has been determined to be critical under the Endangered Species Act of 1973.

(vii) The degree to which the action may adversely affect communities with environmental justice concerns.

(viii) The degree to which the action may adversely affect rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders.

§ 1501.4 Categorical exclusions.

(a) For efficiency and consistent with § 1507.3(c)(8)(ii) of this subchapter or paragraph (c), agencies shall establish categorical exclusions for categories of actions that normally do not have a significant effect on the human environment, individually or in the aggregate, and therefore do not require preparation of an environmental assessment or environmental impact statement unless extraordinary circumstances exist that make application of the categorical exclusion inappropriate, consistent with paragraph (b) of this section. Agencies may establish categorical exclusions individually or jointly with other agencies.

(b) If an agency determines that a categorical exclusion identified in its agency NEPA procedures covers a proposed action, the agency shall evaluate the action for extraordinary circumstances in which a normally excluded action may have a significant effect.

(1) If an extraordinary circumstance exists, the agency nevertheless may apply the categorical exclusion if the agency conducts an analysis and determines that the proposed action does not in fact have the potential to result in significant effects notwithstanding the extraordinary circumstance, or the agency modifies the action to avoid the potential to result in significant effects. In these cases, the agency shall document such determination and should publish it on the agency's website or otherwise make it publicly available.

(2) If the agency cannot categorically exclude the proposed action, the agency shall prepare an environmental assessment or environmental impact statement, as appropriate.

(c) In addition to the process for establishing categorical exclusions under § 1507.3(c)(8) of this subchapter, agencies may establish categorical exclusions through a land use plan, a decision document supported by a programmatic environmental impact statement or programmatic environmental assessment, or other equivalent planning or programmatic decision for which an environmental document has been prepared, so long as the agency:

(1) Provides the Council an opportunity to review and comment prior to public comment;

(2) Provides notification and an opportunity for public comment;

(3) Substantiates its determination that the category of actions normally does not have significant effects, individually or in the aggregate;

(4) Identifies extraordinary circumstances;

(5) Establishes a process for determining that a categorical exclusion applies to a specific action or actions in the absence of extraordinary circumstances, or, where extraordinary circumstances are present, for determining the agency may apply the categorical exclusion consistent with (b)(1) of this section; and

(6) Publishes a list of all categorical exclusions established through these mechanisms on its website.

(d) Categorical exclusions established consistent with paragraph (c) of this section or § 1507.3(c)(8) of this subchapter may:

(1) Cover specific geographic areas or areas that share common characteristics, *e.g.,* habitat type;

(2) Have a limited duration;

(3) Include mitigation measures that, in the absence of extraordinary circumstances, will ensure that any environmental effects are not significant, so long as a process is established for monitoring and enforcing any required mitigation measures, including through the suspension or revocation of the relevant agency action; or

(4) Provide criteria that would cause the categorical exclusion to expire because the agency's determination that the category of action does not have significant effects, individually or in the aggregate, is no longer applicable, including, as appropriate, because:

(i) The number of individual actions covered by the categorical exclusion exceeds a specific threshold;

(ii) Individual actions covered by the categorical exclusion are too close to one another in proximity or time; or

(iii) Environmental conditions or information upon which the agency's determination was based have changed.

(e) An agency may adopt and apply a categorical exclusion listed in another agency's NEPA procedures to a proposed action or a category of proposed actions consistent with this paragraph. The agency shall:

(1) Identify the categorical exclusion listed in another agency's NEPA procedures that covers its proposed action or a category of proposed actions;

(2) Consult with the agency that established the categorical exclusion to ensure that the proposed action or category of proposed actions to which the agency intends to apply the categorical exclusion is appropriate;

(3) Provide public notification of the categorical exclusion that the agency is adopting, including a brief description of the proposed action or category of proposed actions to which the agency intends to apply the adopted categorical exclusion, the process the agency will use to evaluate for extraordinary circumstances consistent with paragraph (b) of this section, and a brief description of the agencies' consultation;

(4) In applying the adopted categorical exclusion to a proposed action, evaluate the proposed action for extraordinary circumstances, consistent with paragraph (b) of this section; and

(5) Publish the documentation of the application of the adopted categorical exclusion.

§ 1501.5 Environmental assessments.

(a) An agency shall prepare an environmental assessment for a proposed action that is not likely to have significant effects or when the significance of the effects is unknown unless the agency finds that a categorical exclusion (§ 1501.4) is applicable or has decided to prepare an environmental impact statement.

(b) An agency may prepare an environmental assessment on any action to assist agency planning and decision making.

(c) An environmental assessment shall:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact;

(2) Briefly discuss the:

(i) Purpose and need for the proposed agency action;

(ii) Alternatives as required by section 102(2)(H) of NEPA; and

(iii) Environmental effects of the proposed action and alternatives;

(3) List the Federal agencies; State, Tribal, and local governments and agencies; or persons consulted; and

(4) Provide a unique identification number for tracking purposes, which the agency shall reference on all associated environmental review documents prepared for the proposed action and in any database or tracking system for such documents.

(d) For applications to the agency requiring an environmental assessment, the agency shall commence the environmental assessment as soon as practicable after receiving the application.

(e) If an agency publishes a draft environmental assessment, the agency shall invite public comment and consider those comments in preparing the final environmental assessment.

(f) Agencies shall involve the public, State, Tribal, and local governments, relevant agencies, and any applicants, to the extent practicable in preparing environmental assessments (*see* § 1501.9).

(g) The text of an environmental assessment shall not exceed 75 pages, not including any citations or appendices.

(h) Agencies:

(1) Should supplement environmental assessments if a major Federal action is incomplete or ongoing, and:

(i) The agency makes substantial changes to the proposed action that are relevant to environmental concerns; or

(ii) There are substantial new circumstances or information about the significance of the adverse effects that bear on the analysis to determine whether to prepare a finding of no significant impact or an environmental impact statement.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(i) Agencies may reevaluate an environmental assessment to determine that the agency does not need to prepare a supplemental environmental assessment and a new finding of no significant impact or an environmental impact statement.

(j) Agencies generally should apply § 1502.21 of this subchapter to environmental assessments.

(k) As appropriate to improve efficiency and effectiveness of environmental assessments, agencies may apply the other provisions of part 1502 and 1503 of this subchapter, including §§ 1502.4, 1502.22, 1502.24, and 1503.4, to environmental assessments.

§ 1501.6 Findings of no significant impact.

(a) After completing an environmental assessment, an agency shall prepare:

(1) A finding of no significant impact if the agency determines, based on the environmental assessment, that NEPA does not require preparation of an environmental impact statement because the proposed action will not have significant effects;

(2) A mitigated finding of no significant impact if the agency determines, based on the environmental assessment, that NEPA does not require preparation of an environmental impact statement because the proposed action will not have significant effects due to mitigation; or

(3) An environmental impact statement if the agency determines, based on the environmental assessment, that the action will have significant effects.

(b)(1) The agency shall make the finding of no significant impact available to the affected public as specified in § 1501.9(c)(5).

(2) In the following circumstances, the agency shall make the finding of no significant impact available for public review for 30 days before the agency determines whether to prepare an environmental impact statement and before the action may begin:

(i) The proposed action is or is closely similar to one that normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to § 1507.3 of this subchapter; or

(ii) The nature of the proposed action is one without precedent.

(c) The finding of no significant impact shall include the environmental assessment or incorporate it by reference and shall note any other environmental documents related to it (§ 1502.4(d)(3) of this subchapter). If the environmental assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

(d) The finding of no significant impact shall state the authority for any mitigation that the agency has adopted and any applicable monitoring or enforcement provisions. If the agency finds no significant effects based on mitigation, the mitigated finding of no significant impact shall state the enforceable mitigation requirements or commitments that will be undertaken and the authority to enforce them, such as terms and conditions or other measures in a relevant permit, incidental take statement, or other agreement, and the agency shall prepare a monitoring and compliance plan for that mitigation consistent with

§ 1505.3(c) of this subchapter. In addition, the agency shall prepare a monitoring and compliance plan for other mitigation as required by § 1505.3(c) of this subchapter.

§ 1501.7 Lead agency.

(a) A lead agency shall supervise the preparation of an environmental impact statement or environmental assessment if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) A Federal, State, Tribal, or local agency may serve as a joint lead agency to prepare an environmental impact statement or environmental assessment (§ 1506.2 of this subchapter). A joint lead agency shall jointly fulfill the role of a lead agency.

(c) If an action falls within the provisions of paragraph (a) of this section, the participating Federal agencies shall determine, by letter or memorandum, which agency will be the lead agency, considering the factors in paragraphs (c)(1) through (c)(5) of this section, and the lead agency shall determine which agencies will be joint lead or cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement;

(2) Project approval or disapproval authority;

(3) Expertise concerning the action's environmental effects;

(4) Duration of agency's involvement; and

(5) Sequence of agency's involvement.

(d) Any Federal, State, Tribal, or local agency or person substantially affected by the absence of a lead agency designation, may make a written request to the senior agency officials of the potential lead agencies that a lead agency be designated. An agency that receives a request under this paragraph shall transmit such request to each participating Federal agency and to the Council.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted in a lead agency designation within 45 days of the written request to the senior agency officials, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency. The Council shall transmit a copy of the request to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action; and

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) Any potential lead agency may file a response no later than 20 days after a request is filed with the Council. As soon as possible, but not later than 40 days after receiving the request, the Council shall designate which Federal agency will be the lead agency and which other Federal agencies will be cooperating agencies.

(g) To the extent practicable, if a proposal will require action by more than one Federal agency and the lead agency determines that the proposal requires preparation of an environmental impact statement, the lead and cooperating agencies shall evaluate it in a single environmental impact statement; the lead and cooperating agencies shall issue, except where inappropriate or inefficient, a joint record of decision. To the extent practicable, if a proposal will require action by more than one Federal agency and the lead agency determines that it requires preparation of an environmental assessment, the lead and cooperating agencies shall evaluate the proposal in a single environmental assessment and issue a joint finding of no significant impact or jointly determine to prepare an environmental impact statement.

(h) With respect to cooperating agencies, the lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest practicable time;

(2) Consider any analysis or proposal created by a cooperating agency and, to the maximum extent practicable, use the environmental analysis, proposal, and information provided by cooperating agencies;

(3) Meet with a cooperating agency at the latter's request; and

(4) Determine the purpose and need, and alternatives in consultation with any cooperating agency.

§ 1501.8 Cooperating agencies.

(a) The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any Federal agency with jurisdiction by law shall be a cooperating agency. In addition, upon request of the lead agency, any other Federal agency with special expertise with respect to any environmental issue may be a cooperating agency. A State, Tribal, or local agency of similar qualifications may become a cooperating agency by agreement with the lead agency. Relevant special expertise may include Indigenous Knowledge. An agency may request that the lead agency designate it a cooperating agency, and a Federal agency may appeal a denial of its request to the Council.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest practicable time.

(2) Participate in the scoping process (described in § 1502.4).

(3) On request of the lead agency, assume responsibility for developing information and preparing environmental analyses, including portions of the environmental impact statement or environmental assessment concerning which the cooperating agency has special expertise.

(4) On request of the lead agency, make available staff support to enhance the lead agency's interdisciplinary capability.

(5) Normally use its own funds. To the extent available funds permit, the lead agency shall fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(6) Consult with the lead agency in developing and updating the schedule (§ 1501.10), meet the schedule, and elevate, as soon as practicable, to the senior agency official of the lead agency any issues relating to purpose and need, alternatives, or other issues that may affect any agencies' ability to meet the schedule.

(7) Meet the lead agency's schedule for providing comments.

(8) To the maximum extent practicable, jointly issue environmental documents with the lead agency.

(c) In response to a lead agency's request for assistance in preparing the environmental documents (described in paragraph (b)(3), (4), or (5) of this section), a cooperating agency may reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement or environmental assessment. The cooperating agency shall submit a copy of this reply to the Council and the senior agency official of the lead agency.

§ 1501.9 Public and governmental engagement.

(a) *Purpose and responsibility.* The purpose of public engagement is to inform the public of an agency's proposed action, allow for meaningful engagement during the NEPA process, and ensure decision makers are informed by the views of the public. The purpose of governmental engagement is to identify the potentially affected Federal, State, Tribal, and local governments, invite them to serve as cooperating agencies, as appropriate, and ensure that participating agencies have opportunities to engage in the environmental review process, as appropriate. This section sets forth agencies' responsibilities and best practices to conduct public and governmental engagement. Agencies shall determine the appropriate methods of public and governmental engagement for their proposed actions.

(b) *Determination of scope.* Agencies shall use public and governmental engagement, as appropriate, to inform the level of review for and scope of analysis of a proposed action, consistent with § 1501.3 of this subchapter. For environmental impact statements, in addition to the requirements of this section, agencies also shall comply with the requirements for scoping set forth in § 1502.4 of this subchapter. For environmental assessments, in addition to the requirements of this section, agencies should consider applying the requirements for scoping set forth in § 1502.4 of this subchapter, as appropriate.

(c) *Outreach and notification.* Agencies shall:

(1) Invite the participation of any likely affected Federal, State, Tribal, and local agencies and governments, as early as practicable, including, as appropriate, as cooperating agencies under § 1501.8 of this subchapter;

(2) Conduct, as appropriate, early engagement with likely affected or interested members of the public (including those who might not be in accord with the action), unless there is a limited exception under § 1507.3(d)(3) of this subchapter; and

(3) Consider what methods of outreach and notification are necessary and appropriate based on the likely affected entities and persons; the scope, scale, and complexity of the proposed action and alternatives; the degree of public interest; and other relevant factors. When selecting appropriate methods for providing public notification, agencies shall consider the ability of affected persons and agencies to access electronic media and the primary languages of affected persons.

(4) Publish notification of proposed actions they are analyzing through an environmental impact statement, including through a notice of intent consistent with § 1502.4 of this subchapter.

(5) Provide public notification of NEPA-related hearings, public meetings, and other opportunities for public engagement, and the availability of environmental documents to inform those persons and agencies who may be interested or affected by their proposed actions.

(i) The agency shall notify those entities and persons who have requested notification on a particular action and those who have requested regular notification from the agency on its actions.

(ii) In the case of an action with effects of national concern, notification shall also include publication of a notice in the **Federal Register**.

(iii) In the case of an action with effects primarily of local concern, the notification may include distribution to or through:

(A) State, Tribal, and local governments and agencies that may be interested or affected by the proposed action.

(B) Following the affected State or Tribe's public notification procedures for comparable actions.

(C) Publication in local newspapers having general circulation.

(D) Other local media.

(E) Potentially interested community organizations, including small business associations.

(F) Publication in newsletters that may be expected to reach potentially interested persons.

(G) Direct mailing to owners and occupants of nearby or affected property.

(H) Posting of notification on- and off-site in the area where the action is to be located.

(I) Electronic media (*e.g.,* a project or agency website, dashboard, email list, or social media). Agencies should establish email notification lists or similar methods for the public to easily request electronic notifications for a proposed action.

(6) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act, as amended (5 U.S.C. 552), and without charge to the extent practicable.

(d) *Public meetings and hearings.* Agencies shall hold or sponsor public hearings, public meetings, or other opportunities for public engagement whenever appropriate or in accordance with statutory or regulatory requirements or applicable agency NEPA procedures. Agencies may conduct public hearings and public meetings by means of electronic communication except where another format is required by law. When determining the format for a public hearing or public meeting, such as whether an in-person or virtual meeting, or formal hearing or listening session is most appropriate, agencies shall consider the needs of affected communities. When accepting comments for electronic or virtual public hearings or meetings, agencies shall allow the public to submit comments electronically, by regular mail, or by other appropriate methods. Agencies should make a draft environmental document available to the public at least 15 days in advance when it is the subject of a public hearing or meeting unless the purpose of such hearing or meeting is to provide information for the development of the document.

(e) *Agency procedures.* Agencies shall make diligent efforts to engage the public in preparing and implementing their NEPA procedures (§ 1507.3 of this subchapter).

§ 1501.10 Deadlines and schedule for the NEPA process.

(a) To ensure that agencies conduct sound NEPA reviews as efficiently and expeditiously as practicable, Federal agencies shall set deadlines and schedules appropriate to individual actions or types of actions consistent with this section and the time intervals required by § 1506.10 of this subchapter. Where applicable, the lead agency shall establish the schedule for a proposed action and make any necessary updates to the schedule in consultation with and seek the concurrence of any joint lead, cooperating, and participating agencies, and in consultation with any applicants.

(b) To ensure timely decision making, agencies shall complete:

(1) Environmental assessments within 1 year, unless the lead agency extends the deadline in writing and, as applicable, in consultation with any applicant, and establishes a new deadline that provides only so much additional time as is necessary to complete the environmental assessment.

(2) Environmental impact statements within 2 years, unless the lead agency extends the deadline in writing and, as applicable, in consultation with any applicant and establishes a new deadline that provides only so much additional time as is necessary to complete the environmental impact statement.

(3) The deadlines in paragraphs (b)(1) and (2) of this section are measured from the sooner of, as applicable:

(i) the date on which the agency determines that NEPA requires an environmental impact statement or environmental assessment for the proposed action;

(ii) the date on which the agency notifies an applicant that the application to establish a right-of-way for the proposed action is complete; or

(iii) the date on which the agency issues a notice of intent for the proposed action.

(4) The deadlines in paragraphs (b)(1) and (2) of this section are measured to, as applicable:

(i) For environmental assessments, the date on which the agency:

(A) Publishes an environmental assessment;

(B) Where applicable, makes the environmental assessment available pursuant to an agency's pre-decisional administrative review process; or

(C) Issues a notice of intent to prepare an environmental impact statement; and

(ii) For environmental impact statements, the date on which the Environmental Protection Agency publishes a notice of availability of the final environmental impact statement or, where applicable, the date on which the agency makes the final environmental impact statement available pursuant to an agency's pre-decisional administrative review process, consistent with § 1506.10(c)(1) of this subchapter.

(5) Each lead agency shall annually submit the report to Congress on any missed deadlines for environmental assessments and environmental impact statements required by section 107(h) of NEPA.

(c) To facilitate predictability, the lead agency shall develop a schedule for completion of environmental impact statements and environmental assessments as well as any authorizations required to carry out the action. The lead agency shall set milestones for all environmental reviews, permits, and authorizations required for implementation of the action, in consultation with any applicant and in consultation with and seek the concurrence of all joint lead, cooperating, and participating agencies, as soon as practicable. Schedules may vary depending on the type of action and in consideration of other factors in paragraph (d) of this section. The lead agency should develop a schedule that is based on its expertise reviewing similar types of actions under NEPA. All agencies with milestones, including those for a review, permit, or authorization, in the schedule shall take appropriate measures to meet the schedule. If a participating agency anticipates that a milestone will be missed, the agency shall notify, as applicable, the agency responsible for the milestone and the lead agency, and request that they take appropriate measures to comply with the schedule. As soon as practicable, the lead and any other agency affected by a potentially missed milestone shall elevate any unresolved disputes contributing to the potentially missed milestone to the appropriate officials of the agencies responsible for the potentially missed milestone, to ensure timely resolution within the deadlines for the individual action.

(d) The lead agency may consider the following factors in determining the schedule and deadlines:

(1) Potential for environmental harm.

(2) Size of the proposed action.

(3) State of the art of analytic techniques.

(4) Degree of public need for the proposed action, including the consequences of delay.

(5) Number of persons and agencies affected.

(6) Availability of relevant information.

(7) Degree to which a substantial dispute exists as to the size, location, nature, or consequences of the proposed action and its effects.

(8) Time limits imposed on the agency by law, regulation, Executive order, or court ordered deadlines.

(9) Time necessary to conduct government-to-government Tribal consultation.

(e) The schedule for environmental impact statements shall include the following milestones:

(1) The publication of the notice of intent;

(2) The issuance of the draft environmental impact statement;

(3) The public comment period on the draft environmental impact statement, consistent with § 1506.10 of this subchapter;

(4) The issuance of the final environmental impact statement; and

(5) The issuance of the record of decision.

(f) The schedule for environmental assessments shall include the following milestones:

(1) Decision to prepare an environmental assessment;

(2) Issuance of the draft environmental assessment, where applicable;

(3) The public comment period on the draft environmental assessment, consistent with § 1501.5 of this subchapter, where applicable; and

(4) Issuance of the final environmental assessment and decision on whether to issue a finding of no significant impact or issue a notice of intent to prepare an environmental impact statement.

(g) An agency may designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.

(h) For environmental impact statements, agencies shall make schedules for completing the NEPA process publicly available, such as on their website or another publicly accessible platform. If agencies make subsequent changes to the schedule, agencies shall publish revisions to the schedule and explain the basis for substantial changes.

§ 1501.11 Programmatic environmental documents and tiering.

(a) *Programmatic environmental documents.* Agencies may prepare programmatic environmental documents, which may be either environmental impact statements or environmental assessments, to evaluate the environmental effects of policies, programs, plans, or groups of related activities. When agencies prepare such documents, they should be relevant to the agency decisions and timed to coincide with meaningful points in agency planning and decision making. Agencies may use programmatic environmental documents to conduct a broad or holistic evaluation of effects or policy alternatives; evaluate widely applicable measures; or avoid duplicative analysis for individual actions by first considering relevant issues at a broad or programmatic level.

(1) When preparing programmatic environmental documents (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(i) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(ii) Thematically or by sector, including actions that have relevant similarities, such as common timing, effects, alternatives, methods of implementation, technology, media, or subject matter.

(iii) By stage of technological development, including Federal or federally assisted research, development, or demonstration programs for new technologies that, if applied, could significantly affect the quality of the human environment. Documents on such programs should be

completed before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or limit the choice of reasonable alternatives.

(2) Agency actions that may be appropriate for programmatic environmental documents include:

(i) Programs, policies, or plans, including land use or resource management plans;

(ii) Regulations;

(iii) National or regional actions;

(iv) Actions that have multiple stages or phases, and are part of an overall plan or program; or

(v) A group of projects or related types of projects.

(3) Agencies should, as appropriate, employ scoping (§ 1502.4 of this subchapter), tiering (paragraph (b) of this section), and other methods listed in §§ 1500.4 and 1500.5 of this subchapter, to describe the relationship between the programmatic environmental document and related individual actions and to avoid duplication and delay. The programmatic environmental document shall identify any decisions or categories of decisions that the agency anticipates making in reliance on it.

(b) *Tiering.* Where an existing environmental impact statement, environmental assessment, or programmatic environmental document is relevant to a later proposed action, agencies may employ tiering. Tiering allows subsequent tiered environmental analysis to avoid duplication and focus on issues, effects, or alternatives not fully addressed in a programmatic environmental document, environmental impact statement, or environmental assessment prepared at an earlier phase or stage. Agencies generally should tier their environmental impact statements and environmental assessments when it would eliminate repetitive discussions of the same issues, focus on the actual issues ripe for decision, and exclude from consideration issues already decided.

(1) When an agency has prepared an environmental impact statement, environmental assessment or programmatic environmental document for a program or policy and then prepares a subsequent statement or assessment on an action included within the program or policy (such as a project- or site-specific action), the tiered document shall discuss the relationship between the tiered document and the previous review, and summarize and incorporate by reference the issues discussed in the broader document. The tiered document shall concentrate on the issues specific to the subsequent action, analyzing site-, phase-, or stage-specific conditions and reasonably foreseeable effects. The agency shall provide for public engagement opportunities consistent with the type of environmental document prepared and appropriate for the location, phase, or stage. The tiered document shall state where the earlier document is publicly available.

(2) Tiering is appropriate when the sequence from an environmental impact statement or environmental assessment is:

(i) From a programmatic, plan, or policy environmental impact statement or environmental assessment to a program, plan, or policy statement or assessment of lesser or narrower scope or to a site-specific statement or assessment.

(ii) From an environmental impact statement or environmental assessment on a specific action at an early stage (such as need and site selection) to a subsequent statement or assessment at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the agency to focus on the issues that are ripe for decision and exclude from consideration issues already decided or not yet ripe.

(c) *Reevaluation.* When an agency prepares a programmatic environmental document for which judicial review was available, the agency may rely on the analysis included in the programmatic environmental document in a subsequent environmental document for related actions as follows:

(1) Within 5 years and without additional review of the analysis in the programmatic environmental document, unless there are substantial new circumstances or information about the significance of adverse effects that bear on the analysis; or

(2) After 5 years, so long as the agency reevaluates the analysis in the programmatic environmental document and any underlying assumption to ensure reliance on the analysis remains valid. The agency shall briefly document its reevaluation and explain why the analysis remains valid considering any new and substantial information or circumstances.

§ 1501.12 Incorporation by reference into environmental documents.

Agencies shall incorporate material, such as planning studies, analyses, or other relevant information, into environmental documents by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. Agencies shall cite the incorporated material in the document, briefly describe its content, and briefly explain the relevance of the incorporated material to the environmental document. Agencies shall not incorporate material by reference unless it is reasonably available for review, such as on a publicly accessible website, by potentially interested persons throughout the time allowed for comment or public review. Agencies should provide digital references, such as hyperlinks, to the incorporated material or otherwise indicate how the public can access the material for review. Agencies shall not incorporate by reference material based on proprietary data that is not available for review and comment.

PART 1502—ENVIRONMENTAL IMPACT STATEMENT

Sec.

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123.

§ 1502.1 Purpose of environmental impact statement.

(a) The primary purpose of an environmental impact statement prepared pursuant to section 102(2)(C) of NEPA is to serve as an action-forcing device by ensuring agencies consider the environmental effects of their action in decision making, so that the policies and goals defined in the Act are infused

into the ongoing programs and actions of the Federal Government.

(b) Environmental impact statements shall provide full and fair discussion of significant effects and shall inform decision makers and the public of reasonable alternatives that would avoid or minimize adverse effects or enhance the quality of the human environment. Agencies shall focus on important environmental issues and reasonable alternatives and shall reduce paperwork and the accumulation of extraneous background data.

(c) Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. Federal agencies shall use environmental impact statements in conjunction with other relevant material to plan actions, involve the public, and make decisions.

§ 1502.2 Implementation.

To achieve the purposes set forth in § 1502.1, agencies shall prepare environmental impact statements in the following manner:

(a) Environmental impact statements shall not be encyclopedic.

(b) Environmental impact statements shall discuss effects in proportion to their significance. There shall be only brief discussion of other than important issues. As in an environmental assessment and finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be analytical, concise, and no longer than necessary to comply with NEPA and with the regulations in this subchapter. Length should be proportional to potential environmental effects and the scope and complexity of the action.

(d) Environmental impact statements shall state how alternatives considered in them and decisions based on them will or will not achieve the requirements of sections 101 and 102(1) of NEPA, the regulations in this subchapter, and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the decision maker.

(f) Agencies shall not commit resources prejudicing the selection of alternatives before making a decision (*see also* § 1506.1 of this subchapter).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

§ 1502.3 Statutory requirements for environmental impact statements.

As required by section 102(2)(C) of NEPA, environmental impact statements are to be included in every Federal agency recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

§ 1502.4 Scoping.

(a) *Purpose.* Agencies shall use scoping, an early and open process consistent with § 1501.9 of this subchapter, to determine the scope of issues for analysis in an environmental impact statement, including identifying the important issues and eliminating from further study unimportant issues. Scoping should begin as soon as practicable after the proposal for action is sufficiently developed for agency consideration. Scoping may include appropriate pre-application procedures or work conducted prior to publication of the notice of intent (see §§ 1501.3 and 1501.9 of this subchapter).

(b) *Scoping outreach.* When preparing an environmental impact statement, agencies shall facilitate notification to persons and agencies who may be interested or affected by an agency's proposed action, consistent with § 1501.9 of this subchapter. As part of the scoping process, the lead agency may hold a scoping meeting or meetings, publish scoping information, or use other means to communicate with those persons or agencies who may be interested or affected, which the agency may integrate with any other early planning meeting.

(c) *Inviting participation.* As part of the scoping process, and consistent with § 1501.9 of this subchapter, the lead agency shall invite the participation of likely affected Federal, State, Tribal, and local agencies and governments as cooperating or participating agencies, as appropriate; any applicant; and other likely affected or interested persons (including those who might not be in accord with the action), unless there is a limited exception under § 1507.3(d)(3) of this subchapter.

(d) *Additional scoping responsibilities.* As part of the scoping process, the lead agency shall:

(1) Identify and eliminate from detailed study the issues that are not important or have been covered by prior environmental review(s) (§§ 1501.12 and 1506.3 of this subchapter), narrowing the discussion of these issues in the environmental impact statement to a brief presentation of why they will not be important or providing a reference to their coverage elsewhere.

(2) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(3) Indicate any publicly available environmental assessments and other environmental impact statements that are being or will be prepared and are related to but are not part of the scope of the environmental impact statement under consideration.

(4) Identify other environmental review, authorization, and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently and integrated with the environmental impact statement, as provided in § 1502.24.

(5) Indicate the relationship between the timing of the preparation of environmental analyses and the agencies' tentative planning and decision-making schedule.

(e) *Notice of intent.* As soon as practicable after determining that a proposal is sufficiently developed to allow for meaningful public comment and requires an environmental impact statement, the lead agency shall publish a notice of intent to prepare an environmental impact statement in the **Federal Register**. In addition to the **Federal Register** notice, an agency also may publish notification in accordance with § 1501.9 of this subchapter. The notice shall include, as appropriate:

(1) The purpose and need for the proposed agency action;

(2) A preliminary description of the proposed action and alternatives the environmental impact statement will consider;

(3) A brief summary of expected effects;

(4) Anticipated permits and other authorizations;

(5) A schedule for the decision-making process;

(6) A description of the public scoping process, including any scoping meeting(s);

(7) A request for comment on alternatives and effects, as well as on relevant information, studies, or analyses with respect to the proposed action;

(8) Contact information for a person within the agency who can answer questions about the proposed action and the environmental impact statement;

(9) Identification of any cooperating and participating agencies, and any information that such agencies require in the notice to facilitate their decisions

or authorizations that will rely upon the resulting environmental impact statement; and

(10) A unique identification number for tracking purposes, which the agency shall reference on all environmental documents prepared for the proposed action and in any database or tracking system for such documents.

(f) *Notices of withdrawal or cancellation.* If an agency withdraws, cancels, or otherwise ceases the consideration of a proposed action before completing a final environmental impact statement, the agency shall publish a notice in the **Federal Register**.

(g) *Revisions.* An agency shall revise the determinations made under paragraphs (b), (c), and (d) of this section if substantial changes are made later in the proposed action, or if important new circumstances or information arise that bear on the proposal or its effects.

§ 1502.5 Timing.

An agency should commence preparation of an environmental impact statement as close as practicable to the time the agency is developing or receives a proposal so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve as an important practical contribution to the decision-making process and will not be used to rationalize or justify decisions already made (§§ 1501.2 of this subchapter and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies, the agency shall prepare the environmental impact statement at the feasibility analysis or equivalent stage evaluating whether to proceed with the project and may supplement it at a later stage, if necessary.

(b) For applications to the agency requiring an environmental impact statement, the agency shall commence the statement as soon as practicable after receiving the complete application. Federal agencies should work together and with potential applicants and applicable State, Tribal, and local agencies and governments prior to receipt of the application.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances, the statement may follow preliminary hearings designed to gather information for use in the statement.

(d) For informal rulemaking, the draft environmental impact statement shall normally accompany the proposed rule.

§ 1502.6 Interdisciplinary preparation.

Agencies shall prepare environmental impact statements using an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of NEPA). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (§ 1502.4 of this subchapter).

§ 1502.7 Page limits.

The text of final environmental impact statements, not including citations or appendices, shall not exceed 150 pages except for proposals of extraordinary complexity, which shall not exceed 300 pages.

§ 1502.8 Writing.

Agencies shall write environmental impact statements in plain language and should use, as relevant, appropriate visual aids or charts so that decision makers and the public can readily understand such statements. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which shall be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

§ 1502.9 Draft, final, and supplemental statements.

(a) *Generally.* Except for proposals for legislation as provided in § 1506.8 of this subchapter, agencies shall prepare environmental impact statements in two stages and, where necessary, supplement them as provided in paragraph (d)(1) of this section.

(b) *Draft environmental impact statements.* Agencies shall prepare draft environmental impact statements in accordance with the scope decided upon in the scoping process (§ 1502.4 of this subchapter). The lead agency shall work with the cooperating agencies and shall obtain comments as required in part 1503 of this subchapter. To the fullest extent practicable, the draft statement must meet the requirements established for final statements in section 102(2)(C) of NEPA and in the regulations in this subchapter. If the agency determines that a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and publish a supplemental draft of the appropriate portion. At appropriate points in the draft statement, the agency shall discuss all major points of view on the environmental effects of the alternatives, including the proposed action.

(c) *Final environmental impact statements.* Final environmental impact statements shall consider and respond to comments as required in part 1503 of this subchapter. At appropriate points in the final statement, the agency shall discuss any responsible opposing view that was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(d) *Supplemental environmental impact statements.* Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if a major Federal action is incomplete or ongoing, and:

(i) The agency makes substantial changes to the proposed action that are relevant to environmental concerns; or

(ii) There are substantial new circumstances or information about the significance of adverse effects that bear on the analysis.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall prepare, publish, and file a supplement to an environmental impact statement (exclusive of scoping (§ 1502.4 of this subchapter)) as a draft and final environmental impact statement, as is appropriate to the stage of the environmental impact statement involved, unless the Council approves alternative arrangements (§ 1506.11 of this subchapter).

(e) *Reevaluation.* An agency may reevaluate an environmental impact statement to determine that the agency does need to prepare a supplement under paragraph (d) of this section. The agency should document its finding consistent with its agency NEPA procedures (§ 1507.3 of this subchapter), or, if necessary, prepare a supplemental environmental assessment and finding of no significant impact.

§ 1502.10 Recommended format.

(a) Agencies shall use a format for environmental impact statements that will encourage good analysis and clear presentation of the alternatives, including the proposed action. Agencies should use the following standard format for environmental impact statements unless the agency determines that there is a more effective format for communication:

(1) Cover (§ 1502.11);

(2) Summary (§ 1502.12);

(3) Table of contents;

(4) Purpose of and need for action (§ 1502.13);

(5) Alternatives including the proposed action (sections 102(2)(C)(iii) and 102(2)(H) of NEPA) (§ 1502.14);

(6) Affected environment and environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA) (§§ 1502.15 and 1502.16); and

(7) Appendices (§ 1502.19), including the summary of scoping information (§ 1502.17) and the list of preparers (§ 1502.18).

(b) If an agency uses a different format, it shall include paragraph (a) of this section, as further described in §§ 1502.11 through 1502.19, in any appropriate format.

§ 1502.11 Cover.

The environmental impact statement cover shall not exceed one page and shall include:

(a) A list of the lead, joint lead, and, to the extent feasible, any cooperating agencies;

(b) The title of the proposed action that is the subject of the statement (and, if appropriate, the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction(s), if applicable) where the action is located;

(c) The name, address, and telephone number of the person at the agency who can supply further information;

(d) A designation of the statement as a draft, final, or draft or final supplement;

(e) A one-paragraph abstract of the statement;

(f) The date by which the agency must receive comments (computed in cooperation with the Environmental Protection Agency under § 1506.10 of this subchapter); and

(g) The identification number included in the notice of intent (§ 1502.4(e)(10)).

§ 1502.12 Summary.

Each environmental impact statement shall contain a summary that adequately and accurately summarizes the statement. The summary shall include the major conclusions and summarize any disputed issues raised by agencies and the public, any issues to be resolved, and key differences among alternatives, and identify the environmentally preferable alternative or alternatives. Agencies shall write the summary in plain language and should use, as relevant, appropriate visual aids and charts. The summary normally should not exceed 15 pages.

§ 1502.13 Purpose and need.

The environmental impact statement shall include a statement that briefly summarizes the underlying purpose and need for the proposed agency action.

§ 1502.14 Alternatives including the proposed action.

The alternatives section is the heart of the environmental impact statement. The alternatives section should identify the reasonably foreseeable environmental effects of the proposed action and the alternatives in comparative form based on the information and analysis presented in the sections on the affected environment (§ 1502.15) and the environmental consequences (§ 1502.16). In doing so, the analysis should sharply define the issues for the decision maker and the public and provide a clear basis for choice among options. In this section, agencies shall:

(a) Rigorously explore and objectively evaluate reasonable alternatives to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination. The agency need not consider every conceivable alternative to a proposed action; rather, it shall consider a reasonable range of alternatives that will foster informed decision making. Agencies also may include reasonable alternatives not within the jurisdiction of the lead agency.

(b) Discuss each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits.

(c) Include the no action alternative.

(d) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(e) Include appropriate mitigation measures not already included in the proposed action or alternatives.

(f) Identify the environmentally preferable alternative or alternatives amongst the alternatives considered in the environmental impact statement. The environmentally preferable alternative will best promote the national environmental policy expressed in section 101 of NEPA by maximizing environmental benefits, such as addressing climate change-related effects or disproportionate and adverse effects on communities with environmental justice concerns; protecting, preserving, or enhancing historic, cultural, Tribal, and natural resources, including rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders; or causing the least damage to the biological and physical environment. The environmentally preferable alternative may be the proposed action, the no action alternative, or a reasonable alternative.

§ 1502.15 Affected environment.

(a) The environmental impact statement shall succinctly describe the environment of the area(s) to be affected by the alternatives under consideration, including the reasonably foreseeable environmental trends and planned actions in the area(s).

(b) Agencies shall use high-quality information, including reliable data and resources, models, and Indigenous Knowledge, to describe reasonably foreseeable environmental trends, including anticipated climate-related changes to the environment, and when such information is incomplete or unavailable, provide relevant information consistent with § 1502.21. This description of the affected environment, including existing environmental conditions, reasonably foreseeable trends, and planned actions in the area, should inform the agency's analysis of environmental consequences and mitigation measures (§ 1502.16).

(c) The environmental impact statement may combine the description of the affected environment with evaluation of the environmental consequences (§ 1502.16). The description should be no longer than necessary to understand the relevant affected environment and the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the effect, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

§ 1502.16 Environmental consequences.

(a) The environmental consequences section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA that are within the scope of the environmental impact statement and as much of section 102(2)(C)(iii) of NEPA as is necessary to support the comparisons. The comparison of the proposed action and reasonable alternatives shall be based on the discussion of their reasonably foreseeable effects and the significance of those effects (§ 1501.3 of this subchapter), focusing on the significant or important effects. The no action alternative should serve as the baseline

against which the proposed action and other alternatives are compared. This section should not duplicate discussions required by § 1502.14 and shall include an analysis of:

(1) Any adverse environmental effects that cannot be avoided should the proposal be implemented.

(2) The effects of the no action alternative, including any adverse environmental effects;

(3) The relationship between short-term uses of the human environment and the maintenance and enhancement of long-term productivity;

(4) Any irreversible or irretrievable commitments of Federal resources that would be involved in the proposal should it be implemented;

(5) Where applicable, possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local plans, policies, and controls for the area concerned, including those addressing climate change (§ 1506.2(d) of this subchapter);

(6) Where applicable, climate change-related effects, including, where feasible, quantification of greenhouse gas emissions, from the proposed action and alternatives and the effects of climate change on the proposed action and alternatives;

(7) Where applicable, energy requirements and conservation potential of various alternatives and mitigation measures;

(8) Where applicable, natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures;

(9) Where applicable, relevant risk reduction, resiliency, or adaptation measures incorporated into the proposed action or alternatives, informed by relevant science and data on the affected environment and expected future conditions;

(10) Where applicable, urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures;

(11) Means to mitigate adverse environmental effects (if not fully covered under § 1502.14(e));

(12) Where applicable, economic and technical considerations, including the economic benefits of the proposed action; and

(13) Where applicable, disproportionate and adverse human health and environmental effects on communities with environmental justice concerns.

(b) Economic or social effects by themselves do not require preparation of an environmental impact statement. However, when the agency determines that economic or social and natural or physical environmental effects are interrelated, the environmental impact statement shall discuss these effects on the human environment.

§ 1502.17 Summary of scoping information.

(a) The draft environmental impact statement or appendix shall include a summary of information, including alternatives and analyses, submitted by commenters during the scoping process for consideration by the lead and cooperating agencies in their development of the environmental impact statement.

(b) The agency shall append to the draft environmental impact statement or publish all comments (or summaries thereof where the response has been exceptionally voluminous) received during the scoping process.

§ 1502.18 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or important background papers, including basic components of the statement. Where possible, the environmental impact statement shall identify the persons who are responsible for a particular analysis, including analyses in background papers. Normally the list will not exceed two pages.

§ 1502.19 Appendix.

If an agency prepares an appendix, the agency shall publish it with the environmental impact statement, and it shall consist of, as appropriate:

(a) Material prepared in connection with an environmental impact statement (as distinct from material that is not so prepared and is incorporated by reference (§ 1501.12 of this subchapter)).

(b) Material substantiating any analysis fundamental to the impact statement.

(c) Material relevant to the decision to be made.

(d) For draft environmental impact statements, all comments (or summaries thereof where the response has been exceptionally voluminous) received during the scoping process that identified information for the agency's consideration.

(e) For final environmental impact statements, the comment summaries and responses consistent with § 1503.4 of this chapter.

§ 1502.20 Publication of the environmental impact statement.

Agencies shall publish the entire draft and final environmental impact statements and unchanged statements as provided in § 1503.4(c) of this subchapter. The agency shall transmit the entire statement electronically (or in paper copy, if requested due to economic or other hardship) to:

(a) Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State, Tribal, or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement, any person, organization, or agency that submitted substantive comments on the draft.

§ 1502.21 Incomplete or unavailable information.

(a) When an agency is evaluating reasonably foreseeable significant effects on the human environment in an environmental impact statement, and there is incomplete or unavailable information, the agency shall make clear that such information is lacking.

(b) If the incomplete information relevant to reasonably foreseeable significant effects is essential to a reasoned choice among alternatives, and the overall costs of obtaining it are not unreasonable, the agency shall include the information in the environmental impact statement.

(c) If the information relevant to reasonably foreseeable significant effects cannot be obtained because the overall costs of obtaining it are unreasonable or the means to obtain it are not known, the agency shall include within the environmental impact statement:

(1) A statement that such information is incomplete or unavailable;

(2) A statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant effects on the human environment;

(3) A summary of existing credible scientific evidence that is relevant to evaluating the reasonably foreseeable significant effects on the human environment; and

(4) The agency's evaluation of such effects based upon theoretical approaches or research methods generally accepted in the scientific community.

(d) For the purposes of this section, ''reasonably foreseeable'' includes

effects that have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the effects is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

§ 1502.22 Cost-benefit analysis.

If an agency is considering a cost-benefit analysis for the proposed action relevant to the choice among alternatives with different environmental effects, the agency shall incorporate the cost-benefit analysis by reference or append it to the statement as an aid in evaluating the environmental consequences. In such cases, to assess the adequacy of compliance with section 102(2)(B) of NEPA (ensuring appropriate consideration of unquantified environmental amenities and values in decision making, along with economical and technical considerations), the statement shall discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, agencies need not display the weighing of the merits and drawbacks of the various alternatives in a monetary cost-benefit analysis and should not do so when there are important qualitative considerations. However, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, that are likely to be relevant and important to a decision.

§ 1502.23 [Reserved]

§ 1502.24 Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrent and integrated with environmental impact analyses and related surveys and studies required by all other Federal environmental review laws and Executive orders applicable to the proposed action, including the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (54 U.S.C. 300101 *et seq.*), and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other authorizations that must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other authorization is necessary, the draft environmental impact statement shall so indicate.

PART 1503—COMMENTING ON ENVIRONMENTAL IMPACT STATEMENTS

Sec.

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123.

§ 1503.1 Inviting comments and requesting information and analyses.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or is authorized to develop and enforce environmental standards; and

(2) Request the comments of:

(i) Appropriate State, Tribal, and local agencies that are authorized to develop and enforce environmental standards;

(ii) State, Tribal, or local governments that may be affected by the proposed action;

(iii) Any agency that has requested it receive statements on actions of the kind proposed;

(iv) The applicant, if any; and

(v) The public, affirmatively soliciting comments in a manner designed to inform those persons or organizations who may be interested in or affected by the proposed action.

(b) An agency may request comments on a final environmental impact statement before the final decision and set a deadline for providing such comments. Other agencies or persons may make comments consistent with the time periods under § 1506.10 of this subchapter.

(c) An agency shall provide for electronic submission of public comments, with reasonable measures to ensure the comment process is accessible to affected persons.

§ 1503.2 Duty to comment.

Cooperating agencies and agencies that are authorized to develop and enforce environmental standards shall comment on environmental impact statements within their jurisdiction, expertise, or authority within the time period specified for comment in § 1506.10 of this subchapter. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that the environmental impact statement adequately reflects its views, it should reply that it has no comment.

§ 1503.3 Specificity of comments and information.

(a) To promote informed decision making, comments on an environmental impact statement or on a proposed action shall be as specific as possible, and may address either the adequacy of the statement or the merits of the alternatives discussed or both. Comments should explain why the issues raised are important to the consideration of potential environmental effects and alternatives to the proposed action. Where possible, comments should reference the corresponding section or page number of the draft environmental impact statement, propose specific changes to those parts of the statement, and describe any data, sources, or methodologies that support the proposed changes.

(b) When a participating agency criticizes a lead agency's predictive methodology, the participating agency should describe the alternative methodology that it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental review or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or authorizations.

(d) A cooperating agency with jurisdiction by law shall specify mitigation measures it considers necessary to allow the agency to grant or approve applicable authorizations or concurrences and cite to its applicable statutory authority.

§ 1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall consider substantive comments timely submitted during the public comment period. The agency shall respond to individual comments or groups of comments. In the final environmental impact statement, the agency may respond by:

(1) Modifying alternatives including the proposed action;

(2) Developing and evaluating alternatives not previously given serious consideration by the agency;

(3) Supplementing, improving, or modifying its analyses;

(4) Making factual corrections; or

(5) Explaining why the comments do not warrant further agency response, recognizing that agencies are not required to respond to each comment.

(b) An agency shall append or otherwise publish all substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous).

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, an agency may write any changes on errata sheets and attach the responses to the statement instead of rewriting the draft statement. In such cases, the agency shall publish the final statement (§ 1502.20 of this subchapter), which includes the errata sheet, a copy of the draft statement, the comments, and the responses to those comments. The agency shall file the final statement with the Environmental Protection Agency (§ 1506.10 of this subchapter).

PART 1504—DISPUTE RESOLUTION AND PRE-DECISIONAL REFERRALS

Sec.

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123.

§ 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements, and encourages Federal agencies to engage with each other as early as practicable to resolve interagency disagreements concerning proposed major Federal actions before referring disputes to the Council. This part also establishes procedures for Federal agencies to submit a request to the Council to provide informal dispute resolution on NEPA issues.

(b) Section 309 of the Clean Air Act (42 U.S.C. 7609) directs the Administrator of the Environmental Protection Agency to review and comment publicly on the environmental impacts of Federal activities, including actions for which agencies prepare environmental impact statements. If, after this review, the Administrator determines that the matter is ''unsatisfactory from the standpoint of public health or welfare or environmental quality,'' section 309 directs that the matter be referred to the Council.

(c) Under section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)), other Federal agencies may prepare reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These agencies must make these reviews available to the President, the Council, and the public.

§ 1504.2 Early dispute resolution.

(a) Federal agencies should engage in interagency coordination and collaboration in their planning and decision-making processes and should identify and resolve disputes concerning proposed major Federal actions early in the NEPA process. To the extent practicable, agencies should elevate issues to appropriate agency officials or the Council in a timely manner that will accommodate schedules consistent with § 1501.10 of this subchapter.

(b) A Federal agency may request that the Council engage in informal dispute resolution to provide recommendations on how to resolve an interagency dispute concerning an environmental review. In making the request, the agency shall provide the Council with a summary of the proposed action, information on the disputed issues, and agency points of contact.

(c) In response to a request for informal dispute resolution, the Council may request additional information, provide non-binding recommendations, convene meetings of those agency decision makers necessary to resolve disputes, or determine that informal dispute resolution is unhelpful or inappropriate.

§ 1504.3 Criteria and procedure for referrals and response.

(a) Federal agencies should make environmental referrals to the Council only after concerted, timely (as early as practicable in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental effects, considering:

(1) Possible violation of national environmental standards or policies;

(2) Severity;

(3) Geographical scope;

(4) Duration;

(5) Importance as precedents;

(6) Availability of environmentally preferable alternatives;

(7) Economic and technical considerations, including the economic costs of delaying or impeding the decision making of the agencies involved in the action; and

(8) Other appropriate considerations.

(b) A Federal agency making the referral to the Council shall:

(1) Notify the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached;

(2) Include such a notification whenever practicable in the referring agency's comments on the environmental assessment or draft environmental impact statement;

(3) Identify any essential information that is lacking and request that the lead agency make it available at the earliest possible time; and

(4) Send copies of the referring agency's views to the Council.

(c) The referring agency shall deliver its referral to the Council no later than 25 days after the lead agency has made the final environmental impact statement available to the Environmental Protection Agency, participating agencies, and the public, and in the case of an environmental assessment, no later than 25 days after the lead agency makes it available. Except when the lead agency grants an extension of this period, the Council will not accept a referral after that date.

(d) The referral shall consist of:

(1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it; and

(2) A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

(i) Identify any disputed material facts and incorporate (by reference if appropriate) agreed upon facts;

(ii) Identify any existing environmental requirements or policies that would be violated by the matter;

(iii) Present the reasons for the referral;

(iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason;

(v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time; and

(vi) Give the referring agency's recommendations as to what mitigation

alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(e) No later than 25 days after the referral to the Council, the lead agency may deliver a response to the Council and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

(1) Address fully the issues raised in the referral;

(2) Be supported by evidence and explanations, as appropriate; and

(3) Give the lead agency's response to the referring agency's recommendations.

(f) Applicants or other interested persons may provide views in writing to the Council no later than the response.

(g) No later than 25 days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

(1) Conclude that the process of referral and response has successfully resolved the problem.

(2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

(3) Obtain additional views and information, including through public meetings or hearings.

(4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

(5) Determine that the referring and lead agencies should further negotiate the issue, and the issue is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.

(6) Publish its findings and recommendations (including, where appropriate, a finding that the submitted evidence does not support the position of an agency).

(7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

(h) The Council shall take no longer than 60 days to complete the actions specified in paragraph (g)(2), (3), or (5) of this section.

(i) The referral process is not intended to create any private rights of action or to be judicially reviewable because any voluntary resolutions by the agency parties do not represent final agency action and instead are only provisional and dependent on later consistent action by the action agencies.

PART 1505—NEPA AND AGENCY DECISION MAKING

Sec.

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123.

§ 1505.1 [Reserved]

§ 1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (§ 1506.10 of this subchapter) or, if appropriate, its recommendation to Congress, each agency shall prepare and timely publish a concise public record of decision or joint record of decision. The record, which each agency may integrate into any other record it prepares, shall:

(a) State the decision.

(b) Identify alternatives considered by the agency in reaching its decision. The agency also shall specify the environmentally preferable alternative or alternatives (§ 1502.14(f) of this subchapter). The agency may discuss preferences among alternatives based on relevant factors, including environmental, economic, and technical considerations and agency statutory missions. The agency shall identify and discuss all such factors, including any essential considerations of national policy, that the agency balanced in making its decision and state how those considerations entered into its decision.

(c) State whether the agency has adopted all practicable means to mitigate environmental harm from the alternative selected, and if not, why the agency did not. Mitigation shall be enforceable when the record of decision incorporates mitigation and the analysis of the reasonably foreseeable effects of the proposed action is based on implementation of that mitigation. The agency shall identify the authority for enforceable mitigation, such as through permit conditions, agreements, or other measures, and prepare a monitoring and compliance plan consistent with § 1505.3(c).

§ 1505.3 Implementing the decision.

(a) In addition to the requirements of paragraph (c) of this section, agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (§ 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The agency shall:

(1) Include appropriate conditions in grants, permits, or other approvals; and

(2) Condition funding of actions on mitigation.

(b) The lead or cooperating agency should, where relevant and appropriate, incorporate into its decision mitigation measures that address or ameliorate significant human health and environmental effects of proposed Federal actions that disproportionately and adversely affect communities with environmental justice concerns.

(c) The lead or cooperating agency shall prepare and publish a monitoring and compliance plan for mitigation when:

(1) The analysis of the reasonably foreseeable effects of a proposed action in an environmental assessment or environmental impact statement is based on implementation of mitigation; and

(2) The agency incorporates the mitigation into a record of decision, finding of no significant impact, or separate decision document.

(d) The agency should tailor the contents of a monitoring and compliance plan required by paragraph (c) of this section to the complexity of the mitigation committed to and include:

(1) A basic description of the mitigation measure or measures;

(2) The parties responsible for monitoring and implementing the mitigation;

(3) If appropriate, how monitoring information will be made publicly available;

(4) The anticipated timeframe for implementing and completing mitigation;

(5) The standards for determining compliance with the mitigation and the consequences of non-compliance; and

(6) How the mitigation will be funded.

(e) If an action is incomplete or ongoing, an agency does not need to supplement its environmental impact statement (§ 1502.9(d) of this subchapter) or environmental assessment (§ 1501.5 of this subchapter) or revise its record of decision or finding of no significant impact or separate decision document based solely on new information developed through a monitoring and compliance plan required by paragraph (c) of this section. The ongoing implementation of a monitoring and compliance plan shall not be considered an incomplete or ongoing Federal action.

PART 1506—OTHER REQUIREMENTS OF NEPA

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123.

§ 1506.1 Limitations on actions during NEPA process.

(a) Except as provided in paragraphs (b) and (c) of this section, until an agency issues a finding of no significant impact, as provided in § 1501.6 of this subchapter, or record of decision, as provided in § 1505.2 of this subchapter, no action concerning the proposal may be taken that would:

(1) Have an adverse environmental effect; or

(2) Limit the choice of reasonable alternatives.

(b) If an agency is considering an application from an applicant and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to ensure that the objectives and procedures of NEPA are achieved. This section does not preclude development by applicants of plans or designs or performance of other activities necessary to support an application for Federal, State, Tribal, or local permits or assistance. An agency considering a proposed action for Federal funding may authorize such activities, including, but not limited to, acquisition of interests in land (*e.g.,* fee simple, rights-of-way, and conservation easements), purchase of long lead-time equipment, and purchase options made by applicants, if the agency determines that such activities would not limit the choice of reasonable alternatives and notifies the applicant that the agency retains discretion to select any reasonable alternative or the no action alternative regardless of any activity taken by the applicant prior to the conclusion of the NEPA process.

(c) While work on a required environmental review for a program is in progress and an action is not covered by an existing environmental document, agencies shall not undertake in the interim any major Federal action covered by the program that may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental review; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

§ 1506.2 Elimination of duplication with State, Tribal, and local procedures.

(a) Federal agencies are authorized to cooperate with State, Tribal, and local agencies that are responsible for preparing environmental documents, including those prepared pursuant to section 102(2)(G) of NEPA.

(b) To the fullest extent practicable unless specifically prohibited by law, agencies shall cooperate with State, Tribal, and local agencies to reduce duplication between NEPA and State, Tribal, and local requirements, including through use of studies, analyses, and decisions developed by State, Tribal, or local agencies. Except for cases covered by paragraph (a) of this section, such cooperation shall include, to the fullest extent practicable:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) To the fullest extent practicable unless specifically prohibited by law, agencies shall cooperate with State, Tribal, and local agencies to reduce duplication between NEPA and comparable State, Tribal, and local requirements. Such cooperation shall include, to the fullest extent practicable, joint environmental impact statements. In such cases, one or more Federal agencies and one or more State, Tribal, or local agencies shall be joint lead agencies. Where State or Tribal laws or local ordinances have environmental impact statement or similar requirements in addition to but not in conflict with those in NEPA, Federal agencies may cooperate in fulfilling these requirements, as well as those of Federal laws, so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State, Tribal, or local planning processes, environmental impact statements shall discuss any inconsistency of a proposed action with any approved State, Tribal, or local plan or law (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law. While the statement should discuss any inconsistencies, NEPA does not require reconciliation.

§ 1506.3 Adoption.

(a) *Generally.* An agency may adopt a draft or final environmental impact statement, environmental assessment, or portion thereof, or categorical exclusion determination, consistent with this section.

(b) *Environmental impact statements.* An agency may adopt another agency's draft or final environmental impact statement, or portion thereof, provided that the adopting agency conducts an independent review of the statement and concludes that it meets the standards for an adequate statement, pursuant to the regulations in this subchapter and the adopting agency's NEPA procedures.

(1) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the adopting agency shall republish and file it as a final statement consistent with § 1506.9. If the actions are not substantially the same or the adopting agency determines that the statement may require supplementation consistent with § 1502.9 of this subchapter, the adopting agency shall treat the statement as a draft, supplement or reevaluate it as necessary, and republish and file it, consistent with § 1506.9.

(2) Notwithstanding paragraph (b)(1) of this section, if a cooperating agency does not issue a record of decision jointly or concurrently consistent with § 1505.2 of this subchapter, a cooperating agency may issue a record of decision adopting the environmental impact statement of a lead agency without republication.

(c) *Environmental assessments.* An agency may adopt another agency's environmental assessment, or portion thereof, if the actions covered by the original environmental assessment and the proposed action are substantially the same, and the assessment meets the standards for an adequate environmental assessment under the regulations in this subchapter and the adopting agency's NEPA procedures. If the actions are not substantially the

same or the adopting agency determines that the environmental assessment may require supplementation consistent with § 1501.5(h) of this subchapter, the adopting agency may adopt and supplement or reevaluate the environmental assessment as necessary, issue its finding of no significant impact, and provide notice consistent with § 1501.6 of this subchapter.

(d) *Categorical exclusion determinations.* An agency may adopt another agency's determination that a categorical exclusion applies to a particular proposed action if the action covered by that determination and the adopting agency's proposed action are substantially the same. In such circumstances, the adopting agency shall:

(1) Document its adoption, including the determination that its proposed action is substantially the same as the action covered by the original categorical exclusion determination and that there are no extraordinary circumstances present that require the preparation of an environmental assessment or environmental impact statement; and

(2) Publish its adoption determination on an agency website or otherwise make it publicly available.

(e) *Identification of certain circumstances.* The adopting agency shall specify if one of the following circumstances is present:

(1) The agency is adopting an environmental assessment or environmental impact statement that is not final within the agency that prepared it.

(2) The action assessed in the environmental assessment or environmental impact statement is the subject of a referral under part 1504 of this subchapter.

(3) The environmental assessment or environmental impact statement's adequacy is the subject of a judicial action that is not final.

§ 1506.4 Combining documents.

Agencies should combine, to the fullest extent practicable, any environmental document with any other agency document to reduce duplication and paperwork.

§ 1506.5 Agency responsibility for environmental documents.

(a) *Agency responsibility.* The agency is responsible for the accuracy, scope (§ 1501.3(b) of this subchapter), and content of environmental documents and shall ensure they are prepared with professional and scientific integrity, using reliable data and resources, regardless of whether they are prepared by the agency or a contractor under the supervision and direction of the agency or by the applicant under procedures the agency adopts pursuant to section 107(f) of NEPA and § 1507.3(c)(12) of this subchapter. The agency shall exercise its independent judgment and briefly document its determination that an environmental document meets the standards under NEPA, the regulations in this subchapter, and the agency's NEPA procedures.

(b) *Applicant-provided information.* An agency may require an applicant to submit environmental information for possible use by the agency in preparing an environmental document.

(1) The agency should assist the applicant by outlining the types of information required for the preparation of environmental documents.

(2) The agency shall independently evaluate the information submitted by the applicant and, to the extent it is integrated into the environmental document, shall be responsible for its accuracy, scope, and contents.

(3) An agency may allow an applicant to prepare environmental assessments and environmental impact statements pursuant to its agency procedures, consistent with section 107(f) of NEPA and § 1507.3(c)(12) of this subchapter.

(c) *Agency-directed contractor.* An agency may authorize a contractor to prepare an environmental document under the supervision and direction of the agency.

(1) The agency shall provide guidance to the contractor and participate in and supervise the environmental document's preparation.

(2) The agency shall independently evaluate the environmental document prepared by the agency-directed contractor, shall be responsible for its accuracy, scope, and contents, and document the agency's evaluation in the environmental document.

(3) The agency shall include in the environmental document the names and qualifications of the persons preparing environmental documents, and conducting the independent evaluation of any information submitted or environmental documents prepared by a contractor, such as in the list of preparers for environmental impact statements (§ 1502.18 of this subchapter). It is the intent of this paragraph (c)(3) that acceptable work not be redone, but that it be verified by the agency.

(4) The lead agency or, where appropriate, a cooperating agency shall prepare a disclosure statement for the contractor's execution specifying that the contractor has no financial or other interest in the outcome of the action. Such statement need not include privileged or confidential trade secrets or other confidential business information.

(d) *Information generally.* Nothing in this section is intended to prohibit an agency from requesting any person, including the applicant, to submit information to it or to prohibit any person from submitting information to an agency for use in preparing environmental documents.

§ 1506.6 Methodology and scientific accuracy.

(a) Agencies shall ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents.

(b) In preparing environmental documents, agencies shall use high-quality information, including reliable data and resources, models, and Indigenous Knowledge. Agencies may rely on existing information as well as information obtained to inform the analysis. Agencies may use any reliable data sources, such as remotely gathered information or statistical models. Agencies shall explain any relevant assumptions or limitations of the information or the particular model or methodology selected for use.

(c) Agencies shall identify any methodologies used and shall make explicit reference to the scientific and other sources relied upon for conclusions in the environmental document. Agencies may place discussion of methodology in an appendix.

(d) Where appropriate, agencies shall use projections when evaluating the reasonably foreseeable effects, including climate change-related effects. Such projections may employ mathematical or other models that project a range of possible future outcomes, so long as agencies disclose the relevant assumptions or limitations.

§ 1506.7 Further guidance.

(a) The Council may provide further guidance concerning NEPA and its procedures.

(b) To the extent that Council guidance issued prior to July 1, 2024 is in conflict with this subchapter, the provisions of this subchapter apply.

§ 1506.8 Proposals for legislation.

(a) When developing legislation, agencies shall integrate the NEPA process for proposals for legislation significantly affecting the quality of the human environment with the legislative process of the Congress. Technical drafting assistance does not by itself

constitute a legislative proposal. Only the agency that has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

(b) A legislative environmental impact statement is the detailed statement required by law to be included in an agency's recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later to allow time for completion of an accurate statement that can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(c) Preparation of a legislative environmental impact statement shall conform to the requirements of the regulations in this subchapter, except as follows:

(1) There need not be a scoping process.

(2) Agencies shall prepare the legislative statement in the same manner as a draft environmental impact statement and need not prepare a final statement unless any of the following conditions exist. In such cases, the agency shall prepare and publish the statements consistent with §§ 1503.1 of this subchapter and 1506.10:

(i) A Congressional committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*)).

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects that the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

(d) Comments on the legislative statement shall be given to the lead agency, which shall forward them along with its own responses to the Congressional committees with jurisdiction.

§ 1506.9 Filing requirements.

(a) Agencies shall file environmental impact statements together with comments and responses with the Environmental Protection Agency, Office of Federal Activities, consistent with the Environmental Protection Agency's procedures.

(b) Agencies shall file statements with the Environmental Protection Agency no earlier than they are also transmitted to participating agencies and made available to the public. The Environmental Protection Agency may issue guidelines to agencies to implement its responsibilities under this section and § 1506.10.

(c) Agencies shall file an adoption of an environmental impact statement with the Environmental Protection Agency (see § 1506.3(b)(1)).

§ 1506.10 Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the **Federal Register** each week of the environmental impact statements filed since its prior notice. The minimum time periods set forth in this section are calculated from the date of publication of this notice.

(b) Unless otherwise provided by law, including statutory provisions for combining a final environmental impact statement and record of decision, Federal agencies shall not make or issue a record of decision under § 1505.2 of this subchapter for the proposed action until the later of the following dates:

(1) 90 days after publication of the notice described in paragraph (a) of this section for a draft environmental impact statement.

(2) 30 days after publication of the notice described in paragraph (a) of this section for a final environmental impact statement.

(c) An agency may make an exception to the rule on timing set forth in paragraph (b) of this section for a proposed action in the following circumstances:

(1) Some agencies have formally established administrative review processes (*e.g.,* appeals, objections, protests), which may be initiated prior to or after filing and publication of the final environmental impact statement with the Environmental Protection Agency, that allow other agencies or the public to raise issues about a decision and make their views known. In such cases where a real opportunity exists to alter the decision, the agency may make and record the decision at the same time it publishes the environmental impact statement. This means that the period for administrative review of the decision and the 30-day period set forth in paragraph (b)(2) of this section may run concurrently. In such cases, the environmental impact statement shall explain the timing and the public's right of administrative review and provide notification consistent with § 1506.9; or

(2) An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety may waive the time period in paragraph (b)(2) of this section, publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement, and provide notification consistent with § 1506.9, as described in paragraph (a) of this section.

(d) If an agency files the final environmental impact statement within 90 days of the filing of the draft environmental impact statement with the Environmental Protection Agency, the minimum 30-day and 90-day periods may run concurrently. However, subject to paragraph (e) of this section, agencies shall allow at least 45 days for comments on draft statements.

(e) The lead agency may extend the minimum periods in paragraph (b) of this section and provide notification consistent with § 1506.9. Upon a showing by the lead agency of compelling reasons of national policy, the Environmental Protection Agency may reduce the minimum periods and, upon a showing by any other Federal agency of compelling reasons of national policy, also may extend the minimum periods, but only after consultation with the lead agency. The lead agency may modify the minimum periods when necessary to comply with other specific statutory requirements (§ 1507.3(d)(4) of this subchapter). Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, the Environmental Protection Agency may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period it shall notify the Council.

§ 1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant effects without observing the provisions of the regulations in this subchapter, the Federal agency taking the action shall consult with the Council about alternative arrangements for compliance with section 102(2)(C) of NEPA. Agencies and the Council shall limit such arrangements to actions necessary to control the immediate impacts of the emergency; other actions

remain subject to NEPA review consistent with this subchapter. Alternative arrangements do not waive the requirement to comply with the statute, but establish an alternative means for NEPA compliance.

§ 1506.12 Effective date.

The regulations in this subchapter apply to any NEPA process begun after July 1, 2024. An agency may apply the regulations in this subchapter to ongoing activities and environmental documents begun before July 1, 2024.

PART 1507—AGENCY COMPLIANCE

Sec.

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123.

§ 1507.1 Compliance.

All agencies of the Federal Government shall comply with the regulations in this subchapter. It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by § 1507.3 to the requirements of other applicable laws.

§ 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements of NEPA and the regulations in this subchapter. Such compliance may include use of the resources of other agencies, applicants, and other participants in the NEPA process, but the agency using the resources shall itself have sufficient capability to evaluate what others do for it and account for the contributions of others. Agencies shall:

(a) Designate a senior agency official to be responsible for overall review of agency NEPA compliance, including resolving implementation issues, and a Chief Public Engagement Officer to be responsible for facilitating community engagement in environmental reviews across the agency and, where appropriate, the provision of technical assistance to communities. When the agency is a department, it may be efficient for major subunits (with the consent of the department) to identify senior agency officials or Chief Public Engagement Officers within those subunits, whom the department-level official or Officer oversees.

(b) Fulfill the requirements of section 102(2)(A) of NEPA to utilize a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making that may have an impact on the human environment.

(c) Identify methods and procedures required by section 102(2)(B) of NEPA to ensure that presently unquantified environmental amenities and values may be given appropriate consideration.

(d) Prepare adequate environmental impact statements pursuant to section 102(2)(C) of NEPA and cooperate on the development of environmental impact statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(e) Ensure environmental documents are prepared with professional integrity, including scientific integrity, consistent with section 102(2)(D) of NEPA.

(f) Make use of reliable data and resources in carrying out their responsibilities under NEPA, consistent with section 102(2)(E) of NEPA.

(g) Study, develop, and describe technically and economically feasible alternatives, consistent with section 102(2)(F) of NEPA.

(h) Study, develop, and describe alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources, consistent with section 102(2)(H) of NEPA.

(i) Comply with the requirement of section 102(2)(K) of NEPA that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(j) Fulfill the requirements of sections 102(2)(I), 102(2)(J), and 102(2)(L), of NEPA, and Executive Order 11514, Protection and Enhancement of Environmental Quality, section 2, as amended by Executive Order 11991, Relating to Protection and Enhancement of Environmental Quality.

§ 1507.3 Agency NEPA procedures.

(a) The Council has determined that the revisions to this subchapter as of July 1, 2024 do not affect the validity of categorical exclusions contained in agency NEPA procedures as of this date.

(b) No more than 12 months after July 1, 2024, or 9 months after the establishment of an agency, whichever comes later, each agency shall develop or revise, as necessary, proposed procedures to implement the regulations in this subchapter, facilitate efficient decision making, and ensure that the agency makes decisions in accordance with the policies and requirements of the Act. When the agency is a department, it may be efficient for major subunits (with the consent of the department) to adopt their own procedures.

(1) Each agency shall consult with the Council while developing or revising its proposed procedures and before publishing them in the **Federal Register** for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants.

(2) Agencies shall provide an opportunity for public review and review by the Council for conformity with the Act and the regulations in this subchapter before issuing their final procedures. The Council shall complete its review within 30 days of the receipt of the proposed final procedures. Once in effect, agencies shall publish their NEPA procedures and ensure that they are readily available to the public. Agencies shall continue to review their policies and procedures, in consultation with the Council, and revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(3) The issuance or update of agency procedures is not subject to NEPA review under this subchapter.

(c) Agency procedures shall:

(1) Designate the major decision points for the agency's programs and actions subject to NEPA, ensuring that the NEPA process begins at the earliest reasonable time, consistent with § 1501.2 of this subchapter, and aligns with the corresponding decision points;

(2) Require that relevant environmental documents, comments, and responses be part of the record in rulemaking and adjudicatory proceedings;

(3) Integrate the environmental review into the decision-making process by requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that decision makers use them in making decisions;

(4) Require that the alternatives considered by the decision maker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decision maker consider the alternatives described in the environmental documents. If another decision document accompanies the relevant environmental documents to the decision maker, agencies are encouraged

to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives;

(5) Require the combination of environmental documents with other agency documents to facilitate sound and efficient decision making and avoid duplication, where consistent with applicable statutory requirements;

(6) Include the procedures required by § 1501.2(b)(4) of this subchapter (assistance to applicants);

(7) Include specific criteria for and identification of those typical classes of action that normally:

(i) Require environmental impact statements; and

(ii) Require environmental assessments but not necessarily environmental impact statements;

(8) Establish categorical exclusions and identify extraordinary circumstances. When establishing new or revising existing categorical exclusions, agencies shall:

(i) Identify when documentation of a determination that a categorical exclusion applies to a proposed action is required;

(ii) Substantiate the proposed new or revised categorical exclusion with sufficient information to conclude that the category of actions does not have a significant effect, individually or in the aggregate, on the human environment and provide this substantiation in a written record that is made publicly available as part of the notice and comment process (§ 1507.3(b)(1) and (2)); and

(iii) Describe how the agency will consider extraordinary circumstances consistent with § 1501.4(b) of this subchapter;

(9) Include a process for reviewing the agency's categorical exclusions at least every 10 years, which the agency may conduct on a rolling basis, starting with its oldest categorical exclusions;

(10) Include processes for reevaluating and supplementing environmental assessments and environmental impact statements, as appropriate;

(11) Explain where interested persons can get information or status reports on environmental impact statements, environmental assessments, and other elements of the NEPA process; and

(12) Where an agency has applicants that seek its action, include procedures to allow an applicant (including an applicant-directed contractor) to prepare environmental assessments and environmental impact statements under the agency's supervision. Such procedures shall not apply to applicants when they serve as joint lead agencies. Such procedures shall be consistent with § 1506.5(a) and (c) of this subchapter, and at a minimum shall include the following:

(i) Requirements that the agency review and approve the purpose and need (§§ 1501.5(c)(2)(i) or 1502.13 of this subchapter) and reasonable alternatives (§§ 1501.5(c)(2)(ii) or 1502.14 of this subchapter);

(ii) A process for the agency to independently evaluate the applicant-prepared environmental assessment or environmental impact statement; take responsibility for its accuracy, scope, and contents; and document the agency's evaluation in the document; and

(iii) A prohibition on the preparation of a finding of no significant impact or record of decision by applicants.

(d) Agency procedures also may:

(1) Identify activities or decisions that are not subject to NEPA;

(2) Include processes for consideration of emergency actions that would not result in significant effects;

(3) Include specific criteria for providing limited exceptions to the provisions of the regulations in this subchapter for classified proposals. These are proposed actions that are specifically authorized under criteria established by an Executive order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order or statute. Agencies may safeguard and restrict from public dissemination environmental assessments and environmental impact statements that address classified proposals in accordance with agencies' own regulations applicable to classified information. Agencies should organize these documents so that classified portions are included as annexes, so that the agencies can make the unclassified portions available to the public; and

(4) Provide for periods of time other than those presented in § 1506.10 of this subchapter when necessary to comply with other specific statutory requirements, including requirements of lead or cooperating agencies.

§ 1507.4 Agency NEPA program information.

(a) To allow agencies and the public to efficiently and effectively access information about NEPA reviews, agencies shall provide for agency websites or other information technology tools to make available documents, relevant notices, and other relevant information for use by agencies, applicants, and interested persons. The website or other such means of publication shall include the agency's NEPA procedures, including those of subunits, and a list of environmental assessments and environmental impact statements that are in development and complete. As appropriate, agencies also should include:

(1) Agency planning and other documents that guide agency management and provide for public involvement in agency planning processes;

(2) Environmental documents;

(3) Agency policy documents, orders, terminology, and explanatory materials regarding agency decision-making processes;

(4) Agency planning program information, plans, and planning tools; and

(5) A database searchable by geographic information, document status, document type, and project type.

(b) Agencies shall provide for efficient and effective interagency coordination of their environmental program websites and other information technology tools, such as use of shared databases or application programming interfaces, in their implementation of NEPA and related authorities.

PART 1508—DEFINITIONS

Sec.

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375; 42 U.S.C. 7609; and E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1977 Comp., p. 123.

§ 1508.1 Definitions.

The following definitions apply to the regulations in this subchapter. Federal agencies shall use these terms uniformly throughout the Federal Government.

(a) *Act* or *NEPA* means the National Environmental Policy Act, as amended (42 U.S.C. 4321, *et seq.*).

(b) *Affecting* means will or may have an effect on.

(c) *Applicant* means a non-Federal entity, including a project sponsor, that seeks an action by a Federal agency such as granting a permit, license, or financial assistance.

(d) *Authorization* means any license, permit, approval, finding, determination, or other administrative decision issued by an agency that is required or authorized under Federal law in order to implement a proposed action.

(e) *Categorical exclusion* means a category of actions that an agency has determined, in its agency NEPA

procedures (§ 1507.3 of this subchapter) or pursuant to § 1501.4(c) of this subchapter, normally does not have a significant effect on the human environment.

(f) *Communities with environmental justice concerns* means those communities that may not experience environmental justice as defined in paragraph (m) of this section. To assist in identifying communities with environmental justice concerns, agencies may use available screening tools, such as the Climate and Economic Justice Screening Tool and the EJScreen Tool, as appropriate to their activities and programs. Agencies also may develop procedures for the identification of such communities in their agency NEPA procedures.

(g) *Cooperating agency* means any Federal, State, Tribal, or local agency with jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal that has been designated by the lead agency.

(h) *Council* means the Council on Environmental Quality established by title II of the Act.

(i) *Effects* or *impacts* means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and include the following:

(1) Direct effects, which are caused by the action and occur at the same time and place.

(2) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

(3) Cumulative effects, which are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from actions with individually minor but collectively significant effects taking place over a period of time.

(4) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, such as disproportionate and adverse effects on communities with environmental justice concerns, whether direct, indirect, or cumulative. Effects also include effects on Tribal resources and climate change-related effects, including the contribution of a proposed action and its alternatives to climate change, and the reasonably foreseeable effects of climate change on the proposed action and its alternatives. Effects may also include those resulting from actions which may have both beneficial and adverse effects, even if on balance the agency believes that the effects will be beneficial.

(j) *Environmental assessment* means a concise public document, for which a Federal agency is responsible, for an action that is not likely to have a significant effect or for which the significance of the effects is unknown (§ 1501.5 of this subchapter), that is used to support an agency's determination of whether to prepare an environmental impact statement (part 1502 of this subchapter) or a finding of no significant impact (§ 1501.6 of this subchapter).

(k) *Environmental document* means an environmental assessment, environmental impact statement, documented categorical exclusion determination, finding of no significant impact, record of decision, or notice of intent.

(*l*) *Environmental impact statement* means a detailed written statement that is required by section 102(2)(C) of NEPA.

(m) *Environmental justice* means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision making and other Federal activities that affect human health and the environment so that people:

(1) Are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and

(2) Have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.

(n) *Environmentally preferable alternative* means the alternative or alternatives that will best promote the national environmental policy as expressed in section 101 of NEPA.

(o) *Extraordinary circumstances* means factors or circumstances that indicate a normally categorically excluded action may have a significant effect. Examples of extraordinary circumstances include potential substantial effects on sensitive environmental resources; potential substantial disproportionate and adverse effects on communities with environmental justice concerns; potential substantial effects associated with climate change; and potential substantial effects on historic properties or cultural resources.

(p) *Federal agency* means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. For the purposes of the regulations in this subchapter, Federal agency also includes States, units of general local government, and Tribal governments assuming NEPA responsibilities from a Federal agency pursuant to statute.

(q) *Finding of no significant impact* means a document by a Federal agency briefly presenting the agency's determination that and reasons why an action, not otherwise categorically excluded (§ 1501.4 of this subchapter), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared.

(r) *Human environment* or *environment* means comprehensively the natural and physical environment and the relationship of present and future generations with that environment. (*See also* the definition of ''effects'' in paragraph (i) of this section.)

(s) *Joint lead agency* means a Federal, State, Tribal, or local agency designated pursuant to § 1501.7(c) that shares the responsibilities of the lead agency for preparing the environmental impact statement or environmental assessment.

(t) *Jurisdiction by law* means agency authority to approve, veto, or finance all or part of the proposal.

(u) *Lead agency* means the Federal agency that proposes the agency action or is designated pursuant to § 1501.7(c) for preparing or having primary responsibility for preparing the environmental impact statement or environmental assessment.

(v) *Legislation* means a bill or legislative proposal to Congress developed by a Federal agency, but does not include requests for appropriations or legislation recommended by the President.

(w) *Major Federal action* or *action* means an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility.

(1) Examples of major Federal actions generally include:

(i) Granting authorizations, including permits, licenses, rights-of-way, or other authorizations.

(ii) Adoption of official policy, such as rules, regulations, and interpretations adopted under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.,* or other statutes; implementation of treaties and international conventions or agreements, including those implemented pursuant to statute or regulation; formal documents establishing an agency's policies that will result in or substantially alter agency programs.

(iii) Adoption of formal plans, such as official documents prepared or approved by Federal agencies, which prescribe alternative uses of Federal resources, upon which future agency actions will be based.

(iv) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and related agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(v) Approval of or carrying out specific agency projects, such as construction or management activities.

(vi) Providing more than a minimal amount of financial assistance, including through grants, cooperative agreements, loans, loan guarantees, or other forms of financial assistance, where the agency has the authority to deny in whole or in part the assistance due to environmental effects, has authority to impose conditions on the receipt of the financial assistance to address environmental effects, or otherwise has sufficient control and responsibility over the subsequent use of the financial assistance or the effects of the activity for which the agency is providing the financial assistance.

(2) Major Federal actions do not include the following:

(i) Non-Federal actions:

(A) With no or minimal Federal funding; or

(B) With no or minimal Federal involvement where the Federal agency cannot control the outcome of the project;

(ii) Funding assistance solely in the form of general revenue sharing funds that do not provide Federal agency compliance or enforcement responsibility over the subsequent use of such funds;

(iii) Loans, loan guarantees, or other forms of financial assistance where a Federal agency does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effects of the action;

(iv) Business loan guarantees provided by the Small Business Administration pursuant to section 7(a) or (b) and of the Small Business Act (15 U.S.C. 636(a) and (b)), or title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 through 697g);

(v) Judicial or administrative civil or criminal enforcement actions;

(vi) Extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside of the jurisdiction of the United States;

(vii) Activities or decisions that are non-discretionary and made in accordance with the agency's statutory authority; and

(viii) Activities or decisions for projects approved by a Tribal Nation that occur on or involve land held in trust or restricted status by the United States for the benefit of that Tribal Nation or by the Tribal Nation when such activities or decisions involve no or minimal Federal funding or other Federal involvement.

(x) *Matter* means for purposes of part 1504 of this subchapter:

(1) With respect to the Environmental Protection Agency, any proposed legislation, project, action, or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(2) With respect to all other agencies, any proposed major Federal action to which section 102(2)(C) of NEPA applies.

(y) *Mitigation* means measures that avoid, minimize, or compensate for adverse effects caused by a proposed action or alternatives as described in an environmental document or record of decision and that have a connection to those adverse effects. Mitigation includes, in general order of priority:

(1) Avoiding the adverse effect altogether by not taking a certain action or parts of an action.

(2) Minimizing the adverse effect by limiting the degree or magnitude of the action and its implementation.

(3) Rectifying the adverse effect by repairing, rehabilitating, or restoring the affected environment.

(4) Reducing or eliminating the adverse effect over time by preservation and maintenance operations during the life of the action.

(5) Compensating for the adverse effect by replacing or providing substitute resources or environments.

(z) *NEPA process* means all measures necessary for compliance with the requirements of section 2 and title I of NEPA.

(aa) *Notice of intent* means a public notice that an agency will prepare and consider an environmental impact statement or, as applicable, an environmental assessment.

(bb) *Page* means 500 words and does not include citations, explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information.

(cc) *Participating agency* means a Federal, State, Tribal, or local agency participating in an environmental review or authorization of an action.

(dd) *Participating Federal agency* means a Federal agency participating in an environmental review or authorization of an action.

(ee) *Programmatic environmental document* means an environmental impact statement or environmental assessment analyzing all or some of the environmental effects of a policy, program, plan, or group of related actions.

(ff) *Proposal* means a proposed action at a stage when an agency has a goal, is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and can meaningfully evaluate its effects. A proposal may exist in fact as well as by agency declaration that one exists.

(gg) *Publish* and *publication* mean methods found by the agency to efficiently and effectively make environmental documents and information available for review by interested persons, including electronic publication, and adopted by agency NEPA procedures pursuant to § 1507.3 of this subchapter.

(hh) *Reasonable alternatives* means a reasonable range of alternatives that are technically and economically feasible, and meet the purpose and need for the proposed action.

(ii) *Reasonably foreseeable* means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.

(jj) *Referring agency* means the Federal agency that has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

(kk) *Scope* consists of the range and breadth of actions, alternatives, and effects to be considered in an environmental impact statement or environmental assessment.

(*ll*) *Senior agency official* means an official of assistant secretary rank or higher (or equivalent) that is designated for overall agency NEPA compliance, including resolving implementation issues.

(mm) *Significant effects* means adverse effects that an agency has

identified as significant based on the criteria in § 1501.3(d) of this subchapter.

(nn) *Special expertise* means statutory responsibility, agency mission, or related program experience.

(oo) *Tiering* refers to the process described in § 1501.11 of this subchapter by which an environmental document may rely on an existing and broader or more general environmental document.

§ 1508.2 [Reserved]

[FR Doc. 2024–08792 Filed 4–30–24; 8:45 am]

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Part V

Department of Homeland Security

Transportation Security Administration

49 CFR Parts 1500, 1503, 1515, et al.
Flight Training Security Program; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1500, 1503, 1515, 1540, 1542, 1544, 1546, 1548, 1549, 1550, 1552, 1554, 1570, and 1572

[Docket No. TSA–2004–19147; Amendment No. 1552–1]

RIN 1652–AA35

Flight Training Security Program

AGENCY: Transportation Security Administration, DHS.

ACTION: Final rule.

SUMMARY: The Transportation Security Administration (TSA) is finalizing the 2004 interim final rule (IFR) that established the Flight Training Security Program (FTSP) (formerly known as the Alien Flight Student Program). The FTSP implements a statutory requirement under the Aviation and Transportation Security Act, as amended by the Vision 100–Century of Aviation Reauthorization Act, to prevent flight schools from providing flight training to any individuals who are not U.S. citizens or nationals, and who have not been vetted by the Federal Government to determine whether the flight training candidate is a security threat. The rule also requires security awareness training for certain flight training provider employees. In finalizing this rule, TSA addresses the comments on the IFR, recommendations from the Aviation Security Advisory Committee, and additional comments received during a reopened comment period. TSA also is eliminating years of programmatic guidance and clarifications by codifying current and relevant information into the regulatory text. Where possible, TSA is modifying the program to make it more effective and less burdensome. Finally, TSA is making other technical modifications to its regulations to consolidate in one location the agency's inspection authority.

DATES:

Effective Date: This rule is effective July 30, 2024.

Compliance Date: Flight training providers and individuals subject to the requirements of this rule must comply with these sections by July 30, 2024. Until this date, all regulated entities must continue to comply with the requirements in the IFR.

FOR FURTHER INFORMATION CONTACT:

Technical questions: D. Julean Thorpe, Enrollment Services and Vetting Programs, Vetting Programs Division, TSA; telephone: (571) 227–1932; email: *FTSP.help@tsa.dhs.gov.*

Legal questions: David M.G. Ross, Office of Chief Counsel, TSA; telephone: (571) 227–2465; email: *TSA-OCC-R&SS@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Document

You can find an electronic copy of this rulemaking using the internet by accessing the Government Publishing Office's web page at *https://www.govinfo.gov/app/collection/FR/* to view the daily published **Federal Register** edition or accessing the Office of the Federal Register's web page at *https://www.federalregister.gov.* Copies are also available by contacting the individual identified for ''General Questions'' in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Persons can obtain further information regarding SBREFA on the Small Business Administration's web page at *https://advocacy.sba.gov/resources/reference-library/sbrefa/.*

Abbreviations and Terms Used in This Document

AFSP—Alien Flight Student Program
ADIS—Arrival and Departure Information System
ASAC—Aviation Security Advisory Committee
ATSA—Aviation and Transportation Security Act
ATS—Automated Targeting System
CBP—U.S. Customs and Border Protection
CFI—Certified Flight Instructor
CFR—Code of Federal Regulations
CHRC—Criminal History Records Check
CTCEU—Counterterrorism and Criminal Exploitation Unit
DHS—Department of Homeland Security
DoD—Department of Defense
DOJ—Department of Justice
DOS—Department of State
E.O.—Executive Order
FAA—Federal Aviation Administration
FBI—Federal Bureau of Investigation
FR—Final Rule
FTSP—Flight Training Security Program
GAO—Government Accountability Office
HME—Hazardous Materials Endorsement
IACRA—Integrated Airman Certification and Rating Application
ICE—U.S. Immigration and Customs Enforcement
IDENT—Automated Biometrics Identification System
IFR—Interim Final Rule
NARA—National Archives and Records Administration
OMB—Office of Management and Budget
PIA—Privacy Impact Assessment
PRA—Paperwork Reduction Act
RFA—Regulatory Flexibility Act
RIA—Regulatory Impact Analysis
SAVE—Systematic Alien Verification for Entitlements
SENTRI—Secure Electronic Network for Travelers Rapid Inspection
SEVIS—Student and Exchange Visitor Information System
SEVP—Student and Exchange Visitor Program
SORN—System of Records Notice
STA—Security Threat Assessment
TSA—Transportation Security Administration
TWIC—Transportation Worker Identification Credential
U.S.—United States
U.S.C.—United States Code
USCIS—U.S. Citizenship and Immigration Services

Table of Contents

I. Overview

A. Purpose of This Rulemaking

This rulemaking finalizes an IFR issued in 2004.[1] The purpose of this rulemaking is to prevent non-U.S. citizens[2] who are potential threats to aviation or national security from receiving flight training. Since issuance of the 2004 IFR, TSA's vetting of flight training candidates has identified a number of individuals as potential security threats,[3] including some certificated[4] pilots.

This final rule addresses all public comments received on the IFR, both through the initial comment period in 2004 and a reopened comment period in 2018.[5] TSA is also addressing recommendations TSA received from regulated persons, other Federal organizations, and advisory committees. Finally, TSA is eliminating more than a decade of previously issued clarifications and interpretations, either by addressing them in the preamble or through changes to the regulatory text. All previously issued clarifications and interpretations are superseded by this rulemaking.

In addition, Executive Order (E.O.) 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), requires agencies to periodically review existing regulations to identify requirements that ''may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them, in accordance with what has been learned.''[6] Consistent with these requirements, this final rule provides an overall reduction in the burden of compliance through several modifications that will reduce the regulatory burden without negatively affecting security. For an

[1] *See* 69 FR 56324 (Sep. 20, 2004), *codified at* 49 CFR part 1552.

[2] The enabling statute for this rule applies to aliens as the term is defined in 8 U.S.C. 1101(a)(3). *See* 49 U.S.C. 44939. Section 1101(a)(3) defines an ''alien'' as ''any person who is not a citizen or national of the United States.'' Section 1101(a)(22) defines a ''national of the United States'' as ''(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.'' Similarly, 8 U.S.C. 1401 *et seq.* sets the criteria for ''nationals and citizens of the United States.'' TSA historically adopted the terminology from the status, using the term ''alien'' in program documents, and originally titling the program as the Alien Flight Student Program. In 2021, the President directed DHS to cease using the term ''alien,'' recommending the term ''non-citizen'' in its place. Some candidates in the FTSP program have taken offense at being referred to as ''non-citizens.'' With this rulemaking, TSA is modifying 49 CFR part 1552 to use the term ''non-U.S. citizen'' for any individual who is an ''alien'' as defined in 8 U.S.C. 1101(a)(3), is not a ''national'' of the United States as defined in 8 U.S.C. 1101(a)(22), or who does not meet the requirements to be a national or citizen of the United States under 8 U.S.C. 1401 *et seq.* Throughout this preamble and through revisions to the rule, the term ''non-U.S. citizen'' means a person who is not a U.S. citizen or U.S. national.

[3] TSA uses the term ''threat'' in all of its vetting programs, which is an essential element of the risk that an individual may pose to aviation, transportation security, or national security. The statute requiring the FTSP program uses the term ''risk,'' *see id.,* which is a broader term that incorporates ''threat'' as used by TSA. DHS generally sees risk as a function of threat, vulnerability and consequences.

[4] ''Certificated'' is a term used by the FAA for an individual who has been granted an FAA certificate.

[5] *See* 83 FR 23238 (May 18, 2018).

[6] *See* Sec. 6 of E.O. 13563.

overview of these modifications, see section I.D.

B. Statutory and Rulemaking History

1. Introduction

Several of the terrorists who hijacked planes used to commit the terrorist attacks on September 11, 2001, received flight training in the United States.[7] To address this security vulnerability, Congress passed the Aviation and Transportation Security Act (ATSA), which required those who are not U.S. citizens or nationals (hereafter, referred to collectively as ''non-U.S. citizens'') to undergo vetting in order to receive flight training in the United States.[8] Specifically, section 113 of ATSA included two prerequisites for providing flight training to non-U.S. citizens: (1) the flight training provider must first notify the Attorney General that the individual requested such training and must submit information about the individual to the Attorney General; and (2) the Attorney General must determine that the individual does not present a risk to aviation or national security.[9] ATSA also required the training provider to give the Attorney General information regarding the individual's identity in the form required by the Attorney General.[10] This provision gave the Attorney General the discretion to request a wide variety of information from these individuals in order to determine whether they presented a risk[11] to aviation or national security.

On February 13, 2003, the Department of Justice (DOJ) issued a final rule implementing the ATSA requirement.[12] The DOJ rule applied to individual flight training providers, training centers, certificated carriers, and flight schools (collectively referred to as ''providers''), including those located in countries other than the United States, if they provided training leading to a U.S. license, certification, or rating.[13]

The DOJ rule also required a provider to submit certain identifying information for each non-U.S. citizen (referred to as ''candidates'') and other individuals designated by the Administrator of TSA[14] before providing training to the candidate. Using the information provided, which included fingerprints and financial information, DOJ performed a risk assessment. Consistent with the requirements in section 113 of ATSA, if DOJ did not complete a candidate's risk assessment within the time period designated in the statute, the provider could initiate the candidate's training. If the training provider received subsequent notification that the candidate presented a risk to aviation or national security, the provider was required to immediately cease the candidate's training.

Beginning in December 2003, the following series of legislative actions substantially modified the requirements in ATSA.

- The Vision 100-Century of Aviation Reauthorization Act (the Vision 100 Act)[15] transferred the function of vetting candidates from the Attorney General to the Secretary of the Department of Homeland Security (DHS)[16] and required DHS to issue an IFR to implement additional requirements added to 49 U.S.C. 44939.[17] These amendments included authority for DHS to charge for the costs of conducting the required vetting.[18]
- Section 520 of the Department of Homeland Security Appropriations Act, 2004 required the collection of fees authorized by the Vision 100 Act.[19]
- Section 543 of the Department of Homeland Security Appropriations Act, 2009, further amended 6 U.S.C. 469 to ensure the scope of the program includes both initial and recurrent training.[20] This law required DHS to establish a process to properly identify individuals who are non-U.S. citizens who receive recurrent flight training, and to ensure that those individuals do not pose a risk to aviation or national security. These amendments also authorize DHS to impose reasonable fees to recoup the cost of vetting candidates seeking recurrent training.[21]

ATSA created TSA as a component of the Department of Transportation. Section 403(2) of the Homeland Security Act of 2002 (HSA)[22] transferred all functions related to transportation security, including those of the Secretary of Transportation and the Under Secretary of Transportation for Security, to the Secretary of Homeland Security. Pursuant to DHS Delegation Number 7060.2, the Secretary delegated to the Administrator of TSA, subject to the Secretary's guidance and control, the authority vested in the Secretary with respect to the TSA, including the authority in section 403(2) of the HSA.

TSA established the FTSP by issuing an IFR with request for comments on September 20, 2004.[23] The IFR implemented many of the same requirements as the program previously administered by DOJ pursuant to the statutory requirements in 49 U.S.C. 44939. Consistent with section 520 of the Department of Homeland Security Appropriations Act of 2004, the IFR also set fees to cover costs incurred by the program.[24] As required by section 543 of the Department of Homeland Security Appropriations Act of 2009, TSA subsequently published a notice in the **Federal Register** announcing an additional fee to cover processing of a security threat assessment (STA)[25] for each candidate engaged in recurrent training.[26]

2. Imposing Fees for the FTSP

As noted above, TSA is authorized to collect fees under 49 U.S.C. 44939 and is required to collect fees to cover the costs of vetting under 6 U.S.C. 469. To comply with 6 U.S.C. 469, which requires TSA to fund vetting and credentialing programs through user fees, TSA charges fees for candidates who receive an STA under the FTSP.

TSA determined the fees for the FTSP program in accordance with Office of Management and Budget (OMB)

[7] *See The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the U.S.,* Official Government Edition, at ch. 7 (U.S. Government Printing Office, 2004).

[8] Public Law 107–71 (115 Stat. 597; Nov. 19, 2001), codified at 49 U.S.C. 44939, as amended.

[9] *Id.*

[10] *Id.*

[11] TSA uses the term ''threat'' in all of its vetting programs which is an essential element of the risk that an individual may pose to aviation, transportation security, or national security. The statute requiring the FTSP program uses the term ''risk,'' *see id.,* which is a broader term that incorporates ''threat'' as used by TSA. DHS generally sees risk as a function of threat, vulnerability and consequences. *See https://www.dhs.gov/sites/default/files/publications/18_0116_MGMT_DHS-Lexicon.pdf.*

[12] 68 FR 7313 (Feb. 13, 2003).

[13] *Id.* at 7318.

[14] Referred to at that time as the Department of Transportation's Under Secretary for Transportation Security.

[15] Vision 100—Century of Aviation Reauthorization Act, Public Law 108–176 (117 Stat. 2490, 2574; Dec 12, 2003).

[16] *See id.* at section 612 (amending 49 U.S.C. 44939).

[17] *See id.* at section 612(b)(1). For a discussion of the amendments to 49 U.S.C. 44939, see section I.C of the 2004 IFR, 69 FR at 56327.

[18] *See id.* at section 612(a) (amending 49 U.S.C. 44939(g)).).

[19] *See* section 520 of Public Law 108–90 (Oct. 1, 2003), as codified at 6 U.S.C. 469(b).

[20] *See* section 543, Division D of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Public Law 110–329 (122 Stat. 3574; Sept. 30, 2008).

[21] *See id.*

[22] Public Law 107–296 (116 Stat. 2135; Nov. 25, 2002).

[23] *See supra* note 1.

[24] *See supra* note 19. Section 520 of the DHS Appropriations Act, 2004, as codified at 6 U.S.C. 469(a), requires TSA to collect fees to cover the costs of performing background record checks.

[25] For purposes of this rulemaking and consistent with common vetting terminology, TSA uses the term ''security threat assessment'' or ''STA'' in place of the term ''security background check.''

[26] *See* 74 FR 16880 (Apr. 13, 2009). *See also supra* note 20 for more information on the DHS Appropriations Act of 2009.

Circular No. A–25. The fees are set to recover a share of the service costs from all individuals that use a particular service, and a description of the processes that went into estimating the proposed fees is available in the Fee Report in the rulemaking docket. TSA may increase or decrease the fees described in this regulation to achieve efficiencies or to accommodate inflation, changes in contractual services, changes in populations, or other factors following publication of the final rule. TSA will publish a notice in the **Federal Register** notifying the public of any fee changes and will update fee information on the website dedicated to this program.

TSA incurs costs associated with performing STAs, assessing comparable STAs, conducting expedited processing, requesting Federal Bureau of Investigation (FBI) reviews, issuing Determinations of Eligibility, maintaining the FTSP Portal, and processing provider notifications of flight training events. TSA expends resources to establish, operate, and maintain the technology to facilitate the STA process for candidates and provider compliance with this program entirely through the FTSP Portal. In addition, TSA assumes in its analysis that some online interactions will result in customer service expenses.

A candidate pays a single fee that consolidates all fees assessed by TSA, as presented in section II.C.2. The FTSP fee structure is designed to cover TSA's anticipated costs of conducting and administering STA services over the 5-year duration of each STA. TSA calculated the proposed fees based on estimates for the cost of each respective service, pertinent to the expected number of candidates that will benefit from the services. The following summarizes the costs consolidated into the fee:

- Once candidate information is captured and records are established, TSA incurs costs to run the information through the various databases accessed for the STA. TSA incurs costs to construct, maintain, and operate the information technology platform that enables comparisons of applicant information to multiple intelligence, immigration and law enforcement databases, and other information sources.
- TSA incurs additional expenses to evaluate the information received from these sources, make decisions as to whether a candidate may pose a security threat, correct records with the candidate when necessary, and communicate with other entities, such as the candidate's employer, flight training provider, or governmental agencies.
- Additional costs include staffing for this service to (1) adjudicate the results of Criminal History Records Checks (CHRCs); (2) conduct immigration checks; (3) provide candidates an opportunity to correct their records; and (4) process the recordkeeping and training event notifications required by the program.
- Finally, the fee includes the FBI's fee to process CHRCs. TSA collects this fee and forwards it to the FBI.

To properly recover the cost of this vetting service, TSA set the FTSP standard fee at $140, and the FTSP reduced fee at $125. As discussed more fully in section II.C.2.b., candidates may be eligible for a reduced fee if they already completed a comparable STA recognized by TSA.[27]

3. Evolution of Flight Training Security

In late 2004 and early 2005, after the IFR took effect, TSA held six meetings with industry representatives subject to the regulatory requirements. In response to questions and concerns raised during these meetings and through public comments submitted on the IFR, TSA issued clarifications, interpretations, exemptions, and other guidance documents.[28] This final rule reflects TSA's review of these previously issued documents and statements, for both internal and external audiences, and determinations of whether to make them permanent. As a result of this review, any previously issued interpretations of the provisions of 49 CFR part 1552 published on or before the effective date of this final rule are withdrawn and superseded by this rulemaking.

In July 2012, the Government Accountability Office (GAO) reviewed the program and provided the following recommendations to TSA: (1) identify instances where non-U.S. citizens receive Federal Aviation Administration (FAA) airman certificates without first undergoing an STA and the reasons for these occurrences; (2) strengthen controls to prevent future occurrences; and (3) establish a pilot program to check the program's data against DHS data on candidates' admissibility status to help detect immigration violations by non-U.S. citizen flight students (see discussion in section II.D.).[29] DHS concurred with these recommendations. TSA adopted the following corrective actions that continue to operate under this final rule: TSA and the FAA exchange data under a memorandum of understanding, and TSA sends a candidate's information to the U.S. Customs and Border Protection (CBP) Arrival and Departure Information System (ADIS) to assist CBP in determining a candidate's purpose for entering the United States when they arrive at the U.S. border. *See* discussion in section II.D.

As discussed more fully in section II.D.1, TSA also works directly with U.S. Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS), and CBP to share information and address unique circumstances regarding candidates. TSA refers candidates who appear to be engaged in unauthorized employment, criminal violations, and/or visa overstays to the ICE Counterterrorism and Criminal Exploitation Unit (CTCEU). CTCEU reviews the candidate's primary purpose for being in the United States and provides that information to TSA to assist TSA in making a Determination of Eligibility for the candidate. TSA uses the USCIS Systematic Alien Verification for Entitlements (SAVE) program and the DHS Automated Targeting System (ATS), administered by CBP to resolve immigration concerns.[30] GAO closed its recommendations as a result of these actions.[31]

4. Aviation Security Advisory Committee's Recommendations

Since issuance of the IFR, TSA has also engaged regularly with the Aviation Security Advisory Committee (ASAC).[32]

[27] *See* fee study and Regulatory Impact Analysis posted on the public docket at *https://www.regulations.gov/docket?D=TSA-2004-19147.*

[28] A list of these documents may be found under Supporting & Related Material in the public docket for the FTSP program, at *https://www.regulations.gov/docket/TSA-2004-19147/document?documentTypes=Supporting%20%26%20Related%20Material.*

[29] *See* GAO–12–875, July 18, 2012, *available at https://www.gao.gov/products/GAO-12-875.*

[30] FTSP uses CBP's ATS—Unified Passenger module to compare candidate information against law enforcement, intelligence, and other data. TSA shares information with CBP through ADIS to support admissibility determinations of approved flight training candidates.

[31] The use of information related to the FTSP is covered by the Transportation Security Threat Assessment System of Records Notice (SORN), most recently updated at 79 FR 46862 (Aug. 11, 2014). TSA also shares information within DHS in compliance with section (b)(1) of the Privacy Act of 1974 (5 U.S.C. 552a (Privacy Act).

[32] The ASAC is an official advisory body established under 49 U.S.C. 44946. The ASAC is composed of representatives from air carriers, all-cargo air transportation, indirect air carriers, labor organizations representing air carrier employees, labor organizations representing transportation security officers, aircraft manufacturers, airport operators, airport construction and maintenance contractors, labor organizations representing employees of airport construction and maintenance contractors, general aviation, privacy organizations,

Continued

The Aviation Security Stakeholder Participation Act of 2014 established the ASAC as an advisory committee with whom the Administrator of TSA consults, as appropriate.[33] In 2016, the ASAC submitted five recommendations to the Administrator regarding the FTSP, including: (1) moving from an event-based STA to a time-based STA; (2) addressing recordkeeping requirements between parties to wet and dry aircraft and simulator leases; (3) requiring the use of the FTSP program for Department of Defense (DoD) endorsees; (4) clarifying which events require an STA; and (5) clarifying the impact of visa applicability on flight training.[34] This final rule addresses each of these recommendations.

5. Reopening of Comment Period

In 2018, TSA reopened the comment period on the IFR to ensure TSA adequately considered the current operational environment when finalizing the IFR, to solicit updated comments following the original comment period in 2004, and to solicit comments on the substance of the 2016 ASAC recommendations related to the FTSP that were under consideration.[35] In particular, TSA requested comments on six issues: (1) costs and benefits of requiring flight training providers to undergo an STA; (2) impact of moving from an event-based to time-based STA requirement; (3) appropriate compliance requirements for parties involved in leases of aircraft, aircraft simulators, and other flight training equipment; (4) impact of allowing regulated parties to use electronic recordkeeping, in whole or in part, to establish compliance; (5) implications of refining the scope of STAs for candidates who train with FAA-certified flight instructors operating outside of the United States; and (6) sources of data on the number or percentage of flight schools that only train U.S. citizens. TSA also requested the submission of any other data or information available that it should consider during the review of the IFR. TSA requested new comments in these areas to expand upon issues raised by one or more commenters in response to the IFR in 2004. See section IV for additional details on the comments received.

Although 5 years have passed since TSA last solicited comments, TSA does not believe the policymaking landscape for this rule has shifted substantively since 2018. The policy changes in this rule are supported by comments received on the IFR, or by comments received following the 2018 reopened comment period. TSA tailored the scope and content of the final rule to reflect only those changes that are supported by the public record.

C. Organization of Final Rule

The IFR divided the requirements into two subparts: flight training and security awareness training. To provide greater clarity, this final rule consists of three subparts. Subpart A outlines the scope of the regulation, defines terms, and prescribes general requirements applicable to all flight training providers. Subpart B prescribes requirements applicable to all candidates regarding STAs and associated fees. Subpart C prescribes requirements applicable to all flight training providers concerning notification and management of flight training events. Table 1 provides a distribution table for changes to current 49 CFR part 1552.

TABLE 1—DISTRIBUTION TABLE

IFR	Final rule
1552.1(a);1552.21(a) (scope)	1552.1
1552.1(b); 1552.21(b) (definitions)	1552.3
1552.3(a)–(d) and (k) (notification of flight training events)	1552.7 and 1552.51
1552.3(a)–(d) and (k) (submission of information)	1552.31
1552.3(a)–(d), 1552.5 (fee)	1552.39
1552.3(e) (interruption of flight training)	1552.31
1552.3(f) (fingerprints)	1552.31
1552.3(g)(1) (false statements)	1552.19
1552.3(g)(2) (preliminary approval)	1552.35
1552.3(h) (U.S. citizens and DoD endorsees)	1552.7
1552.3(i)(1) and 1552.25(a) (recordkeeping)	1552.15
1552.3(i)(2) and 1552.25(c) (inspection)	1503.207
1552.3(j) (grandfathered candidates)	(removed)
1552.23 (security awareness training)	1552.13

D. Regulatory Relief

With publication of this final rule, TSA is modifying the FTSP regulations to reduce the regulatory burden of compliance. Consistent with E.O. 13563 of January 18, 2011,[36] and TSA's statutory mandate under 49 U.S.C. 114(l)(3), TSA has considered the impact of the costs and the security benefits and determined that burden reduction modifications can be made to the program without negatively affecting the appropriate security posture or failing to execute the statutory mandates. Three changes to the regulatory requirements will result in notable cost savings to the industry: (1) modifying the refresher security awareness training[37] from an annual to a biennial requirement; (2) providing for electronic recordkeeping and a dedicated website (the FTSP Portal);

the travel industry, airport-based businesses (including minority-owned small businesses), businesses that conduct security screening operations at airports, aeronautical repair stations, passenger advocacy groups, the aviation security technology industry (including screening technology and biometrics), victims of terrorist acts against aviation, and law enforcement and security experts. The Administrator of TSA consults with the ASAC, as appropriate, in developing, refining, and implementing policies, programs, rulemaking, and security directives.

[33] Public Law 113–238 (128 Stat. 2842; Dec. 18, 2014), *as codified at* 49 U.S.C. 44946.

[34] *See* ASAC Meeting Minutes from July 28, 2016, *available at https://www.tsa.gov/sites/default/files/asac_meeting_minutes_28jul2016-final.pdf* for the full report. Note that neither the minutes nor this rulemaking contain or address recommendations that include Sensitive Security Information under 49 CFR part 1520.

[35] *See* 83 FR 23238 (May 18, 2018).

[36] *See supra* note 6.

[37] In the IFR, the term ''recurrent training'' applied both to flight training for candidates and security awareness training for employees. Through this final rule, TSA is modifying the security awareness training terminology to require ''refresher training'' rather than ''recurrent training'' to distinguish the two requirements.

and (3) moving from an event-based STA to a time-based STA.

1. Reducing Frequency of Security Awareness Training

The Vision 100 Act includes a requirement for the FTSP to mandate security awareness training for flight training provider employees to ''increase their awareness of suspicious circumstances and activities of individuals enrolling in or attending flight school.'' [38] The IFR required this training to be provided on an annual basis. In response to industry feedback as discussed further in section IV.C.5.b., the final rule has reduced the required frequency of security awareness training to provide economic and logistical relief to flight training providers, and to provide more flexibility in how they schedule refresher training. Specifically, the final rule replaces the IFR's annual security awareness training requirement with a requirement for all covered flight training provider employees to receive initial training within 60 days of hiring, and a biennial refresher training requirement thereafter. TSA discusses these changes further in section II.B.6. A provider may conduct refresher training on or before the 2-year anniversary of the previous initial training or the last refresher training.

2. Electronic Recordkeeping and FTSP Portal

At the industry's request, TSA provided an online portal that flight training providers use to meet the requirement to notify TSA of a candidate's proposed and actual flight training events. This capability was first provided in 2004 and updated in 2007. Today, all flight training providers use TSA's online portal; no candidates or flight training providers submit applications via traditional paper-based methods. The final rule codifies this capability as mandatory for this purpose.

This modification is consistent with multiple recommendations from industry to establish an electronic storage capability for provider accounts, to ease their storage costs and time burdens. In addition to informal comments on this issue since the rule was first issued, the recommendation was formally submitted to TSA in the comments during the reopened comment period in 2018, requesting that TSA ''allow regulated parties to use electronic recordkeeping, in whole or in part, to establish compliance.'' [39]

In response to these comments, and generally recognizing advancements in electronic recordkeeping since the IFR was published, TSA has enhanced its web-based capabilities to facilitate submission of information and recordkeeping compliance. Through this rule, TSA is expanding the availability of this option for both required and optional use. Providing this option recognizes that flight training providers may realize cost and time savings and reduce or eliminate duplicative and costly physical and electronic recordkeeping by storing and maintaining their records on the FTSP Portal. Section V describes TSA's analysis of estimated cost savings for providers as a result of these changes.

TSA may also benefit from the enhanced capabilities of the FTSP Portal to increase efficiency and effectiveness in monitoring compliance. Ready availability of stored records also provides TSA with more immediate access to information about a candidate who has been identified as a potential threat.

3. Time-Based STAs

Currently, an STA is required for each training event. Consistent with recommendations and new vetting capabilities, under § 1552.31(d) of this final rule, an STA is valid for up to 5 years. See IV.C.5.B. for a more detailed discussion. This change from an event-based STA to a time-based STA is possible due to significant improvements in TSA's ability to conduct recurrent vetting of candidates, which enables TSA to review a candidate's record on an on-going basis. As discussed more fully in section II.D., TSA conducts recurrent vetting of candidates through several intelligence databases that include terrorist watchlists and can conduct continuous CHRCs of candidates for disqualifying offenses through the FBI's Rap Back service. This change aligns the FTSP with other TSA programs, such as TSA PreCheck®, Transportation Worker Identification Credential (TWIC®), and Hazardous Materials Endorsement (HME).[40]

Recurrent vetting has several benefits that reduce costs and enhance security. First, recurrent vetting enables TSA to ensure security while allowing for a time-based STA that can be valid for a 5-year period. Second, as discussed more fully in section II.D.4., recurrent vetting allows TSA to continually vet a candidate and revoke the approval if and when disqualifying information emerges. Third, recurrent vetting enables TSA to reduce the costs of the rule by reducing delays in processing training requests and supporting the portability or sharing of a candidate's Determination of Eligibility among flight training providers.

This modification will reduce costs and save time for individuals who have multiple training events over a 5-year period. Rather than paying a fee for each vetting event, candidates will pay a single fee for a 5-year STA. As many candidates will have multiple training events within a 5-year period, the time-based STA is likely to reduce the total amount of fees most candidates must pay over time.[41] Section 1552.51(f) also allows expedited processing for candidates that hold type ratings [42] and candidates who are lawful permanent residents of the United States. As discussed in more detail in sections IV.C.5.b.–d., TSA received many comments indicating that this change would likely foster industry growth.

E. Summary of Other Modifications

This final rule includes additional modifications that will provide benefits to the flight training industry and enhance security. First, the final rule incorporates previously issued clarifications concerning what type of training is covered by the regulation while eliminating the four weight-based categories of training identified by the IFR. TSA's response to comments in section IV.C.4.a. provides more information on these revisions. Second, the rule clarifies who is responsible for maintaining records of lease arrangements. Section II.A.2. and TSA's response to comments in section IV.C.2.c. provides more information on these revisions. Third, the final rule aligns this program with TSA's other transportation security programs by requiring flight training providers to designate a Security Coordinator to serve as a security liaison with TSA. Section II.B.5. provides more information on these revisions.

TSA also is consolidating provisions found throughout TSA's regulations relating to inspections, as well as

[38] *See* 49 U.S.C. 44939(i).

[39] Four major industry organizations and one major flight training provider posted comments using this same explanation of the request. All comments are available in the docket to this rulemaking (TSA–2004–19147) at *www.regulations.gov*.

[40] As discussed more fully in section II.C.2.b. (and the fee study and Regulatory Impact Analysis (RIA) in the docket for this rulemaking), TSA provides a reduced fee for individuals who have completed a comparable STA, as determined by TSA. *See also* § 1552.37.

[41] *Id.*

[42] ''Type rating'' means an endorsement on a pilot certificate indicating the make and type of aircraft that the individual has the skill or authorization to operate, and that the holder of the certificate has completed the appropriate training and testing required by a civil or military aviation authority.

harmonizing and consolidating terminology. TSA is mandated to: (1) enforce its regulations and requirements; (2) oversee the implementation and ensure the adequacy of security measures; and (3) inspect, maintain, and test security facilities, equipment, and systems for all modes of transportation.[43] Through this regulation, TSA is making a technical amendment to consolidate inspection requirements in one location, a new § 1503.207 in 49 CFR part 1503, which is that part of TSA's regulations that specifically focuses on investigative and enforcement procedures applicable to all of TSA's regulatory requirements. TSA also is removing the definition of ''Public transportation agency'' from § 1503.103. TSA added the definition of a public transportation agency to § 1500.3 through a separate rulemaking, making the definition in § 1503.103 unnecessary.[44]

TSA also is making technical amendments to consolidate into a single location several definitions applicable to the FTSP that are also used in other parts of TSA's regulations. These amendments standardize and harmonize the meaning of the following terms, without substantively changing their meaning: ''Citizen of the United States,'' ''Day,'' ''Lawful Permanent Resident,'' ''National of the United States,'' and ''Non-U.S. Citizen.'' [45]

In each case, the harmonized definition added to § 1500.3 reflects TSA's long-standing interpretation of the term, and the clearest expression of its meaning. This final rule also removes these terms from the definition sections of other parts of 49 CFR chapter XII, as appropriate.

TSA also revised and added definitions to § 1552.3 that further clarify regulatory requirements and minimize ambiguity. Revised definitions include ''Aircraft Simulator,'' ''Candidate,'' ''Demonstration flight for marketing purposes,'' ''Flight Training,'' and ''Recurrent training.'' New definitions include ''Determination of Eligibility,'' Determination of Ineligibility,'' ''DoD,'' ''DoD Endorsee,'' ''Flight Training Provider,'' ''Flight Training Provider Employee,'' ''Flight Training Security Program (FTSP),'' ''FTSP Portal,'' ''FTSP Portal account,'' ''Non-U.S. Citizen,'' ''Security Threat,'' ''Security Threat Assessment,'' ''Simulated flight for entertainment purposes,'' and ''Type rating.''

II. Summary of Regulatory Requirements

A. Who is required to comply?

As noted above, the purpose of this rule is to prevent the provision of flight training to non-U.S. citizens who may pose a security risk. In general, the requirements apply to those who provide flight training (flight training providers), those who provide equipment for flight training (lessors of flight training equipment), and those who receive flight training (candidates). This rule prohibits providing flight training to a candidate, as defined in § 1552.3, unless the flight training provider and candidate submit certain information to TSA, the candidate remits the specified fee to TSA, and TSA determines that the candidate is not known or suspected to be a threat to aviation or national security.

1. Flight Training Providers

Under the final rule, a flight training provider is defined in § 1552.3 to include the following persons:

- Any person that provides instruction under 49 U.S.C. subtitle VI, part A, in the operation of any aircraft or aircraft simulator in the United States or outside the United States, including any pilot school, flight training center, air carrier flight training facility, or individual flight instructor certificated under 14 CFR part 61 (providers who are either individual FAA Certified Flight Instructors (CFIs) or a group of associated-CFIs that provide training services); part 141 (providers who are FAA certificated); part 142 (providers who are training centers certificated by FAA); and parts 121 and 135 (providers who are U.S. air carriers and U.S. aircraft operators and conduct in-house training for their businesses). As required to comply with applicable Federal Equal Employment Opportunity laws, U.S. operators providing in-house training for its employees must conduct training and report threat assessments in a manner that is consistent with these laws and free from discrimination.
- Similar persons certificated by foreign aviation authorities recognized by the FAA, who provide flight training services in the United States.
- Any lessor of aircraft or aircraft simulators for flight training, if the entity or company leasing their equipment is not covered by the previous two categories.

Through this final rule, TSA is revising the definition of flight training providers to provide greater clarity and to ensure the regulatory program aligns with the scope of the statute. The scope of 49 U.S.C. 44939 includes persons ''operating as a flight instructor, pilot school, or aviation training center,'' which the IFR captured under the general term ''flight school.'' Adopting the term ''flight training provider'' clarifies the rule's broad applicability to the flight training industry, consistent with 49 U.S.C. 44939.

2. Lessors of Flight Training Equipment

In response to comments received on the IFR in 2004 and in 2018, and in response to a request from the ASAC, TSA is providing clarity regarding which party to an aircraft or simulator lease agreement is responsible for compliance with this part. In most lease situations, the lessee of the simulator or other equipment is a certificated flight training provider. In situations where the lessee of the equipment is not registered with TSA as a flight training provider, however, the lessor is considered the flight training provider for purposes of assuming reporting and recordkeeping responsibilities. For example, a foreign government may bring its own instructors and candidates to the United States for flight training on leased equipment, but TSA cannot require a foreign government to register as a flight training provider. Through the definitions and the applicability stated in §§ 1552.3 and 1552.5, TSA is clarifying that in similar cases, the company owning the aircraft simulator must register as a flight training provider and comply with the requirements in this rule.

3. Candidates

The requirements of this rule directly affect candidates for flight training. As defined in § 1552.3, a candidate is anyone applying for flight training who is neither a U.S. citizen nor a foreign military pilot endorsed by the DoD (DoD endorsee). Candidates must establish an account on the FTSP Portal to apply for an STA, submit biographic and biometric information, and pay their fee using *Pay.gov*. After the candidate has completed the STA process and received a Determination of Eligibility, they may share their Determination of Eligibility with one or more flight training providers through the FTSP Portal. Figure 1 in section II.F summarizes candidate requirements.

B. What must flight training providers do in order to comply?

Flight training providers must not provide flight training or access to any flight training equipment to any

[43] *See* 49 U.S.C. 114(f).

[44] *See* 85 FR 16456 (March 23, 2020).

[45] TSA's definitions relating to a person's citizenship status are consistent with the definitions set out in the Immigration and Nationality Act and those used by the U.S. immigration agencies. Should the definitions change, TSA will make corresponding revisions in title 49 of the CFR as necessary.

individual (a U.S. or non-U.S. Citizen) before first establishing whether the individual is a candidate for flight training (a non-U.S. Citizen required to complete an STA). Flight training providers must notify TSA of all training events for candidates and must validate that the candidate has a current Determination of Eligibility before providing training. All flight training providers also must designate a Security Coordinator, provide security awareness training to their employees, and maintain records to demonstrate compliance with this part. Figure 2 in section II.F summarizes the requirements. Subsections 1 through 7 below describe these requirements in greater detail.

1. Determine Whether an Individual Is a Candidate for Flight Training

The FTSP, consistent with 49 U.S.C. 44939, imposes vetting requirements on individuals who are non-U.S. citizens or who have not been endorsed by the DoD. The first step towards compliance is determining whether an individual seeking training is a candidate required to comply with this part, *i.e.,* not a U.S. citizen, not a U.S. national, and not a DoD endorsee, and not otherwise exempt.

a. Verify Whether an Individual Is a U.S. Citizen or U.S. National (§ 1552.7(a)(1))

U.S. citizens and U.S. nationals are exempt from the requirement to undergo an STA, but the flight training provider must verify an individual's U.S. citizenship or U.S. nationality by checking official documents presented by the individual. While the final rule retains the IFR's verification requirements, TSA is removing the IFR's list of specific documents that are acceptable to establish U.S. citizenship, U.S. nationality, foreign nationality, or presence in the United States.

TSA will maintain a list of common official documents suitable to identify U.S. citizens and U.S. nationals on the FTSP Portal, and will update the list as any relevant laws or national policies change. As of the publication date for this final rule, any of the identity documents listed in the first column of table 2 can be used to establish U.S. citizenship and nationality.[46] If a U.S. citizen or U.S. national does not have one of these documents, the individual must provide two qualifying documents: one document from List A and one document from List B.

TABLE 2—TWO OPTIONS FOR DOCUMENTS VALIDATING U.S. CITIZENSHIP AND NATIONALITY

Option 1: provide one of the following documents establishing identity and U.S. citizenship	Option 2: provide 1 document from List A AND 1 document from List B	
	List A—valid proof of U.S. citizenship	List B—Valid photo identification
• Unexpired U.S. Passport (book or card). • Unexpired Enhanced Tribal Card. • Unexpired Free and Secure Trade Card (designates U.S. citizenship if indicated on the document). • Unexpired NEXUS Card (designates U.S. citizenship if indicated on the document). • Unexpired Secure Electronic Network for Travelers Rapid Inspection (SENTRI) Card (designates U.S. citizenship if indicated on the document). • Unexpired Global Entry Card (designates U.S. citizenship if indicated on the document). • Unexpired U.S. Enhanced Driver's License or Unexpired Enhanced Identification Card (designates U.S. citizenship if indicated on the document).	• U.S. Birth Certificate. • U.S. Territory Birth Certificate. • U.S. Certificate of Citizenship (N–560 or N–561). • U.S. Certificate of Naturalization (N–550 or N–570). • U.S. Citizen Identification Card (I–179 or I–197). • Consular Report of Birth Abroad (FS–240) • Certification of Report of Birth Abroad (DS–1350 or FS–545). • Expired U.S. passport (book or card) within 12 months of expiration if one or more of the documents in List B is also presented.	• Unexpired driver's license issued by a State or outlying possession of the United States. • Unexpired temporary driver's license plus expired driver's license (constitutes one document). • Unexpired photo ID card issued by the Federal Government or by a State or outlying possession of the United States that includes a Federal or State agency seal or logo (such as a State university ID) (permits, such as a gun permit, are not considered valid identity documents). • Unexpired U.S. military ID card. • Unexpired U.S. retired military ID card. • Unexpired U.S. military dependent's card. • Native American tribal document with photo. • Unexpired DHS/TSA TWIC Credential. • Unexpired Merchant Mariner Credential. • Expired U.S. passport within 12 months of expiration if one or more of the documents in List A is also presented.

b. Verify Status of Foreign Military Pilots Endorsed by the DoD (§ 1552.7(a)(2))

Foreign military pilots endorsed by the DoD are exempt from the requirement to undergo an STA, as provided in 49 U.S.C. 44939(f), but the flight training provider must verify the status of each pilot to ensure that the endorsee is exempt from TSA's STA requirements. The final rule requires use of the FTSP portal to confirm an endorsee's status, codifying a previous policy decision from 2012 that eliminated a paper-based DoD endorsement verification process. Providers must use the FTSP Portal by matching the endorsee's identification to an official endorsement provided to TSA electronically by the DoD attaché.[47] ASAC also recommended in 2016 that TSA update the regulation to confirm the mandatory use of the FTSP portal to verify endorsee status.

The FTSP portal also serves as the records repository for DoD endorsee letters provided by the attaché. To further ensure compliance, providers must retain proof that they verified identification documents against the documents in the DoD endorsement. Providers may maintain either separate electronic or paper records to

[46] The documents listed in table 2 are consistent with TSA's requirements for validating U.S. citizenship or nationality for all vetting programs. *See https://www.tsa.gov/sites/default/files/twic-and-hazmat-endorsement-threat-assessment-program.pdf.* TSA's list is aligned with similar lists maintained by U.S. immigration authorities, and will be revised as their lists change. *See also* discussion in section II.D.1. Please note that each TSA program may have unique requirements.

[47] Foreign military pilots endorsed by the DoD are registered under the U.S. International Military Education and Training program. The DoD attaché coordination office uses the FTSP Portal to nominate DoD endorsees and to manage DoD attaché account holders' access to the portal. *See* Defense Security Cooperation Agency IMET website at *https://www.dsca.mil/programs/international-military-education-training-imet.*

demonstrate compliance, or may use the portal to store records when this capability becomes available. Section II.B.7 and II.E describe recordkeeping and the FTSP Portal.

c. Determine Whether an Individual Providing ''Side Seat'' Support Is a Candidate (§ 1552.3)

In most cases, non-U.S. citizens who are not endorsed by the DoD are considered candidates who must comply with this regulation. TSA has made a limited exception for certificated individuals who provide ''side-seat support'' to other candidates. ''Side-seat support'' is an aviation industry term that refers to a second pilot that is required for some training events. When a second pilot is required, the candidate or their sponsor (generally their employer) hires an individual with appropriate skill and experience to provide side-seat support for the candidate or student being trained.

Under a limited exception to the definition of ''candidate'' in § 1552.3, the flight training provider does not need to notify TSA of any training events involving a non-U.S. citizen providing side-seat support if the individual providing the support holds a type rating for the aircraft in which the training occurs, or otherwise holds the piloting certificate necessary to operate the aircraft in which the instruction occurs. TSA is providing this limited exception because these individuals already possess the piloting skills being taught, and because these individuals are already vetted by TSA as candidates under this program when they seek recurrent training to retain their FAA rating or certificate under 6 U.S.C. 469(b).

As with other individuals seeking flight training, the flight training provider must determine the individual's U.S. citizenship status. If the individual providing side-seat support is a non-U.S. citizen, the flight training provider must either determine that the individual providing side-seat support holds a type rating for the specific aircraft, or must ensure the individual undergoes an STA and receives a Determination of Eligibility.

2. Determine Whether the Candidate Is Required To Be Vetted Before Receiving Flight Training

Having established that the individual is a candidate (*i.e.,* the individual is a non-U.S. citizen, is not a DoD endorsee, and is not providing side-seat support under the limited exemption provided above), the flight training provider must determine whether the regulation applies to the training the candidate seeks.

a. Activities Considered Flight Training Events (§ 1552.3)

The following flight training events are subject to the rule's requirements:

- Initial pilot certification (whether private, recreational, or a sport pilot certificate), which provides a pilot with basic piloting skills.
- Instrument rating, which enhances a pilot's abilities to pilot an aircraft in bad weather or at night, and enables a pilot to better understand the instruments and physiological experiences of flying without reference to visual cues outside the aircraft.
- Multi-engine rating, which provides a pilot with the skill to operate more complex, faster aircraft.
- Type rating, which is a specific certification a pilot obtains to operate a certain type of aircraft, because this training is required beyond the initial, multi-engine, and instrument certification.
- Recurrent training for type ratings, which is required to maintain or renew a type rating already held by a pilot.

The flight training events subject to the rule's requirements align with the clarification provided in 2004, when TSA exempted training to operate ultralight aircraft, gliders, sail planes, and lighter-than-air aircraft from the requirements of the IFR. These types of aircraft present a minimal threat, and the skills needed to operate them do not translate easily to the skills needed to operate rotary or fixed-wing piloted aircraft. TSA also has determined that training related to operation of unmanned aerial systems does not fall within the requirements of the final rule for the same reasons. This determination is consistent with the statutory requirements, which limit training events to those that occur in an aircraft or simulator, and do not apply to ground training events.[48]

b. Activities Considered Recurrent Training (§ 1552.3)

As part of this rulemaking, TSA is modifying the definition of ''recurrent training'' to apply to those flight training events that pilots need to maintain or renew their type ratings. The requirement specifically applies to pilots certificated (a) under 14 CFR part 61; subpart K of part 91; or parts 121, 125, or 135; or (b) by a foreign entity recognized by a Federal agency of the United States. A candidate may only register for recurrent training if their FTSP account record includes an airman certificate showing they are currently certificated for that aircraft. The modified definition also excludes facets of training that impart new knowledge or demonstrate the pilot's ability to gain or maintain a rating.

This modification to the definition of recurrent training ensures the regulation aligns with clarifications provided by TSA after publication of the IFR. For example, in October 2004, TSA clarified that recurrent training ''[does] not include any flight review, proficiency check, or other check whose purpose is to review rules, maneuvers, or procedures, or to demonstrate a pilot's existing skills,'' and that flight checks ''do not constitute either flight training or recurrent training . . . because, in practice, these checks are mainly used for pilots to demonstrate their skills to an instructor, rather than to gain new skills.'' [49] TSA also released an interpretation listing activities that are not described as recurrent training by the FAA and are generally considered to be checks or tests that ''do not affect the validity of the certificate(s) and/or the qualifications of a type rating.'' [50] As stated above, and discussed more fully in section III, all previously issued clarifications and interpretations are replaced by this final rule.

c. Activities That Do Not Require Notification

Consistent with a recommendation from ASAC, table 3 provides a current list of flight training activities that do not require notification. This list replaces all information previously issued by TSA regarding training activities that do not require notification. If a flight training provider inadvertently notifies TSA of a non-

[48] *See* 49 U.S.C. 44939(e), which defines the term ''training'' as ''training received from an instructor in an aircraft or aircraft simulator and does not include recurrent training, ground training, or demonstration flights for marketing purposes.'' Given this definition, TSA has concluded that the statute does not apply to ground-based courses focused on remote-piloted aircraft incapable of carrying people.

[49] *See* Interpretation of Certain Definitions and Exemptions from Certain Requirements Contained in 49 CFR part 1552, Oct. 19, 2004, Docket No. TSA–2004–19147–0226 *available at https://www.regulations.gov/document?D=TSA-2004-19147-0226.*

[50] TSA Interpretation of ''Recurrent Training'' and Changes to the Security Threat Assessment Process for Recurrent Training, September 13, 2010, *available at fts.tsa.dhs.gov/static-content/ftsp_cat4_10_2010.pdf.*

required event, the provider will need to close out that event.

TABLE 3—TRAINING ACTIVITIES THAT DO NOT REQUIRE NOTIFICATION

Activity	References and guidance
Technology	
Heads Up Display Simulator Qualification	• Flight Simulation Training Device (FSTD) Guidance Bulletin 03–02. • 14 CFR part 60, Flight Simulation Training Device Initial and Continuing Qualification and Use.
Enhanced Flight Vision System FSTD Qualification	• FSTD Guidance Bulletin 03–03. • 14 CFR 61.66, Flight Simulation Training Device Initial and Continuing Qualification and Use.
Category II/III	• 14 CFR 61.67, Category II Pilot Authorization Requirements. • 14 CFR 61.68, Category III Pilot Authorization Requirements.
Required Navigation Performance, Authorization Required	• FAA Advisory Circular (AC) 90–105A. • AC 90–101A Change 1.
Air carrier qualifications	
Line Oriented Flight Training [also called Line Operational Simulation (LOS)].	• FAA Advisory Circular (AC) 120–51E, Crew Resource Management Training.
Operator Specific	• 14 CFR 121.441, Proficiency Checks. • 14 CFR 135.301, Crewmember: Tests and checks, grace provisions; training to accepted standards.
Differences Training	• Flight Standards Information Management System (FAA Handbook) Volume 3. • General Technical Administration; Chapter 19: Training Programs and Airman Qualifications. • Section 9, Safety Assurance System: Differences Training–All Training Categories.
Rejected Takeoff Go/No-Go	• FAA AC 120–62, Takeoff Safety Training Aid.
Commercial Operator Training	• 14 CFR 135.297, Pilot in command: Instrument proficiency check requirements.
Non-U.S. Air Carrier Proficiency Checks • Proficiency Check. • License Proficiency Check. • Operator Proficiency Check.	• FAA Handbook; Volume 12, International Aviation. • Chapter 2: Foreign Air Carriers Operating to the United States and Foreign Operators of U.S.-Registered Aircraft Engaged in Common Carriage Outside the United States. • Section 3, Part 129, Part A: Operations Specifications.
Extended Operations (ETOPS) Polar Operations.	• AC 120–42B, (ETOPS and Polar Operations). • 14 CFR 121.7, Definitions. • 14 CFR 121.162. • AC 135–42, Extended Operations (ETOPS) and Operations in the North Polar Area. • 14 CFR 135.364, Maximum flying time outside the United States.
Right Seat Training	• Dual qualification for captain to be able to fly from the right seat station (does not include training that will lead to a new type rating for the individual in the right seat (example: a pilot who is qualified on both the Boeing 757 and the Boeing 767 may request a related aircraft deviation in accordance with 14 CFR 121.439(f)).
General proficiency checks	
Flight Review and Instrument Currency, Helicopter	• 14 CFR 61.56, Flight Review (for aircraft <12,500 lbs.). • 14 CFR 61.57(a),(b),(c), and (d), Recent Flight Experience: Pilot in command.
Instrument Proficiency Checks	• 14 CFR 61.57(d), Recent Flight Experience: Pilot in command.
Landing Currency	• 14 CFR 61.57, Recent Flight Experience: Pilot in command.
Conversion	• AC 61–143, Conversion Process for Pilot Certificates in Accordance with the Technical Implementation Procedures—Licensing as Part of the Bilateral Aviation Safety Agreement Between the FAA and the European Union Aviation Safety Agency.
Flight training provider	
Examiner Training	• 14 CFR 183.23, Pilot Examiners.
Training Center Instructor Training and Testing (includes instructor serving as trainee).	• 14 CFR 42.53, Training Center Instructor Training and Testing Requirements.
Other safety activities	
Special Airport Qualifications	• 14 CFR 121.445, Pilot in Command Airport Qualification: Special Areas and Airports.

TABLE 3—TRAINING ACTIVITIES THAT DO NOT REQUIRE NOTIFICATION—Continued

Activity	References and guidance
Upset Recover Training	• FAA AC 120–111, Upset Prevention and Recovery Training—with Change.
High Altitude Training	• 14 CFR 61.31(g), Type rating requirements, additional training, and authorization requirements.

Flight training providers must notify TSA about any recurrent flight training events planned for a candidate that do not fall under the exempted events listed in table 3. TSA will publish any updates to this list of training events that do not require notification under § 1552.51 on the FTSP Portal.

3. Notify TSA of Flight Training Events for Candidates (§ 1552.51)

Consistent with the requirements in 49 U.S.C. 44939, flight training providers are required to notify TSA of all proposed and actual flight training events for candidates. Subpart C lays out flight training event notification requirements for flight training providers. The final rule clarifies and consolidates requirements for flight training providers regarding training event management and confirms TSA's present practice of requiring all notifications to occur through the FTSP portal. There are no other changes to the requirements in this subpart.

The final rule permits a flight training provider to schedule a flight training event or events up to the expiration of a candidate's Determination of Eligibility, but the final rule also continues the IFR's requirement for flight training providers to verify a candidate's Determination of Eligibility for *each* flight training event. While a new STA may only be required once every 5 years, this notification is necessary because TSA may revoke a candidate's Determination of Eligibility at any time within the 5-year window that an STA may otherwise be valid. TSA does not inform flight training providers of a change in a candidate's Determination of Eligibility except in response to a notification that the candidate is currently applying for or involved in a flight training event. A provider is not permitted to initiate a new flight training event notification for a candidate whose Determination of Eligibility has expired.

a. Information To Be Included in Notification of a Flight Training Event (§ 1552.51(a))

In keeping with similar requirements under § 1552(a)(2) of the IFR, the flight training provider must submit the following information and supporting documentation to TSA through the FTSP Portal for each notification of a candidate flight training event:

- The candidate's name.
- The rating that the candidate could receive, maintain, or revitalize if the candidate completes the training.
- The location or locations, domestic or international, where training is to occur.
- The estimated start and end dates of training.

To ensure Determinations of Eligibility can be made before the scheduled training, TSA recommends that flight training providers notify TSA no less than 30 days before the estimated start of the flight training event, even for a candidate who may be eligible for expedited processing. Upon completion of the training event, the provider must update the FTSP Portal with the training event's actual start and end dates, and indicate whether the candidate concluded, cancelled, failed to complete, or abandoned the training.

TSA requires this specific information and documentation to properly ensure compliance with the requirements of 49 U.S.C. 44939, and to properly determine whether any candidate may be a risk to aviation or national security. Knowledge of the candidate, the training location, the training dates, and the type of training to be received is essential to assessing risk. The statute does not refer to type ratings, but the flight training industry tends to market and deliver training by piloting skill and by aircraft type, not by aircraft weight. Generally, crew members of aircraft weighing 12,500 pounds or less are not required to have type ratings.

Flight training providers operating with multiple instructors as an air carrier, charter operator, pilot school, training center, or other corporate entity certificated under 14 CFR parts 61, 121, 135, 141, or 142 respectively, do not need to submit multiple flight training event notifications when multiple instructors within its operation participate in the training of one candidate during that candidate's flight training event. However, multiple individual flight instructors with certificates provided under 14 CFR part 61 who operate as a flying group or club that is not separately certificated by the FAA must list all the CFIs operating at its establishment as part of its registration for an FTSP Portal account.

b. Candidate Photograph (§ 1552.51(d))

The flight training provider must take a photograph of the candidate upon the candidate's arrival for each training event. The provider need only take one photo per day. In the case of a multi-day training event, the provider need only submit one photo for the event, not one per day. The provider may take the photograph either at the beginning of ground training or, if the candidate is not involved in any ground training at the provider's training location, when the candidate begins training on the aircraft or aircraft simulator. The provider must upload the photograph to the FTSP Portal no later than 5 business days after the day the candidate arrived for training. A provider may not re-use a previous candidate photograph for a later training event.

When this program was established by DOJ, flight training providers were encouraged, but not required, to maintain photographs of all candidates. The 2004 IFR made the photographs mandatory because submission of a candidate photograph, along with other identification documents (including a valid passport), offers assurance that the candidate is the person described in the identification and immigration documents submitted to TSA. Flight training providers play a critical role in determining whether the person before them is the same person featured in the identity and immigration documents upon which TSA relies for its STAs, and the required photograph ensures that providers make a reasonable effort to confirm a candidate's identity.

c. Notification of an Update or Cancellation (§ 1552.51(g))

The flight training provider must update the following information for each candidate flight training event:

- Actual start and end dates;
- Actual training location(s); and
- Notification whether training was completed or not completed, and the reason(s) why it was not completed.

When a training event is not completed, the provider must submit a brief description of why the training

was not completed, *e.g.,* cancellation by the provider or the candidate, failure of the candidate to meet the required standard, or abandonment of training by the candidate.

d. Expedited Processing (§ 1552.51(f))

A candidate may be eligible for expedited processing of flight training event notification(s), under 49 U.S.C. 44939(d), if more than 5 business days have elapsed since TSA acknowledged receipt of the event notification and the candidate meets one or more of the following criteria:

- Holds an FAA airman certificate and has provided proof of their FAA certification and at least one type rating;
- Holds an airman certification from a foreign entity that is recognized by an agency of the United States and has provided proof of their airman certificate and at least one type rating;
- Is employed by an aircraft operator regulated under 49 CFR part 1544 or foreign air carrier regulated under 49 CFR part 1546 that has a TSA-approved or accepted security program and has provided proof of employment;
- Is an individual who has unescorted access to a secured area of an airport regulated by TSA under 49 CFR part 1542 with a TSA-approved security program under this chapter and has provided proof of this unexpired credential; or
- Is a lawful permanent resident, and has provided proof of that status (see section II.B.5.g for more discussion on this issue).

Section 1552.51(f) of the final rule requires candidates to provide proof of eligibility when they apply for expedited processing. Upon receipt of a complete candidate application that includes appropriate documentation of eligibility for expedited processing, TSA will send an email notification to the candidate's flight training provider that the candidate is eligible for expedited processing. The 5-day waiting period for candidates eligible for expedited processing applies to the initial application for an STA, and to subsequent notifications of flight training events.

4. Deny Flight Training to Candidates Determined To Be a Security Threat and Notify TSA if They Become Aware of a Threat (§§ 1552.3, 1552.7(b), (c), and (d), and 1552.31(e))

If TSA determines that a candidate presents a threat to aviation or national security, TSA notifies both the candidate and the flight training provider that the candidate has been issued a Determination of Ineligibility and may not participate in flight training. If TSA notifies the provider that the candidate's preliminary Determination of Eligibility has been revoked or suspended, the flight training provider must immediately terminate or cancel the candidate's flight training event. The provider must acknowledge through the FTSP Portal the receipt of all TSA communications regarding a candidate's ineligibility, disqualification, or denial of flight training.

Flight training providers conduct security awareness training pursuant to the IFR, which includes training in the general requirements for eligibility under the FTSP program, and a general awareness of threats to aviation and national security deriving from flight training. If a flight training provider believes that a candidate is no longer eligible to receive flight training, TSA encourages the provider to notify TSA and their local FBI office, as such reporting is consistent with the training requirements of 49 U.S.C. 44939(i) and the requirements of § 1552.9 and as described in section II.B.5. The provider is encouraged to notify TSA of any new alleged disqualifying criminal offenses, as identified under this chapter, or of any changes to an individual's permission to remain in the United States that may affect a candidate's Determination of Eligibility.

5. Designate a Security Coordinator (§ 1552.9)

TSA is committed to enhancing information sharing with all of our industry stakeholders and partners. The final rule aligns the FTSP with other TSA regulations by requiring that all flight training providers designate a Security Coordinator.[51] In keeping with the requirements of the statutes authorizing the FTSP program, a Security Coordinator is necessary to ensure all flight training providers ''conduct a security awareness program for flight school employees to increase their awareness of suspicious circumstances and activities of individuals enrolling in or attending flight school.'' [52] Security Coordinators are a vital part of transportation security, providing TSA and other government agencies with an identified point of contact with access to company leadership and knowledge of the flight training provider's operations, in the event it is necessary to convey extremely time-sensitive information about threats or security procedures to a provider, particularly in situations requiring frequent information updates. The Security Coordinator provides TSA with a designated contact in a position to understand security problems; immediately raise issues with, or transmit information to, corporate or system leadership; and recognize when emergency response action is appropriate.

This final rule requires the Security Coordinator to be accessible to TSA 24 hours per day, 7 days per week, enabling TSA to contact any flight training provider quickly if TSA or another Federal agency should identify a security threat. TSA may contact Security Coordinators by email or telephone, or in person if electronic communications were not promptly acknowledged. TSA recommends that the flight training provider designate at least one alternate for the Security Coordinator, if staffing permits, to ensure the required accessibility is maintained. If the flight training provider designates any alternates, the provider must submit to TSA the same information for the alternates as for the primary Security Coordinator.

This requirement applies to all flight training providers, including those who do not provide flight training to non-U.S. citizens. This applicability reflects that any flight training provider is in a position to identify critical threat information that needs to be provided to the FBI and TSA related to aviation or other national security concerns. Equally important, TSA may need to provide flight training providers with information about an emerging or imminent threat.

As required by § 1552.9, the Security Coordinator acts as a single point of contact and facilitates interactions between TSA and the flight training provider. The final rule does not require the Security Coordinator or alternate(s) to be a dedicated position staffed by an individual who has no other primary or additional duties, *i.e.,* the Security Coordinator may be an existing employee and may perform other duties. For example, if a CFI is a one-person flight training operation, the CFI can be the Security Coordinator. A larger flight training provider operation may designate a Security Coordinator and alternate Security Coordinators, as necessary, to maintain the required level of availability. The final rule does not require the Security Coordinator to be certificated by the FAA. For example, a business owner or office manager may act as the Security Coordinator. A Security Coordinator may also be the administrator of the provider's FTSP Portal account.

[51] *See* 49 CFR 1542.3 (airports); 1544.233 (aircraft operators); 1548.13 (indirect air carriers); 1549.107 (certified cargo screening facilities); and 1570.201 (surface transportation).

[52] 44 U.S.C. 44939(i).

The Security Coordinator's responsibilities include coordinating with law enforcement and emergency response authorities as needed. Although the rule encourages flight training providers to notify TSA of security incidents, if there is an immediate threat, the first priority is to notify and work directly with first responders, such as the FBI or other appropriate authority, as soon as a provider becomes aware of suspected criminal or terroristic concerns, or other suspicious behavior. After notifying the FBI or other Federal, State, Tribal, or local law enforcement agencies, as appropriate, TSA encourages the provider's Security Coordinator to notify TSA.

Threats to aviation security continuously evolve, and incidents may occur. For this reason, the flight training provider's Security Coordinator should actively review TSA updates and security advisories and ensure the provider incorporates relevant new information into their security awareness training.

Flight training providers must designate a Security Coordinator no later than 6 months after the publication date of this final rule. The provider must submit the following information for the Security Coordinator and any designated alternate(s): name(s), title(s), telephone number(s), and email address(es). Flight training providers must keep this contact information on Security Coordinators current, ensuring that TSA is notified when a Security Coordinator leaves the flight training provider's employment and a new coordinator is designated. Flight training providers must provide any change in this information to TSA within 7 days of the change taking effect. The information collection burden associated with providing this information to TSA is the primary cost of this additional requirement.

The burdens imposed on flight training providers to designate a Security Coordinator are minimal, as most providers (including all individual instructors) are likely to designate the same person who already appears as the designated point of contact on the provider's FTSP profile with TSA. All burdens associated with the designation of a Security Coordinator are consistent with the requirements to undergo an STA. When TSA reopened the comment period for the IFR in 2018, the agency sought comment on whether flight training providers and their employees should be required to undergo an STA. 83 FR 23239. Many commenters were in favor of imposing such a requirement. In order to maximize the regulatory relief of the final rule, however, TSA elected to not impose a new requirement for STAs, as the less-burdensome requirement to designate a Security Coordinator also provides a meaningful security improvement.

6. Provide Security Awareness Training to Employees (§ 1552.13)

All ''flight training provider employees,'' as defined in § 1552.3, are also positioned to identify potential threats to security, including information they may become aware of while providing flight training, administering tests, or processing verification documents. TSA is required by 49 U.S.C. 44939(i) to ensure that all flight training providers conduct security awareness training programs that provide employees the awareness and tools necessary to identify individuals who may have malicious intent.

The rule requires flight training providers to provide initial and refresher security awareness training to their employees. As with the Security Coordinator requirements in § 1552.9, these requirements apply to all flight training providers, not just those who train candidates. Flight training providers registered with TSA and their covered employees must complete their initial security awareness training within 60 days of being hired. Thereafter, providers and their employees must complete refresher training at least every 2 years.[53] The final rule uses the term ''refresher training'' rather than the IFR's term ''recurrent security awareness training'' to avoid confusion with the recurrent training required to maintain an aircraft type rating.

The security awareness training program must instruct flight training provider employees on how to recognize suspicious circumstances and suspicious activities that may be exhibited by individuals enrolling in flight training, attending flight training, or employed by flight training providers. The training must address each of the elements identified in § 1552.13 as applied to the unique circumstances associated with their operations. Flight training providers should supplement and update security awareness training as TSA or other law enforcement or intelligence resources transmit new threat information or any changes to requirements applicable to the flight training provider, including changes to security measures for airports, aircraft operators, or foreign air carriers applicable to the flight training provider's operations.

The scope of the training requirements includes a new factor, in § 1552.13(b)(3)(iii), which recognizes the unique position of flight training providers and their employees to identify a potential threat to aviation security: non-U.S. citizens who are or have received flight training from someone not participating in the FTSP, but providing the type of training covered by this rule. This type of information is a security concern that flight training providers are encouraged to report to TSA under § 1552.9. Flight instructors were always in a position to detect such events, and the security awareness training required by the statute and imposed under the IFR was intended to encourage the reporting of such events. In the 19 years of the FTSP program operating under TSA, many providers have come forward to allege that another provider may be training a non-U.S. citizen who has not been vetted by TSA, or that a U.S. citizen was not required to provide documentation exempting the individual from an STA. Incorporating this new factor only makes the training more explicit, and codifies existing practice. In 2006, TSA granted an exemption from security awareness training requirements for aircraft operators who conduct flight training solely for their own employees, because TSA already required aircraft operators to conduct similar training under 49 CFR parts 1544 or 1546. This final rule incorporates this exemption by allowing an aircraft operator operating under a security program approved by TSA under 49 CFR parts 1544 or 1546 to comply with the security awareness training requirements through its programs under those parts, if all of the following conditions and limitations are met:

- The aircraft operator must not offer or conduct flight training to the public or to employees of other aircraft operators.
- The aircraft operator must maintain or continue to maintain training records in accordance with the aircraft operator's approved security program and must make those records available to TSA and FAA inspectors upon request.
- An aircraft operator who implements this exemption must not use the FTSP Portal to record security awareness training.

[53] In practice, TSA allows a grace period of 30 days to allow for scheduling flexibility. For example, an employee who completed initial security awareness training on April 1, 2019, must complete a refresher course no later than May 1, 2021. This provision in the final rule allows flight training providers latitude to consolidate security awareness training for their employees.

Although the requirements under § 1552.13 also apply to those persons who engage in lease agreements for flight training, the security training requirements do not apply to their employees who never come into contact with any candidates or records related to compliance with the FTSP. In general, individuals who provide side-seat support are not considered flight training provider employees and do not need to complete security awareness training unless the flight training provider employs them. For example, individuals who are supplied by the candidate or student's sponsor in order to provide side-seat support are not considered flight school employees.

The final rule also allows a provider to adopt and tailor industry-developed online security awareness training programs to the provider's needs as long as they cover the topics identified in the rule. In addition, TSA publishes guidelines for a security awareness training program in the document ''Security Guidelines for General Aviation Airport Operators and Users.'' [54]

7. Maintain Records (§ 1552.15)

In accordance with § 1552.15(a), flight training providers required to comply with this rule must retain the following records for at least 5 years from the date the record is created:

- Employee records regarding security awareness training. Flight training providers must retain records for former employees for at least 1 year after the employee has left their employment. As provided in § 1552.15 (b)(3), flight training provider employees or former employees may request their security awareness training records from their current or previous employer as evidence of previous or current security awareness training. Providers must make those records available to the employee or former employee upon request and should provide the record(s) in a timely manner. Records may be provided in hard copy or electronically.
- Candidate records demonstrating flight training eligibility, as required in § 1552.15(c).
- Records documenting the flight training provider's verification of a student's U.S. citizenship, as required in § 1552.15(c). Providers also may meet this requirement by placing a statement in provider and student logbooks in accordance with § 1552.15(c)(2).
- DoD endorsement records demonstrating that the flight training provider has verified the endorsee's identity, as required in § 1552.7(a)(2).
- Provider and contractor records concerning leasing agreements. Section 1552.15(d) clarifies requirements for flight training providers and contractors to maintain records of their flight training lease agreements. The flight training provider is responsible for documenting leasing agreements used in flight training, unless that provider cannot register with TSA, in which case, the lessor of the simulator must register with TSA as a provider. Flight training providers must demonstrate compliance with this requirement no later than 6 months after the publication of this final rule.

To ensure compliance with this regulation, TSA may review a provider's records, whether these records are stored on the FTSP Portal or maintained physically or electronically by the provider (such as documentation that a student is a U.S. citizen or otherwise not subject to the vetting requirements before receiving flight training). Flight training providers not in compliance with recordkeeping requirements are subject to civil penalties. TSA publishes its Enforcement Sanction Guidance Policy on its website at *www.tsa.gov.*

Providers are not required to maintain physical records if they have their own electronic system for this purpose. TSA is, however, also developing a recordkeeping capability associated with the FTSP Portal to allow flight training providers the option to upload and store their compliance records through their FTSP account. Providers will be notified when this option becomes available. Section E provides more information on the FTSP Portal.

C. What must a candidate do in order to comply with the rule and receive flight training?

The final rule continues to require an STA and Determination of Eligibility for all non-U.S. citizens, except DoD endorsees, who seek either flight training in the United States or an FAA certification abroad, as provided in § 1552.31. Candidates must use the FTSP Portal to apply for the STA and pay the appropriate fee. In performing the STA, TSA assesses the candidate's biographic information, identity documentation, and biometric information (fingerprints) against terrorism risk, criminal history, and immigration datasets. Candidates are responsible for keeping their FTSP Portal account information current. Subsections 1 and 2 below describe the requirements in greater detail.

1. Submit Information Sufficient for TSA To Conduct a Security Threat Assessment (§ 1552.31)

Candidates must submit information to TSA sufficient for TSA to conduct an STA. To reduce the burden to candidates, the final rule has limited the information TSA collects to biographic elements identified in table 4, which often aligns with the type of information the candidate provides to obtain a U.S. visa.[55] A candidate who does not have a passport, such as an asylee or a refugee, must produce other government-issued documentation, whether from their home country or from the United States, to positively identify who they are. Documentation must include an issue date and an expiration date (if appropriate), such as on a U.S. driver's license or U.S. employment authorization document. TSA collects gender information in coordination and compliance with the U.S. DOJ. TSA no longer collects candidate height, weight, eye color, or hair color. A candidate need not obtain an immigrant or nonimmigrant document from the United States in order to participate in training outside the United States, but a candidate must present any immigrant or nonimmigrant documents previously issued to the candidate by the United States, even if the candidate now seeks training at a location outside the United States. Many candidates have been to the United States before, and some applicants have previously been denied a U.S. visa. TSA considers a candidate's prior interactions with U.S. immigration agencies to be relevant information when determining whether a candidate presents a risk to aviation or national security. The information and documents listed in table 4 are for illustrative purposes only, and may be subject to change. A complete list of acceptable documents will be maintained at *www.tsa.gov.*

[54] A copy of these guidelines is available at *https://www.tsa.gov/for-industry/general-aviation* under ''GA Security Guidelines'' or by contacting *FTSP.Help@tsa.dhs.gov.*

[55] *See* DOS Online Nonimmigrant Visa Application (DS–160) at *https://ceac.state.gov/genniv/.*

TABLE 4—INFORMATION SUBMITTED BY CANDIDATES TO TSA

Identification Information	
Name	The candidate's official name as it appears on their passport or other acceptable documentation. Any other name variations from the candidate's passport (or other acceptable document) name that appear on other documents provided by the candidate. Any other aliases used that are different from the documentation or may not be obvious from documents provided, such as: • Birth name: the name as it appears on the candidate's birth certificate. • Maiden or premarital name: the name used prior to marrying. • Americanized name: name that an individual may have adopted as an Anglicization to facilitate the spelling or pronunciation by English speakers. • Legal name changes: legally changed name or names used by the individual one or more times in their life. • Previous legal names even if no longer used. • Nickname: a familiar name used in lieu of the person's official name, such as: Rick for Richard, Betty for Elizabeth, Fred for Fahad, Jenni for Jennifer, *etc.*
Gender	Female/woman. Male/man. another or unspecified gender identity.
Date(s) of birth	The date of birth listed on the candidate's passport. If another date is listed on any document supplied, the candidate may be required to provide an explanation.
Foreign Citizenship	Citizenship information to include: • Birth Country • Foreign Naturalization status, from the date of naturalization to present. • Whether dual or multi citizenship (include any and all citizenships held currently or in the past). • Historical data (any citizenship(s) that has been modified from a previous nation state to a new nation state; for example, a citizen from the former Socialist Federal Republic of Yugoslavia is now from either Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Serbia, or Slovenia). • Renunciation of citizenship.
Social Security Number (if issued by the U.S. Government).	Social Security Number (if issued by the U.S. Government). Most candidates will not have a social security number and it is not required. Providing a social security number is voluntary and may in certain circumstances facilitate the completion of the STA.
Document images and information	
Passport information (if applicable)	Passport number(s); Date issued/expiration date; and Extension date and image, if applicable.
Documents sufficient to demonstrate permission to remain in the United States during all proposed flight training events.	One or more documents that may include a Form I–94, U.S. lawful permanent resident card, U.S. employment authorization document, refugee documentation, asylum seeker documentation, parolee documentation, or authorization documents under Deferred Action for Childhood Arrivals. Documentation provided must include: • Document number(s); • Date issued and/or expiration date (if any); and • Extension date and image, if applicable. *Note:* The following documents do not demonstrate an extension of permission to remain in the United States: • Appointment confirmation for biometric submission. • Appointment confirmation for interview. • Electronic System for Travel Authorization documentation.
Airman certificate information	All airman certificate information and images, current or expired (if available), that may demonstrate their eligibility for training or their eligibility for expedited processing. Certificate information must include all document number(s), issuance date(s) and rating(s).
Physical address information	All residential addresses for the past 5 years and indication whether each address provided is current or historical. Any gap in residence of 30 days or more must be explained. The application also must include any physical or postal addresses that appear on the document images provided. Address information provided must include the following: • Start and end date(s) for each address. • Street address and apartment or room number, if applicable. • City, state, province, jurisdiction, and country. • Zip code/postal code. • Phone number(s). A post office box is not acceptable as a residential address and cannot be used to cover a 30-day gap.
Email address information (TSA requires every candidate to provide an email address; this email address will be the primary means of communication between TSA and the candidate).	Email information must be unique to the individual and match the email associated with the candidate's account on the FTSP Portal. If a candidate's email information changes, it is the candidate's responsibility to update that information on the FTSP Portal to ensure the candidate receives TSA notifications.
Employment information	The candidate must provide information regarding their current employment status. If currently unemployed, candidates may select "unemployed" and need not fill out employer information. TSA requires the following information in order to contact a candidate's current employer to verify that candidate's eligibility for expedited processing: • Occupation. • Employer or company name.

TABLE 4—INFORMATION SUBMITTED BY CANDIDATES TO TSA—Continued

	• Contact name (provide a person's contact information who can confirm occupation/employer, usually a supervisor). • Employer phone number (if any). • Employer email (if any). • Employer website (if any).

TSA will initiate the STA after the agency receives all of the information required under this section, as well as the candidate's fingerprints and the fee. The Candidate Guide on the FTSP Portal provides additional information on completing the STA application.

Sometimes an individual will convert an airman certificate from another civil aviation authority to an FAA-certification. In general, this conversion of an airman certificate is not subject to the requirements under § 1552.51. If, however, the individual converting the FAA-certification wishes to pursue additional training or recurrent training on that certificate, that individual may be a candidate under this rule who must enroll with TSA and apply for an STA.[56]

Consistent with current practice under the IFR, § 1552.31(e) provides procedures for candidates TSA identified as ineligible to present additional information to correct their records if they believe such information would materially affect TSA's decision. The IFR did not provide redress procedures for candidates who are declared ineligible by TSA, but TSA has always allowed candidates an opportunity to correct their records. The procedures to correct the record are described in § 1552.31(e).

2. Pay Fee for the Security Threat Assessment

a. Fees (§ 1552.39)

The final rule requires a candidate to submit a fee the first time that candidate requests an STA and with each STA renewal, as provided in § 1552.39. The fee is a consolidated fee that allows a candidate to train as often as they wish over the 5-year period of their valid Determination of Eligibility, without additional cost.

The candidate generally will pay one fee to cover the STA for all training events up to 5 years. Table 7 provides the fees and amounts required as of the publication date for this final rule.

Candidates who have completed an STA that TSA deems is comparable to the STA required for FTSP candidates may be eligible for a reduced fee, collected to cover the cost of confirming their comparable STA. *See* § 1552.37.

As noted above, this change from an event-based STA to a time-based STA provides significant cost-savings and addresses an ASAC recommendation to reduce the frequency that a candidate must undergo an STA. This change will result in time and cost savings for candidates. Over the initial 18 years of the program, very few candidates paid for only one or two STAs. Most candidates paid for 3 to 12 combined STAs and training event notifications over a 5-year period, costing them a combined total of $350 to $840.[57]

Payments are submitted to TSA via *Pay.gov,* the U.S. Government's electronic fee payment portal. The FTSP Portal provides all necessary instructions and a link to *Pay.gov* for payment. Automated processing of the STA is initiated as soon as the candidate pays the fee. TSA is not authorized to refund fees once the STA is initiated because TSA incurs the costs of vetting upon receiving verification from *Pay.gov* that a fee was paid. Under § 1552.5 of the IFR, TSA had allowed a refund only when an individual submitted a fee in error, for example, submitting a fee when one was not required.[58] This provision was intended to account for U.S. Citizens (who are not required to undergo an STA) who submitted an application by mistake, or if a candidate submitted multiple applications for the same training event. TSA believes that the online enrollment process would identify and preclude these types of mistakes before an individual paid any fee. Though mistakes are unlikely, TSA will retain the limited refund provision from the IFR.

The FTSP fee structure reflects current and estimated costs for processing the candidate's application.[59] The consolidated fee includes the fee the FBI charges to process fingerprints, which TSA collects and forwards to the FBI. If the FBI fee changes, TSA will collect and transmit the revised fee to the FBI. TSA reviews fees for this program every 2 years and will publish any changes with a notice published in the **Federal Register**.

b. Reduced Fee for Comparable STAs (§ 1552.37)

TSA may determine that another TSA-conducted STA or an STA conducted by another governmental agency is comparable to the Level 3 STA required under this rule, as discussed further in section II.D. In these cases, the candidate would not be required to undergo, and TSA would not have to conduct, a duplicate STA in its entirety. The candidate would pay only for the services TSA performs to verify the STA and determine eligibility, resulting in a reduced fee. Note that some STAs governed by other regulations may have unique restrictions, requirements, or privileges. A candidate who receives a comparable STA determination under this regulation is not entitled to additional privileges beyond the original STA. TSA will review the comparable STA of any candidate if new information indicates the candidate may pose or poses a threat to aviation or aviation security.

If TSA confirms completion of a comparable STA under § 1552.37, TSA assesses a reduced STA fee.[60] A candidate with a comparable STA must still provide the biographic and biometric information required under § 1552.31. The following is the current list of comparable STAs:

- TSA's PreCheck® program;[61]
- TSA's TWIC® program;[62]
- TSA's HME program;[63]

[56] The FAA creates advisory circulars memorializing agreements with other civil aviation authorities, generally concerning the conversion process for pilot certificates. Conversion agreements with other civil aviation authorities are managed by FAA's General Aviation and Commercial Division, AFS 800. *See https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/afx/afs/afs800/.*

[57] This statement is based on an August 2019 TSA-analysis of the latest 5-year window for 216 candidates who paid for an STA on August 15, 2014. Based on this analysis, TSA determined that 20 of the candidates paid less than $220 and 15 paid $840 or more.

[58] *See* 69 FR at 56334.

[59] *See* fee study and RIA in the docket for this rulemaking for more information on how the fees are developed.

[60] *Id.*

[61] *See https://www.tsa.gov/precheck. See also* 78 FR 72922 (Dec. 4, 2013).

[62] *See https://www.tsa.gov/for-industry/twic. See also* 49 CFR part 1572.

[63] *See https://www.tsa.gov/for-industry/hazmat-endorsement. See also* 49 CFR part 1572.

• DHS Trusted Traveler programs including Global Entry, SENTRI, and NEXUS.[64]

TSA considers each of the threat assessment programs listed above to be a ''Level 3'' STA, which is discussed in detail below. For the purposes of the FTSP, TSA will only consider a Level 3 STA to be a comparable STA. TSA will publish any changes to the list of comparable STAs on the FTSP Portal.

D. How does TSA determine whether a candidate is eligible for flight training?

TSA determines a candidate's eligibility by conducting an STA, which is designed to determine whether a candidate poses a threat to transportation or national security. Individuals who are issued a Determination of Eligibility following an STA may be granted access to transportation infrastructure or assets, or may be granted other privileges and credentials, including access to flight training. Both the IFR and the final rule require an STA that consists of one or more checks against immigration records, terrorist watchlists (known as an ''intelligence'' check), and criminal history records, as well as other data sources. An STA with these checks is referred to as a ''Level 3 STA.''

1. Immigration Check (§ 1552.35)

The final rule specifies that all flight training students who are not U.S. citizens, U.S. nationals, or foreign pilots endorsed by the DoD must undergo an immigration check as part of the STA process. The immigration check for a Level 3 STA verifies that the individual is lawfully admitted for permanent residence; a refugee admitted under 8 U.S.C. 1157; granted asylum under 8 U.S.C. 1158; in lawful nonimmigrant status; paroled into the United States under 8 U.S.C. 1182(d)(5); or otherwise authorized to be in or be employed in the United States. A candidate who is not authorized to be in the United States under one of these categories is not eligible for flight training in the United States. TSA also considers a candidate's history with U.S. immigration services, such as violations of U.S. immigration laws or regulations, to be a factor in determining a candidate's risk to aviation or national security, regardless of where a candidate may seek flight training.

TSA conducts an immigration check using CBP's ATS, which allows TSA to query many different databases and systems that may include SAVE, the Advanced Passenger Information System, ADIS, Consular Consolidated Database, the Treasury Enforcement Communications System, used by CBP officers at the border to assist with screening and determinations regarding admissibility of arriving persons, and the Student and Exchange Visitor Information System (SEVIS). Candidates who appear to be ineligible following an immigration check for a Level 3 STA are referred to an immigration authority or liaison to assist in determining whether the candidate is eligible to participate in flight training. TSA also compares the information a candidate presents with their STA application to the information in the above databases. The documents provided by the candidate help TSA adjudicators narrow mixed results, de-conflict contradictory info, and save time during the adjudication process. For instance, an applicant may have a document that is more detailed than what is in the database.

TSA may suspend a Determination of Eligibility if immigration authorities inform TSA that the candidate does not have permission to remain in the United States. In this instance, TSA will advise the provider to cease training the candidate, because a candidate that no longer passes the immigration check for a Level 3 STA is considered by TSA to be unlawfully present, and to be a risk to national security.

Unless otherwise directed by the U.S. Department of State (DOS), a candidate's Determination of Eligibility will expire when their passport or other document(s) establishing eligibility for flight training expires, is revoked, or suspended, even if the Determination of Eligibility was originally issued for a longer period of time. The candidate may submit additional documents to correct or update their record and possibly extend or restore their Determination of Eligibility. Table 4 provides a list of relevant documents, and § 1552.31(e) describes redress provisions.

TSA relies upon valid U.S. Government identity document(s) with issue and expiration dates when conducting immigration checks. TSA is not an immigration authority and relies on data and guidance from immigration authorities, such as DOS, USCIS, ICE, and CBP, during TSA's review of information, and when resolving any immigration-related questions or concerns that arise.

2. Intelligence Check (§ 1552.31(c))

The intelligence check for a Level 3 STA reviews biographic information, documents, and databases to confirm an individual's identity, and searches government and non-government databases, including terrorist watchlists, criminal wants and warrants, Interpol, and other domestic and international sources, to determine whether an individual may pose or poses a threat to transportation or national security. TSA conducts the intelligence check ''recurrently'' so that each time a watchlist changes, TSA again runs the vetted individuals against the revised list. Thus, if a candidate is initially issued a Determination of Eligibility, but is later placed on a watchlist, TSA can quickly take appropriate action to minimize the threat. If TSA determines that the candidate presents a threat to aviation or national security, that individual is not eligible for flight training. Under § 1552.31(e), flight training candidates may request that TSA reconsider an ineligibility determination only if the determination was made on the basis of incorrect records. TSA provides each candidate with a summary of the records upon which TSA based its decision, to the extent feasible in light of national security and law enforcement interests.

3. Criminal History Records Check (§ 1552.31(c))

The CHRC conducted under this rule is similar to the CHRC TSA conducts for other Level 3 STAs such as the TSA PreCheck® program (a DHS trusted traveler program), and the TWIC® and HME programs under 49 CFR part 1572. TSA submits the biometrics (fingerprints) collected for STAs that include a CHRC to the Automated Biometrics Identification System (IDENT), which is operated by the DHS Office of Biometric Identity Management. IDENT is the departmental repository for biometrics collected by DHS agencies and provides additional information for TSA to use as part of the vetting process.

4. Rap Back

The FTSP will use the FBI's Noncriminal Justice Rap Back service[65] for individuals required to undergo a CHRC. Rap Back allows TSA to move from an event-based STA requirement to a time-based STA. TSA has implemented Rap Back for other vetting programs. The Rap Back service provides a continuous criminal vetting capability that enhances security significantly by providing TSA with timely criminal history information rather than finding it when the next STA is conducted.

[64] *See https://www.dhs.gov/trusted-traveler-programs.*

[65] For more information, *see* the FBI's Next Generation website at *https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/ngi.*

Rap Back enables TSA to receive new criminal history that occurs after the initial submission of fingerprints. Without Rap Back, TSA must submit new fingerprints and fees each time it seeks to obtain a new CHRC on an individual. With Rap Back, TSA can determine that an individual who initially passed the CHRC and received a Determination of Eligibility has become ineligible due to a recent disqualifying criminal offense. Implementation of Rap Back does not affect the type or amount of information TSA must collect from each individual at enrollment.

E. How do flight training providers and candidates provide the required information to TSA?

1. Use the FTSP Portal To Submit Documents (§ 1552.17)

For nearly 2 decades, flight training providers and candidates have used the FTSP Portal to manage STA applications and notify TSA of flight training events. The final rule makes the use of the FTSP Portal mandatory for candidates to submit STA applications, for flight training providers to submit their flight training event notifications to TSA, and for U.S. DoD attachés to submit DoD endorsements. The final rule also removes previously permitted procedures for faxing documents. *See* § 1552.17. Under the final rule, flight training providers must use the FTSP Portal to submit all flight training event notifications to TSA on behalf of candidates. TSA accepts no other method to be notified of flight training events.

2. Use the FTSP Portal for Recordkeeping (§ 1552.15)

As previously described in section II.B.7, TSA will allow flight training providers to store records required by § 1552.15 on the FTSP Portal, including records containing personally identifiable information, to facilitate compliance with the regulation.

When this capability is made available, all flight training providers will be able to use the FTSP Portal for recordkeeping purposes. For example, a provider that does not train candidates may use the FTSP Portal to maintain records of compliance with citizenship verification requirements, security awareness training, etc. These providers may, of course, continue to use their own recordkeeping systems. TSA will encourage providers to take advantage of this capability, as the maintenance of all required records in one place facilitates audits and inspections for all parties. For example, many recordkeeping violations of the requirements in this part resulted from the dispersal of records across the enterprise, or from inconsistent recordkeeping practices. Consolidating records on the FTSP Portal will address these issues.

In addition, both Student and Exchange Visitor Program (SEVP)-certified and non-SEVP-certified providers will be able to upload their lease agreements to the FTSP Portal. Table 5 compares the required to permissive use of the FTSP Portal for flight training providers.

TABLE 5—COMPARISON OF REQUIRED AND OPTIONAL USE OF THE FTSP PORTAL

Use of FTSP Portal *required* for the following purposes	Use of FTSP Portal *encouraged* for the following purposes
• Designate a Security Coordinator. • Verify that a student, candidate, or DoD endorsee is eligible to participate in flight training. • Ensure each candidate holds a Determination of Eligibility. • Notify TSA of all non-U.S. citizen flight training events. • Notify TSA when a candidate appears to no longer be lawfully present or otherwise no longer permitted to remain in the United States, or has a disqualifying criminal offense. • Document each student and candidate presents valid ID at each flight training event. • Upload photos of candidates and DoD endorsees within 5 days from when they arrive for training. • Update FTSP Portal records concerning candidate completion or non-completion of training. • Acknowledge receipt of TSA notifications.	• Record compliance-related activities in lieu of maintaining physical or electronic records onsite. • Record employee initial and biennial security awareness training events. • Document aircraft simulator lease agreements. • Record verification of student, candidate, or DoD endorsee eligibility. • Support TSA, FAA, DoD, and SEVP inspections and audits of compliance records.

The FTSP Portal also is available to other U.S. Government agencies who may request access for the following purposes:

• FAA Airmen Certification Office and Flight Standards personnel who confirm airman and flight training provider certifications, facilitate the notification of disqualifying actions or offenses, and support FAA inspections and audits of flight training providers.

• DoD attachés who initiate and distribute endorsement notifications to specific flight training providers.

• DHS employees authorized to support inspections and audits of flight training providers' facilities and records, facilitate the sharing of candidate training activities, and determine a candidate's status with Federal immigration authorities.

3. Use the FTSP Portal To Create and Access Accounts (§ 1552.17)

In order to comply with the regulation, candidates and flight training providers must create their own accounts on the FTSP Portal [66] and submit all required information and documentation through their FTSP Portal accounts. Each candidate uses the FTSP Portal to create an account; enter biographic and biometric information; upload digital copies of identity documents, visas, and other documents that establish eligibility for FTSP; apply for an STA; access the link to pay the fee through an account on *Pay.gov;* and associate their account with their flight training provider or providers.

Flight training providers covered by the final rule must establish an account on the FTSP Portal and identify only one person as the administrator for their FTSP Portal account. This person may be the Security Coordinator or another employee. Each provider must identify at least one FAA instruction certification to establish an online provider account with TSA. Flight training provider accounts are verified with FAA through certificate(s) granted under 14 CFR parts 61, 121, 135, 141, or 142. A provider may identify additional non-administrator agents on their account if desired.

[66] Currently accessible at *https://www.fts.tsa.dhs.gov.*

TSA may suspend any user's access to the FTSP Portal at any time. The decision to suspend a user's FTSP Portal account or a user's access to the FTSP Portal is within TSA's sole discretion, but TSA would not do so without just cause. Examples of such causes include suspicion of fraud, persistent noncompliance with one or more requirements of this part, or reasonable suspicion that the account holder poses a threat to aviation or national security. TSA assumes responsibility for the security of any data uploaded to the FTSP Portal and will partner with flight training providers in the retention and removal of records according to National Archives and Records Administration (NARA) and Privacy Act standards.[67]

4. Use the FTSP Portal To Access FTSP Guidance (§ 1552.17)

The FTSP Portal is the primary source for obtaining information about FTSP requirements. The portal offers detailed guidance on FTSP processes and requirements, including candidate, provider, and other user guides, and Frequently Asked Questions.

Through the FTSP Portal, TSA is reducing its carbon footprint by providing for all documentation and correspondence between TSA and the regulated party to occur through the portal and email; no hard-copy correspondence is required or generated. Email to *FTSP.Help@tsa.dhs.gov* is the most effective way to communicate with or query the FTSP. TSA generally responds to emails within 5 to 7 business days.

F. Compliance Guidelines

The flow charts in Figures 1 and 2 summarize compliance requirements for candidates (Figure 1) and flight training providers (Figure 2).

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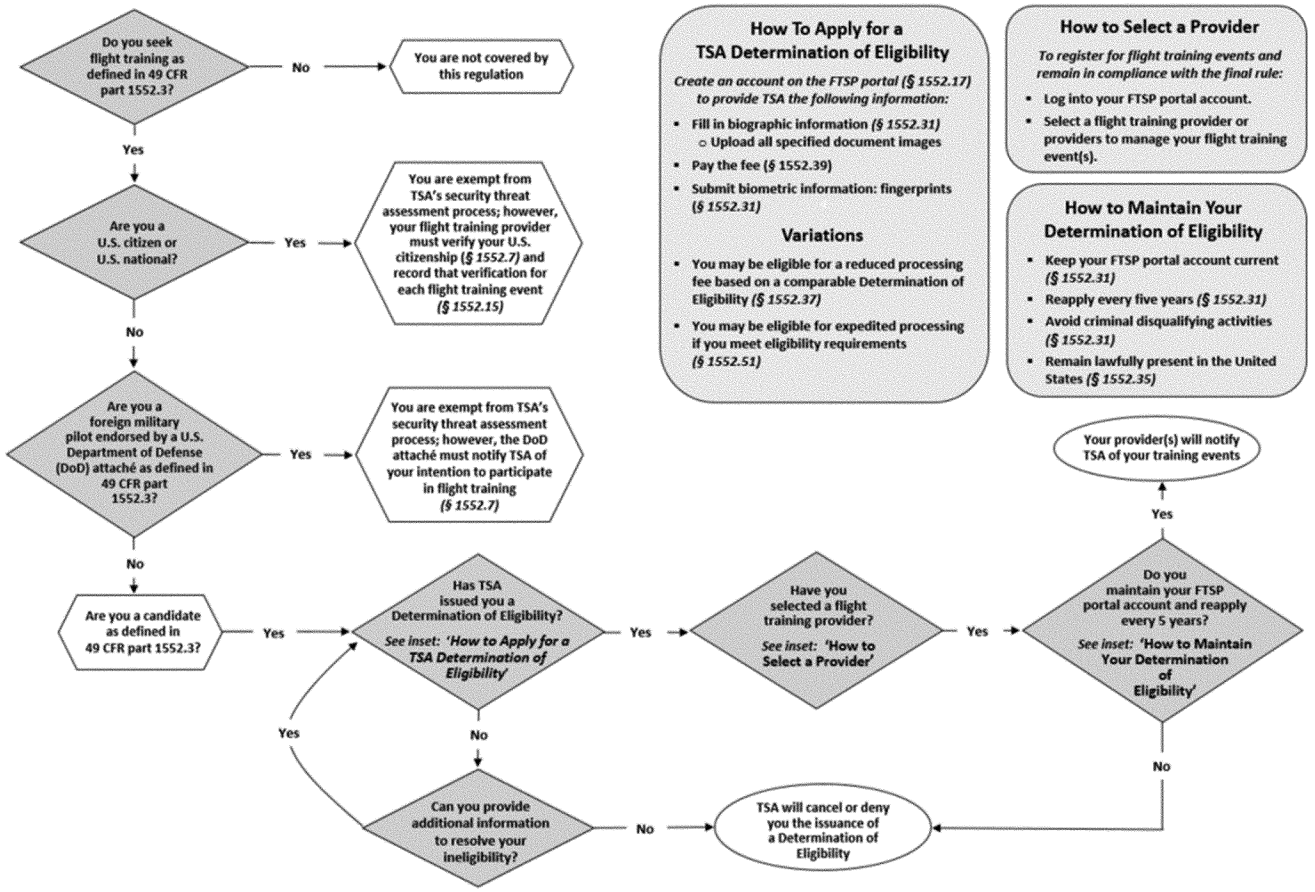
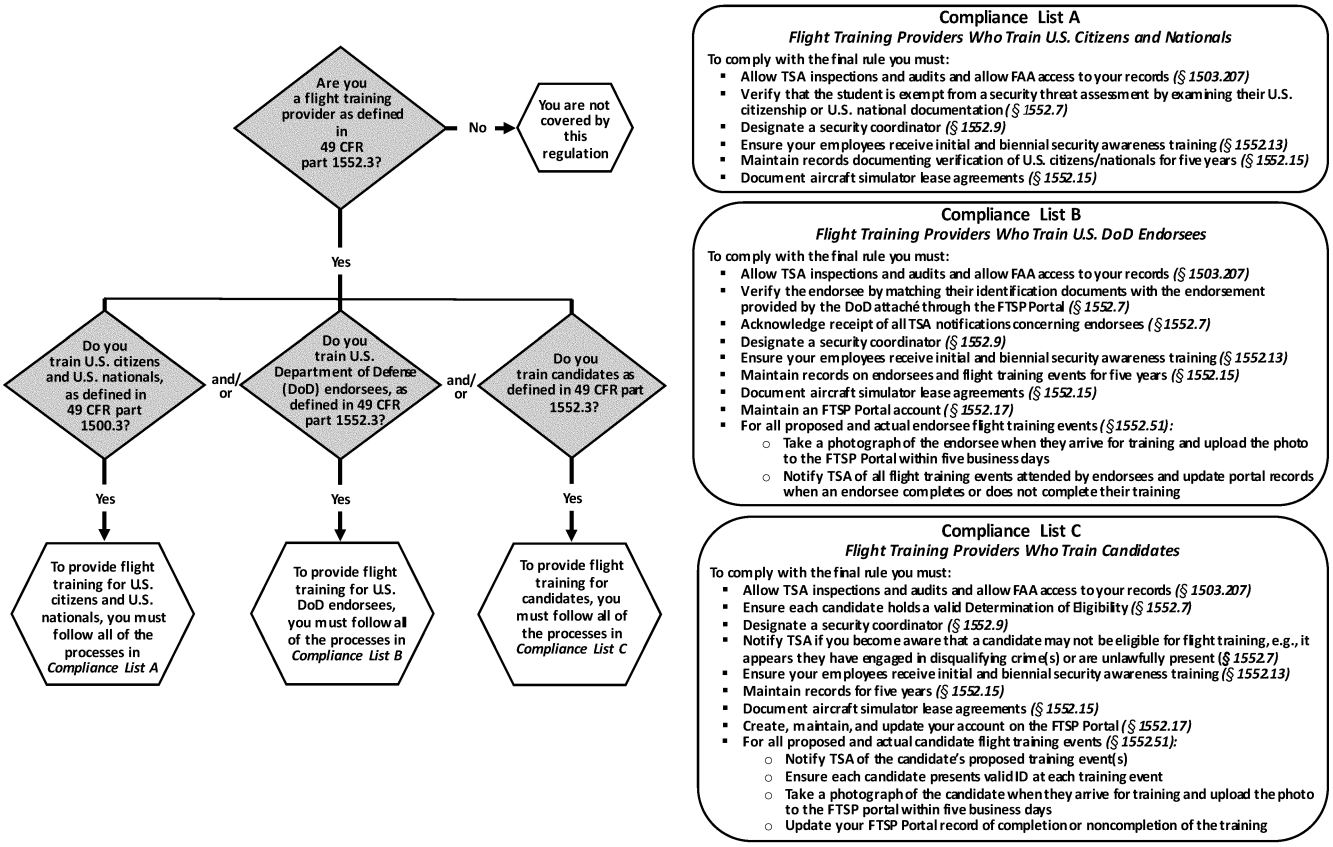
FIGURE 1. FLIGHT TRAINING CANDIDATE COMPLIANCE GUIDELINES



[67] Please *see supra* note 32.

FIGURE 2. FLIGHT TRAINING PROVIDER COMPLIANCE GUIDELINES



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G. What happens if a flight training provider or candidate fails to comply?

1. False Statements (§ 1552.19)

Under § 1552.19, neither the flight training provider nor the candidate may make a willful false statement or misrepresentation or omit a material fact when submitting the information required under this part. TSA considers online confirmation and attestation by the flight training provider or the candidate to be sufficient certification that the information provided is neither fraudulent nor false. The final rule clarifies that this prohibition against false statements under the IFR applies to both candidates and flight training providers.

Individuals subject to this rule may be subject to enforcement actions under 49 CFR 1540.103 for fraud and intentional falsification of records, or under § 1540.105, which applies to individuals who tamper with, interfere with, compromise, modify or attempt to circumvent any security system, measure, or other TSA procedure. Individuals subject to this rule who make knowing and willful false statements, or who omit a material fact when submitting required information for TSA also may be subject to fines and/or imprisonment under 18 U.S.C. 1001, denied approval for a Determination of Eligibility, and subject to other enforcement actions.

2. Compliance, Inspection, and Enforcement (§ 1503.207)

While the IFR included a paragraph related to TSA's inspection authority, it did not provide the same detail found in other TSA regulatory provisions, nor did it align with the full scope of TSA's statutory authority. ATSA authorizes TSA, during reasonable business hours and without advance notice, to enter a facility or access online records and conduct any audits, assessments, tests, or inspection of operations, and view, inspect, and copy any records necessary to carry out TSA's security-related statutory and regulatory authorities.[68] TSA may inspect the original or the recorded copy of any documents provided by a student, candidate, or provider.

This access is necessary to ensure TSA meets its statutory mandate to: (a) enforce its regulations and requirements; (b) oversee the implementation and ensure the adequacy of security measures; and, (c) inspect, maintain, and test security facilities, equipment, and systems for all modes of transportation.[69] This mandate applies even in the absence of rulemaking, but TSA has chosen to include a restatement of its authority in its rules. Over the years, TSA added language through multiple final rules regarding inspections. As a result, TSA's inspection authority had been restated in 49 CFR parts 1542, 1544, 1546, 1548, 1549, 1550, 1552, 1554, 1557, and 1570.

This final rule does not alter the scope of TSA's inspection authority. Through this rulemaking, TSA is consolidating all statements on the agency's enforcement authority into § 1503.207, which covers all of TSA's investigative and enforcement procedures. The new § 1503.207 applies to all of TSA's regulatory requirements. This consolidation is purely technical, as TSA's authority to conduct inspections under each part is not changed. While the various statements of inspection authority included in 49 CFR parts 1500 *et seq.* were not identically worded, TSA has consistently interpreted each of the previous statements to have the same scope and meaning as provided by

[68] *See* ATSA as codified at 49 U.S.C. 114.

[69] *See* 49 U.S.C. 114(f)(7), (11), and (9).

49 U.S.C. 114. This final rule codifies this consistent interpretation in § 1503.207.

H. Severability

TSA is adding § 1540.7 to reflect TSA's intent that the various regulatory provisions be considered severable from each other to the greatest extent possible. For instance, if a court of competent jurisdiction were to hold that the rule or a portion thereof may not be applied to a particular owner or operator or in a particular circumstance, TSA intends for the court to leave the remainder of the rule in place with respect to all other covered persons and circumstances. The inclusion of a severability clause is not intended to imply a position on severability in other TSA regulations.

III. Summary of Changes Between IFR and Final Rule

Table 6 summarizes changes between the IFR and final rule.

TABLE 6—SUMMARY OF CHANGES BETWEEN THE IFR AND THE FINAL RULE

Final rule	Change from IFR	Reason for the change
Subpart A		
§ 1552.1. Scope	Describes the scope and general requirements of the rule.	Technical.
§ 1552.3. Terms used in this part	Consolidates definitions by removing them from other parts of the CFR and publishing them in one part.	Technical change. Provides clarity to requirements by defining terms previously not defined and expanding some existing definitions. Moves some terms used throughout TSA's regulations to § 1500.3. (*See* I.E.)
§ 1552.5. Applicability	Describes the individuals and entities subject to regulation under this rule, with revised text.	Provides clarity regarding applicability of the rules' requirements. Clarifies requirements for persons, entities, and companies providing leased aircraft simulators for flight training. (*See* II.B.).
§ 1552.7. Verification of eligibility	Describes the process for verifying a flight student's eligibility for training in a separate section, with revised text.	Expands and incorporates clarifications published after the IFR was issued, by recognizing that many flight training providers may become aware that a candidate might have become ineligible prior to TSA being informed through formal channels. (*See* II.B. and III.C.).
§ 1552.9. Security Coordinator	Requires all flight training providers to designate a person to serve as a Security Coordinator and outlines the role of the Security Coordinator, including what training the Coordinator must participate in.	Provides a primary contact for administrative purposes and compliance, consistent with TSA's other regulations. (*See* II.B.5.).
§ 1552.13. Security awareness training	Replaces ''recurrent'' security awareness training with ''refresher security awareness training''.	Avoids confusion between recurrent flight training (required by the FAA) and recurrent security awareness training (required by TSA) and reduces the frequency of refresher security awareness training. (*See* II.B.6.).
§ 1552.15. Recordkeeping	Consolidates documentation and recordkeeping requirements and introduces the capability to store and manage records on the FTSP Portal.	Provides clarity and eliminates redundancies. Provides cost-saving options. (*See* II.B.7.).
§ 1552.17. FTSP Portal	Consolidates FTSP Portal account provisions	Provides clarity and eliminates redundancies. (*See* II.E.).
§ 1552.19. Fraud, falsification, misrepresentation, or omission.	Updates language concerning the confirmation and attestation of truth and accuracy.	Provides clarity on impact of making false statements. (See II.G.1, III.C.).
Subpart B		
§ 1552.31. Security threat assessments required for flight training candidates.	Consolidates and standardizes requirements for candidates, and extends the duration of an STA for up to 5 years.	The Determination of Eligibility may be used with one or more flight training providers (portable), instead of requiring a new determination for each flight training event. (See I.D.3., II.C., II.D., IV.C.5.).
§ 1552.33. [Reserved]		
§ 1552.35. Presence in the United States	Describes how TSA determines immigration check eligibility in relation to an STA.	Clarifies TSA's role in conducting an immigration check. (*See* II.D.).
§ 1552.37. Comparable security threat assessments.	Allows applicants to submit proof of a completed, comparable STA.	Allows for a reduced fee for candidates that hold a comparable STA issued by another DHS or TSA program. (See II.C.2., IV.C.).
§ 1552.39. Fees	Consolidates all fee requirements	Combines fees paid over a 5-year timeframe into one fee and incorporates an industry-stated preference to pay a single fee for an STA covering multiple training events. (*See* II.C., IV.B., IV.C., V.).

TABLE 6—SUMMARY OF CHANGES BETWEEN THE IFR AND THE FINAL RULE—Continued

Final rule	Change from IFR	Reason for the change
Subpart C		
§ 1552.51. Notification and processing of flight training events.	Consolidates flight training event notification requirements.	Standardizes phrasing concerning processing capabilities, and collects pertinent information for one to many training events based on a 5-year Determination of Eligibility. (See II.B.3., IV.C.4).

TSA made these changes in response to comments received during the comment periods following publication of the IFR in 2004, and following the reopened comment period in 2018. All changes in the final rule are supported by comments received on the IFR, or following the 2018 reopened comment period, many of which also formed the basis of formal recommendations from ASAC. TSA tailored the scope and content of the final rule to reflect only those changes that are supported by the public record. TSA did not solicit a new round of comments after the 2018 comment period because the issues raised have not changed.

All exemptions, interpretations, and guidance documents related to the IFR are incorporated into the final rule. TSA has authority under 49 U.S.C. 114(q) to issue an exemption to any TSA regulation, if such an exemption is in the public interest. The basis for TSA's decision in each exemption, interpretation, and guidance document was stated in the original documents TSA provided when issuing each decision, all of which may be found in the public docket for this rulemaking. TSA's reasons for incorporating its previous decisions into the final rule are described more fully in the sections of this document referenced in column three of table 6. Most of TSA's interpretations of this rule have been in place for nearly 2 decades, and all interpretations are now standard practice across the flight training community. TSA does not believe any industry members have relied to their detriment upon the original text of the IFR, or any exemptions, interpretations, or guidance documents issued thereafter. The final rule is intended primarily as a cost-saving and burden-reducing measure, and as such, TSA does not expect any members of the flight training community to be significantly burdened by it.

IV. Discussion of Public Comments and TSA Responses

A. Solicitation of Comments on the IFR

TSA has twice invited public comment on the regulatory requirements to inform a final rule. First, the IFR, published on September 20, 2004,[70] requested comments from the public to be submitted by October 20, 2004. Although the original comment period closed in late 2004, one additional comment came after the closing period (in 2011). TSA also accepted this comment as part of the official record. Second, on May 18, 2018, TSA reopened the IFR comment period for 30 days[71] and solicited additional comments on the scope of STAs, including who should receive them and how frequently; options for reducing the burden of recordkeeping requirements, including use of electronic records; and sources of data on costs and other programmatic impacts of the rule. In addition to these formal opportunities for comment, TSA has been interacting with, and receiving feedback directly from, the regulated community on this program since its inception.

In total, TSA received 386 comments on the IFR since it was issued. TSA considered every comment received during the open comment periods as well as other stakeholder feedback on the FTSP since the IFR was published. The following summarizes all comments and provides TSA's responses. Issuance of this final rule concludes the comment solicitation process TSA began with the IFR. TSA believes it has addressed all issues and concerns emanating from public comments, and has incorporated all viable recommendations from the public and industry.

B. General Rulemaking Issues

1. Justification for the FTSP

Comments: In early comments, some commenters and members of an industry association expressed general support for the IFR. Association members noted that the IFR's requirements were reasonable to prevent another terrorist attack similar to the attacks of September 11, 2001.

Some commenters felt the 2004 IFR did not go far enough, and many commenters, including flight training providers, expressed general disapproval of the IFR. Commenters opposing the IFR cited perceived burdens across the regulated industry and predicted the rule would be ineffective against a terrorist threat, stating that terrorists can obtain training elsewhere, flight simulation software is readily available, or that other forms of transportation, such as trucks, pose more of a threat. Some 2004 commenters predicted that the IFR would have a negative effect on aviation safety, and a few commenters in 2018 asserted that any regulation that discourages candidates from training in the United States compromises aviation safety globally and could harm U.S. citizens traveling abroad.

Some commenters suggested that the IFR could be circumvented easily by terrorists or flight training providers, and that non-U.S. citizens who become flight instructors could accumulate flight time in the United States without being vetted by TSA. Several commenters stated that the rule does not prevent a terrorist from learning to fly, stating as examples that terrorists can train in other countries, receive ''informal'' training that is not covered by this rule, or learn using publicly available web-based flight simulation software.

Commenters also expressed concern that the IFR's underlying message was that all foreign candidates are considered potential terrorists or criminals. These commenters suggested this perception and the increased burdens associated with the IFR would discourage non-U.S. citizens from pursuing flight training in the United States.

One industry association suggested that the IFR was not necessary because flight training providers had already implemented other measures that have ''dramatically increased'' flight school security. Some did not accept that a threat exists.

One commenter recommended that TSA ensure that candidates speak and understand English.

[70] *See supra* note 1.

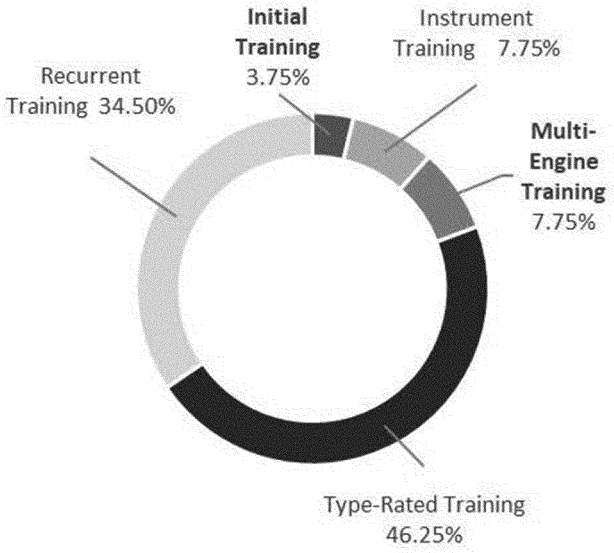
[71] *See supra* note 5.

TSA response: TSA was created in response to the attacks of September 11th, and numerous laws have been enacted since that date to strengthen security. One of these provisions, 49 U.S.C. 44939, requires a nationwide program to identify individuals applying for flight training who present ''a risk to aviation or national security.'' The requirements in section 44939 focus on non-U.S. citizens who obtain in-person flight training, and on security awareness training for flight training providers in general. This rule is aligned with the requirements of that statute.

The primary purpose of the FTSP is to prevent a non-U.S. citizen from receiving flight training unless TSA has determined they are not a security threat. Several of the terrorists who committed the attacks on September 11, 2001, trained at flight schools in Florida, Arizona, and Minnesota.[72] As demonstrated by the horrific events of that day, even a single act of terrorism can cause grave economic and social harm.

Since publication of the IFR in 2004, TSA has identified individuals who posed or may have posed a threat to aviation and national security and prevented them from receiving flight training that they could use to carry out a terrorist act. During the 10-year period shown in Figure 3, below, individuals representing all stages of a pilot's career were identified as posing potential threats to aviation and national security. For this reason, as discussed further below, the final rule focuses on potential skills achieved by an individual, as opposed to the IFR's focus on the weight of an aircraft. Specifically, the final rule covers flight training leading to an initial pilot license, an instrument rating, a multi-engine rating, a type rating, and training required to maintain ratings for specific types of aircraft. The definition of ''flight training'' codifies these changes in § 1552.3.

Figure 3. Training Events Where Non-U.S. Citizens Were Identified as a Threat to Aviation or National Security Over a 10-Year Period



Source: TSA, Enrollment Services and Vetting Programs (FY2009-FY2018)

TSA agrees that the United States benefits from foreign pilots training in the United States under U.S. aviation safety standards. Many of these aviators return to their home countries as professional pilots and provide safer air transportation to U.S. citizens traveling abroad.

Regarding the 2004 comments that the IFR unduly burdened the industry, the final rule implements changes that TSA believes mitigates burdens to candidates and providers. *See* discussion above in section I.D.

Finally, in regard to requiring candidates to demonstrate English proficiency, TSA's mission and authorities do not extend to this concern. The FAA requires English proficiency under 14 CFR part 61.

2. TSA's Authority To Impose Requirements

Comments: Several commenters felt that the IFR exceeded the statutory authority granted to TSA. An industry representative and another commenter stated that the provisions of 49 U.S.C. 44939 pertaining to flight training only require flight instructors to provide identification information to DHS and do not require individuals to submit information to TSA beyond what the statute specifically requires, or to submit to a background check.

TSA response: Under 49 U.S.C. 44939, the Secretary of Homeland Security has broad discretion to

[72] *See supra* note 7.

determine whether a candidate poses a ''risk to aviation or national security.'' The same provision also states that these requirements may be applied to ''other individuals designated by the Secretary.'' As previously noted, the HSA transferred all functions related to transportation security, including those of the Secretary of Transportation and the Under Secretary of Transportation for Security, to the Secretary of Homeland Security.[73] The Secretary of Homeland Security delegated this discretion and authority to the TSA Administrator in DHS Delegation No. 7060.2. In addition to the authorities granted by 49 U.S.C. 44939, TSA has broad authority to ensure the security of air transportation under 49 U.S.C. 114.

TSA has broad statutory authority to assess a security risk for any mode of transportation, develop security measures for dealing with that risk, and enforce compliance with those measures.[74] TSA also has broad regulatory authority to issue, rescind, and revise regulations as necessary to carry out its transportation security functions.[75]

In addition to these authorities, 6 U.S.C. 469(b) requires the Secretary of Homeland Security to establish a process to properly identify individuals who are not U.S. citizens or U.S. nationals who receive recurrent flight training, and to ensure that these individuals do not pose a risk to aviation or national security. The Secretary of Homeland Security has also delegated this discretion and authority to the TSA Administrator in DHS Delegation No. 7060.2. As discussed below, the same statute authorizes the Secretary to impose reasonable fees to recoup the cost of vetting candidates seeking flight training.[76]

3. TSA's Authority To Impose Fee for STAs

Comments: A few commenters, including two industry associations, questioned TSA's authority to impose fees.

TSA response: TSA incurs costs from conducting STAs, processing notifications of training events, enabling expedited processing for eligible candidates, processing comparable STAs, arranging for FBI CHRCs, and online records management. In addition to the authority under 6 U.S.C. 469(a), which requires TSA to fund vetting and credentialing programs in the field of transportation through user fees, TSA is required by 6 U.S.C. 469(a) and authorized by 49 U.S.C. 44939(g) to collect fees for conducting STAs and managing flight training event notifications. Accordingly, TSA charges fees for candidates who receive an STA under the FTSP. A more robust discussion on TSA's authority to collect fees for STAs is provided above in section I.B.6. For more information concerning TSA costs, see the accompanying fee study posted to the public docket and discussion in section II.C.2.

4. TSA's Decision To Issue an IFR

Comments: Several commenters, including professional associations, flight training providers, and others, disagreed with TSA issuing a binding rule without providing the opportunity for prior notice and public comment. They were concerned that stakeholder input would not be solicited or considered.

TSA response: The Vision 100 Act transferred responsibility for the FTSP from DOJ to DHS and required the Secretary of Homeland Security to publish the IFR accomplishing this transfer, and other required changes, within 60 days.[77] For this reason, TSA dispensed with certain notice procedures when it published the IFR. TSA has, however, twice invited public comment on the regulatory requirements to inform a final rule. TSA included an opportunity for public comment on the IFR, specifically asking the public ''to participate in this rulemaking by submitting written comments, data, or views,'' noting that ''to the maximum extent possible, operating administrations within DHS will provide an opportunity for public comment on regulations issued without prior notice.'' [78] In May 2018, TSA reopened the 2004 comment period to solicit further comments on the program and identified six issues for additional consideration.[79] Through this final rule, TSA has considered and responded to all of the comments received. In addition to soliciting public comment through the **Federal Register**, TSA received recommendations from the ASAC, whose meetings are a public record. The details of the ASAC recommendations are discussed in more detail in section I.B.

5. Economic Impacts of the FTSP on the Industry

Comments: Many commenters raised issues regarding the economic impacts of the FTSP. A commenter wrote that the IFR could ''. . . potentially [have] disastrous unintended consequences,'' and that ''TSA has not set a very good example for following rules,'' giving as an example that TSA did not prepare a statement under the Unfunded Mandates Reform Act (UMRA) of 1985. Several commenters predicted that the IFR would ruin the U.S. flight industry, especially recreational flight. For additional information on the ASAC and reopened comment period, see section I.B.4 and 5.

While at least one commenter concurred with TSA that it is appropriate for candidates who undergo an STA for the first time to be held to a 30-day review process to ensure that they do not pose a threat to aviation or national security, many commenters argued that flight training providers should not bear the burden of verifying candidates' citizenship, identification, or other documents. They felt that the IFR created undue time and cost burdens for non-U.S. citizens, lawful permanent residents, and others who had already successfully undergone a U.S.-Government-sponsored threat assessment.

Several 2004 commenters suggested that limiting the number of non-U.S. citizens who receive flight training in the United States would damage the U.S. economy by harming flight schools, flight instructors, and other businesses patronized by foreign customers. Some aircraft operators predicted that the IFR would reduce the U.S. share of the multi-billion-dollar global flight training industry because aircraft operators would train in other countries. An industry association commented that burdens from the IFR threatened the viability of the general aviation industry, private flight instructors, and small flight schools. One commenter wrote that small businesses and independent instructors conduct much of their flight training in the United States and that many of these individuals do not have offices or equipment necessary to comply with the IFR. One commenter wrote ''TSA seems to be putting the burden of safeguarding the airline industry on the flight schools instead of shouldering the responsibility themselves.''

A Canadian aircraft operator disagreed with TSA's determination in the IFR that the rule's economic impact would be neutral, contending that IFR requirements presented a significant

[73] *See supra* note 22.

[74] *Id.*

[75] 49 U.S.C. 114(l)(1).

[76] *See* 6 U.S.C. 469(a). *See also* discussion of authorities in section I.B.2.

[77] *See supra* note 15.

[78] 69 FR at 56324.

[79] 83 FR at 23239.

obstacle to taking flight training in the United States for non-U.S. residents. A pilot stated that, although TSA assumed the IFR would not have a significant impact on the demand for U.S. flight school training despite the increase in costs to candidates, no data was provided to support this assumption. A flight training provider stated that approximately 60 percent of his students were not U.S. citizens, and that the IFR's burden would result in some of these students forgoing training.

Another pilot asserted that TSA's economic analysis in the IFR was based on a flawed model of foreign pilots coming to the United States to complete a single course of training, rather than a series of training events over a long period of time. A flight instructor argued the economic analysis does not account for either non-U.S. citizen pilots training in the United States for a license to be issued by an authority of a foreign country or for non-U.S. citizen pilots receiving proficiency training in the United States.

A major flight training provider submitted that the IFR did not include an estimate of the time lost by flight schools to process candidates for flight training, *e.g.,* identifying all candidates, making copies of information, photographing candidates, and submitting photos to TSA. Commenters in both 2004 and 2018 indicated that TSA had underestimated the paperwork burden. One provider asserted that the number of times candidates would need to apply to upgrade their ratings and keep current on different types of aircraft was more than twice what TSA had assumed in the IFR. Several commenters expressed concern that the costs to industry caused by compliance with the IFR far outweigh the benefits, particularly for light aircraft, and recommended that TSA more thoroughly evaluate the costs and benefits.

Some 2018 commenters noted that domestic and foreign airlines use U.S.-trained pilots to transport passengers and cargo to and from the United States and between other countries, and that the U.S. economy benefits from pilots trained in the United States to FAA standards.

TSA response: TSA is required by 49 U.S.C. 44939 to implement a nationwide program to identify all non-U.S. citizens applying for flight training who ''present[] a risk to aviation or national security.'' In 2004, when assuming responsibility from DOJ and publishing the IFR, TSA conducted all required regulatory analyses to the degree possible. TSA consulted extensively with DOJ and stakeholders on the costs of implementing the DOJ rule and conducted the economic and other analyses published in the IFR. Since the IFR was published, TSA has continually assessed impacts and adjusted the program and requirements.

UMRA [80] does not apply to a regulatory action in which no notice of proposed rulemaking is published, as was the case for the IFR. *See* UMRA analysis for this rulemaking in section V. Accordingly, and as stated in the IFR, TSA did not prepare a statement under the UMRA.

TSA acknowledges regulatory and cost burdens resulting from the IFR, but notes that they mostly resulted from requirements TSA had to impose to comply with statutory requirements. As noted above, TSA has worked continually to improve STA processing and address as many industry concerns as possible. Early predictions that the IFR would be ineffective or ''has the potential for destroying an entire industry'' have proven incorrect. As noted above, since publication of the IFR, TSA has identified individuals who pose a threat to aviation and national security and has prohibited them from participating in flight training. The industry remains a robust economic activity in the United States.

The final rule is intended to minimize cost and time burdens on both candidates and providers while maintaining the appropriate level of security and complying with all statutory mandates. TSA considered all economic impacts identified in the comments and conducted an extensive economic analysis of the impacts of the IFR and the projected impacts of the final rule; this analysis is included in section V. As noted in section I.B.2, a 2008 amendment to 6 U.S.C. 469 required TSA to recoup the costs of STAs for recurrent training.[81] The statutory amendments authorized TSA to establish the fees through notice. Consistent with the changes to the law, TSA published a notice imposing these fees in 2009.[82]

This final rule reduces candidate and provider burdens by moving to a 5-year STA; incorporating all enhancements and clarifications previously issued by the TSA; adding definitions and other clarifications; and allowing for electronic recordkeeping. In addition, TSA has separated the notification of training events by providers from the STA process for the candidate. TSA has also implemented a reduced fee for candidates who have a comparable STA.

TSA believes that these enhancements to the final rule may improve opportunities for non-U.S. citizens to participate in flight training in the United States and with FAA-certificated flight training providers abroad. Finally, the regulatory and cost analyses TSA conducted prior to issuing this final rule, as described in section V, comply with current requirements for issuance of final rules.

C. Specific Regulatory Requirements

1. Terms (General)

Comments: TSA received comments concerning the following terms: ''aircraft simulator,'' ''alien,'' ''candidate,'' ''day,'' ''demonstration flight for marketing purposes,'' ''flight school,'' ''flight training,'' ''ground training,'' ''national of the United States,'' and ''recurrent training.'' Many commenters raised questions relating to the IFR's definitions, particularly questioning how the specific meaning of a term in the IFR would affect the commenter's obligation to comply with the regulation. Definition comments generally fell into the following areas of concern:

- Inconsistencies between how some terms and definitions were used in the IFR's preamble and the regulatory text, especially the terms ''training,'' ''flight training,'' and ''candidate.''
- Inconsistency between the IFR's definition of ''aircraft simulator'' and the FAA's definition.
- Lack of clarity regarding whether lawful permanent residents of the United States are subject to requirements applicable to non-U.S. citizens.
- Lack of clarity on requirements for documentation of leasing agreements associated with training on aircraft simulators.
- Inadequacy of the definition of recurrent training, which caused some confusion and generated many recommendations from commenters.

TSA response: In coordination with industry and other U.S. Government agencies, TSA expanded, consolidated, and clarified definitions in the final rule in the following manner:

- Added the following terms and their definitions to § 1500.3, applicable to all TSA regulatory requirements: ''citizen of the United States,'' ''day,'' ''lawful permanent resident,'' ''national of the United States or U.S. national,'' and ''non-U.S. citizen.''
- Added the following definitions to part 1552, applicable specifically to the FTSP: ''aircraft simulator,'' ''candidate,''

[80] Public Law 104–4 (109 Stat. 66; Mar. 22, 1995), *codified at* 2 U.S.C. 1511 *et seq.*

[81] *See supra* note 20 and accompanying text.

[82] 74 FR 16880 (April 13, 2009).

''demonstration flight for marketing purposes,'' ''DoD,'' ''DoD endorsee,'' ''Determination of Eligibility,'' ''Determination of Ineligibility,'' ''flight training,'' ''flight training provider,'' ''flight training provider employee,'' ''Flight Training Security Program (FTSP),'' ''FTSP Portal,'' ''FTSP portal account,'' ''recurrent training,'' ''security threat,'' ''security threat assessment,'' ''simulated flight for entertainment purposes,'' and ''type rating.''

- Amended the following definitions in part 1552 for clarity: ''aircraft simulator,'' ''candidate,'' ''demonstration flight for marketing purposes,'' ''flight training,'' and ''recurrent training.''
- Replaced the term ''flight school'' with ''flight training provider,'' with some amendments, as appropriate, for clarity.
- Eliminated the terms ''alien'' and ''ground training.''

TSA discusses how these changes to the definitions affect regulatory requirements in section II.A and in the next subsection, which clarifies the scope and applicability of the regulation.

2. Applicability

a. General

Comments: Some 2004 commenters felt that applicability of the FTSP is either too broad or unclear. Several aircraft operators and an association requested that TSA exempt candidates who hold an FAA pilot's license and who have worked for a U.S.-certificated airline for 3 or more years. Most of these commenters argued that their employees meet the statutory definition of a ''national of the United States,'' and therefore fall outside the IFR's scope. Others asked that TSA allow their companies to satisfy the IFR's requirements by sending TSA a list of current airline pilots they employ.

An association noted that all air crews operating into the United States must be on the aircraft operator's Master Crew List and therefore were already cleared to operate into the United States.

Some commenters asked TSA to accept persons cleared by US–VISIT [83] as exempt, because DHS already collected their biometric information (fingerprints) for that process.

TSA response: Both the IFR and the final rule implement the statutory requirements of 49 U.S.C. 44939. Persons who must comply with requirements of the final rule are flight training providers and their employees, all individuals who are ''candidates'' as defined in the rule, and U.S. citizens or U.S. nationals who seek flight training. Section II.B.1 clarifies the need for the requirements as applied to U.S. citizens and U.S. nationals. Section 1552.37 of the final rule allows for those candidates who have successfully completed a comparable STA to submit evidence of that STA in order to qualify for a reduced fee. TSA may accept Determinations of Eligibility held by individuals who participate in TSA's TWIC®, HME, TSA PreCheck®, and CBP's Global Entry, SENTRI, and NEXUS programs, and any other program that TSA publishes on the FTSP Portal as acceptable. TSA does not consider the US–VISIT program to be a comparable STA because the vetting requirements of that program do not include all elements of a Level 3 STA conducted by TSA.

TSA recognizes that the final rule is broad in its applicability to flight training in all locations and in some cases to types of aircraft that may not seem inherently dangerous. Consistent with its transportation security mission, however, TSA recognizes the fact that skills used to operate one aircraft can be transferred to the operation of another aircraft.

b. Scope of Who Is Considered a Flight Training Provider

Comments: Early commenters noted that the IFR did not define ''flight school employee'' adequately, and that the definition of ''flight schools'' also included independent CFIs. These definitions, they noted, resulted in TSA considering an independent instructor to be both a flight school and an employee, despite the fact that the instructor may not be a flight school or an employee as those terms are commonly understood.

In 2004, an industry representative noted that the IFR expanded the scope of the former DOJ program and stated that approximately 3,400 flight training providers provide flight training under 14 CFR part 61 without the necessity for a flight school certification, and approximately 88,000 flight instructors are certificated under 14 CFR part 61, many of whom provide flight training unaffiliated with any flight school.

TSA response: TSA resolved these concerns shortly after the IFR was issued by clarifying that the program is not limited to traditional ''schools'' regulated under 14 CFR part 141.[84] The definition of ''flight training provider'' in the final rule further clarifies which entities must comply with FTSP requirements, making clear that flight training for the purposes of the FTSP program may be delivered by a person operating under one or more of the relevant FAA regulations, *i.e.,* 14 CFR parts 61, 121, 135, 141 and 142. Flight training delivered to non-U.S. citizens under any of these regulations results in their obtaining skills as a pilot; the manner in which the FAA regulates the training is not relevant from a national security perspective.

Consistent with this policy, TSA does not limit the FTSP to only flight training providers certificated under 14 CFR parts 141 and 142 because most flight training in the United States occurs under 14 CFR part 61, by individual flight instructors. Since the inception of the program, approximately 9,000 of the 13,000 flight training providers registered with TSA operate under 14 CFR part 61, and 500 providers operate under 14 CFR parts 121 and 135. Approximately 3,500 flight training providers registered with FTSP and operating under 14 CFR parts 141 and 142 are SEVP-certified. These providers offer FAA-approved courses and ratings; are associated with fixed facilities; and are recognized as an effective way to expose citizens of other countries to the American people and culture.[85]

c. Responsibility for Compliance Under Leasing Agreements for Aircraft and Aircraft Simulators

Comments: Both the ASAC and many 2018 commenters encouraged TSA to define terminology and provide guidance on recordkeeping of lease agreements. A flight training provider noted that the IFR was not specific enough regarding leasing, causing confusion and noncompliance among the parties. An industry representative recommended that TSA limit any regulatory language about leases to only those instances where an aircraft or aircraft simulator would be used for flight training. Individuals and companies who own and operate aircraft and simulators requested that TSA provide clarity on who is responsible for compliance with this regulation.

Most commenters requested that TSA hold only the flight training provider who is actually conducting the training with leased aircraft or aircraft simulators responsible for

[83] Now called the Office of Biometric Identity Management. *See https://www.dhs.gov/obim.*

[84] *See* Letter to John S. Yodice, Aircraft Owners and Pilots Association, Oct. 19, 2004, fn.1, Docket No. TSA–2004–19147–0227 *available at https://www.regulations.gov/document?D=TSA-2004-19147-0227.*

[85] *See* SEVP Policy Guidance for Adjudicators 1207–04: Flight Training Providers, Dec. 11, 2012, at *https://www.ice.gov/doclib/sevis/pdf/sevp-policy-guidance-flight-training-providers.pdf.*

recordkeeping and compliance. Many acknowledged that persons, entities, or companies who own flight training equipment or aircraft may not know what activities that equipment is being used for, including training of non-U.S. citizens. A commenter noted: ''the flight training provider (as opposed to the lessor of the equipment) is best suited to communicate with the candidate and with TSA.'' A provider recalled situations where both the provider and the entity providing the equipment were registered with TSA and were confused about which party should be responsible for recordkeeping compliance.

A company noted that it may lease its simulator to foreign government personnel to conduct training for non-U.S. citizens and that the foreign personnel are generally not flight training providers recognized by the FAA. Other commenters questioned whether TSA would hold foreign governments responsible for complying with this regulation. An industry representative commented in 2018 that it appeared TSA audits and inspections were providing ''informal'' or inconsistent guidance to flight training providers regarding documentation of their lease agreements.

TSA response: The scope of 49 U.S.C. 44939 includes ''training received from an instructor in an aircraft or aircraft simulator.'' The final rule defines the term ''aircraft simulator'' in § 1552.3 and specifically addresses applicability of regulatory requirements to aircraft simulators leased for flight training in § 1552.5.

Regarding comments that a simulator owner leasing the equipment for flight training may lack knowledge of the parties being trained with their equipment, TSA notes that the U.S. Government also cannot know who is using the aircraft simulator unless that information is provided to TSA. The final rule stipulates that the flight training provider must make their leasing agreements available to TSA upon request. Commenters are correct that TSA cannot require a foreign government to register as a flight training provider; in this scenario, the simulator owner is required by § 1552.5(d)(2) to register as the flight training provider.

The clarification under the final rule is limited to aircraft simulator leases, because a person, entity, or company who leases an aircraft for flight training purposes in the United States must be certified by the FAA to operate that aircraft, and must register under this program as a flight training provider if they train non-U.S. citizens. Both flight training providers and the persons, entities, or companies leasing flight training simulators may use the FTSP Portal to document their lease agreements.

3. Determining Whether Vetting Is Required

a. Citizenship Verification Requirements

Comments: TSA received many comments concerning the U.S. citizenship verification requirement, falling into the following broad themes:

- Some commenters questioned TSA's authority to require U.S. citizens seeking flight training to prove their U.S. citizenship, and others asserted these checks were excessive and would not enhance aviation security.
- Several commenters, including an aircraft operator, recommended that TSA accept other means of verifying citizenship, *e.g.,* the aircraft operator's verification of citizenship in the hiring process.
- An industry association asked TSA to clarify that every flight school (including every freelance flight instructor) must determine the citizenship or nationality of every flight student who seeks flight training, including interpreting and determining the authenticity of the student's legal documents.
- A commenter noted that it is redundant to verify citizenship every time a student participates in flight training.
- An industry representative and a flight training provider asked TSA to provide clear guidance on how to verify citizenship, including an updated list of documents flight training providers may accept to establish U.S. citizenship.
- Some commenters, including a major industry association, contended the IFR placed the responsibility of establishing a person's citizenship on individual flight schools and instructors who are not equipped to perform that task.

TSA response: TSA is required by 49 U.S.C. 44939 to ensure that non-U.S. citizens who apply for flight training do not pose a risk to aviation or national security. Flight training providers are best positioned to confirm the identity of those persons who wish to take flight training, and the best way to ensure that non-U.S. citizens who apply for flight training do not pose a risk to aviation or national security is to require flight training providers to verify citizenship status for all individuals seeking flight training. The final rule continues the requirement for flight training providers to review citizenship documents of all U.S. citizens and U.S. nationals who apply for flight training. TSA notes that a designated pilot examiner, an FAA-certificated pilot who is not the same individual as a candidate's flight training provider, submits citizenship verification to the FAA through the Integrated Airman Certification and Rating Application (IACRA), but a pilot examiner generally is not involved in a candidate's training experience until relatively late in the typical training pipeline, well after a candidate has developed many piloting skills. Detailed information regarding verification of citizenship is provided in section II.B.1.

U.S. citizens and U.S. nationals are not required to undergo an STA, but they must provide proof of U.S. citizenship or U.S. nationality to the flight training provider in order for the requirements under 44 U.S.C. 44939 to be implemented. Flight training providers must have this information to identify which flight students are required by law to obtain a Determination of Eligibility from TSA before the individual is permitted to receive covered flight training.

To facilitate provider compliance with rule requirements to verify citizenship, TSA provides the list of applicable identity documents for U.S. citizens/nationals in table 2.

b. DoD-Endorsee Verification Requirements

Comments: A commenter wanted TSA to clarify the process and requirements for flight training providers to accept and facilitate DoD-endorsed candidates.

TSA response: Section 44939(f) of title 49 U.S.C. provides a program exemption for foreign military pilots endorsed by the DoD, but TSA must be able to determine which applicants qualify for that exemption. As a result, if they wish to qualify for the exemption provided under this section, TSA must require DoD endorsees and their governments to provide information that enables TSA to verify their status. TSA is adding a definition of ''Department of Defense endorsee'' to the final rule and providing additional clarity on the necessary procedures and requirements through amendments to § 1552.7. TSA describes these changes further in section II.B.1, and recordkeeping requirements for DoD-endorsed flight training in section II.B.7.

c. Side-Seat Support

Comments: A flight training provider requested that TSA exempt individuals who occupy a side seat during training from the STA required for a candidate.

TSA response: As discussed in section II.B.1(c), the definition of ''candidate'' in § 1552.3 clarifies

requirements as to who is required to undergo an STA before providing side-seat support during flight training. U.S. citizens and other individuals who hold a type rating for the aircraft or who otherwise possess the certificates needed to pilot the aircraft do not need to register with FTSP and undergo an STA in this context. Non-U.S. citizens providing side-seat support who do not hold an appropriate aircraft type rating or other appropriate certificate must hold a Determination of Eligibility from TSA.

4. Flight Training Events

a. Identification and Notification

Comments: Many flight training providers requested that TSA define flight training events by activity rather than the weight of the aircraft. Specifically, they requested that TSA incorporate the terms ''initial,'' ''instrument,'' ''multi-engine,'' ''type-rated,'' and ''recurrent for type-rated'' training in place of the IFR's four categories based on aircraft weight. An industry association and an individual commenter noted that 49 U.S.C. 44939 excludes recurrent training from the definition of training. One aircraft operator requested that TSA clarify which training activities do not have to be reported as recurrent training.

TSA received many comments and requests for clarification concerning the category types, especially the IFR's Category 4 (recurrent training). Commenters observed that either all or certain types of recurrent training do not impart new knowledge to the pilot. Other commenters observed that recurrent training is not included in the enabling legislation.

Some commenters faulted TSA for not excluding from the rule flight training on certain types of aircraft with a maximum certificated takeoff weight of 12,500 pounds or less. These commenters noted that the requirements of 49 U.S.C. 44939 do not apply to aircraft in this weight range and asked TSA to exempt from the rule any flight training in the operation of aircraft weighing less than 12,500 pounds, including helicopters, gliders, rotorcraft, balloons, ultralight aircraft, and all unpowered aircraft.

TSA response: Both 49 U.S.C. 44939 and 6 U.S.C. 469, as amended, require flight training providers to notify TSA of flight training events. Section 44939 also requires flight training providers to wait up to 30 days for TSA to approve flight training events involving aircraft weighing more than 12,500 pounds. Consistent with the statutes, the IFR identified four training categories based on the weight of the aircraft. In addition to these authorities, 6 U.S.C. 469 requires the Secretary of Homeland Security to establish a process to properly identify individuals who are not U.S. citizens or U.S. nationals who receive recurrent flight training and ensure those individuals do not pose a threat to aviation or national security. As noted in section I.B, this requirement was added to section 469 after publication of the IFR.

TSA recognizes that the weight-based structure of both 49 U.S.C. 44939 and the IFR, which tied the requirements of the rule to the aircraft weight being used for the training, created unintended ambiguities. The IFR imposed different requirements and TSA processing times for similar flight training events based on whether the aircraft weighed slightly more or less than 12,500 pounds. This weight-based structure was consistent with 49 U.S.C. 44939(a), (c), and (d), but did not align conceptually with the typical flight training curriculum. In practice, flight training events in the United States are seldom organized or marketed by aircraft weight. Instead, these events are organized around piloting skills, *e.g.,* single-engine, multi-engine, or instrument ratings. TSA also realized that some aircraft models, such as the Cessna Citation or the Beechcraft King Air, may weigh slightly more or less than 12,500 pounds depending on how they were equipped by the manufacturer. The disconnect between the structure of the IFR and the industry's practices resulted in unnecessary confusion.

In January 2005, TSA issued an interpretation of the IFR clarifying that the reporting requirements under the IFR applied to all training events leading to a new FAA certificate or type rating. This clarification resolved the ambiguity of whether the rule applied to training events in aircraft weighing 12,500 lbs. or less, as well as all training in aircraft over 12,500 lbs.[86] This clarification is codified in the final rule, as described in section II.B.2. Even though the final rule organizes flight training by piloting skill, the final rule still meets the policy intent of 49 U.S.C. 44939 because the events that would require reporting by aircraft weight under that statute also require reporting under the final rule.

Potential impacts from the IFR noted by many 2004 commenters concerning aircraft weighing less than 12,500 pounds were mitigated by TSA-issued exemptions and interpretations regarding gliders, balloons, ultralight aircraft, and all unpowered aircraft. All exemptions, interpretations, and guidance documents related to the IFR are either incorporated into the final rule or supplanted by new final rule provisions.[87] Notably, the final rule eliminates the four flight training categories specified in the IFR and replaces them with a requirement to report flight training events as described in § 1552.51. TSA provides more information on this change in section II.B.3.

In addition to eliminating the IFR's numbered, weight-based training categories, the final rule more clearly defines which flight training events require notification and recordkeeping. Although the final rule does not identify or categorize flight training events by aircraft weight, the new reporting and notification requirements based on piloting skills achieve the same results. The final rule focuses on the notification of flight training events that ''substantially enhance a pilot's skills,'' as discussed in section II.B.3. Table 3 lists type-rated training variations that do not require notification under § 1552.51. The final rule's requirement to notify TSA of flight training events aligns with TSA's long-standing interpretation of these requirements under the IFR and the statute, which requires notification for flights in aircraft weighing over 12,500 pounds, *see* 44939(a), and notification for training in aircraft weighing less than 12,500 pounds. *See* 49 U.S.C. 44939(c).

Finally, under the final rule, the flight training notification requirement in § 1552.51 is separated from the STA requirement in § 1552.31. All candidates are still required to have a current, valid STA prior to participating in any flight training event covered by the regulation, including recurrent training. Developments in information technology, however, now allow continuous vetting of each candidate for terrorism and criminal disqualifications. These developments allow TSA to require only one STA that may be valid for up to 5 years. As discussed in section V, TSA believes these changes significantly reduce the regulatory burden.

[86] *See* Interpretation of ''Flight Training'' for Aircraft with an MTOW of 12,500 Pounds or Less and Exemption from Certain Recurrent Training Information Submission Requirements Contained in 49 CFR part 1552 (Jan. 5, 2005) available as Docket No. TSA–2004–19147–0337 at *https://www.regulations.gov.*

[87] Interpretations and other clarification documents are posted on the public docket at *https://www.regulations.gov/docket?D=TSA-2004-19147.*

b. Recurrent Training

Comments: Commenters did not find value in conducting STAs on individuals engaged in recurrent training for type ratings they already hold.

TSA response: TSA is required under 6 U.S.C. 469(b),[88] to establish a process to ensure that non-U.S. citizens applying for recurrent training in the operation of any aircraft are properly identified and have not become a risk to aviation or national security since the time that a prior STA was conducted.[89] Figure 3, above, shows that more than a third of the security threats identified by FTSP over a 10-year period were candidates participating in recurrent training.

5. STA Requirements

a. General

Comments: Many flight training providers and industry associations expressed concern that the IFR's requirement to obtain an STA for each training event posed logistical and financial burdens for candidates and providers alike. Flight training providers, industry associations, their members, and others requested that TSA accept the threat assessment conducted by FAA when issuing airman certifications. Some commenters and a trade organization recommended that TSA work with the FAA to augment the IACRA process with additional security measures that would satisfy TSA's STA requirements. Many commenters recommended that TSA accept vetting conducted by other government agencies that review or approve applications for student pilots to obtain a U.S. entry visa, such as student pilots processed and approved by FAA-approved flight schools and U.S. embassies for M–1, F–1, or J–1 visas,[90] or immigrant candidates vetted by USCIS. Others thought that TSA should accept driver's licenses and/or passports in lieu of an STA.

Two commenters also expressed concern that individuals could be subjected to racial profiling and discrimination as a result of IFR requirements.

TSA response: Section 44939 requires non-U.S. citizens seeking flight training to submit specific information to TSA (under delegation from DHS) to determine whether or not the individual poses a threat to aviation or national security. Thus, the final rule continues to require all non-U.S. citizens to undergo an STA before they may begin flight training to determine whether they may pose a threat to aviation or national security. In most cases, however, the final rule's move from an event-based to a time-based STA means that most candidates will apply for an STA prior to their first training event and then once every 5 years thereafter. The next section provides more discussion on this topic.

Non-U.S. citizens may undergo multiple vetting processes by other agencies before and after arrival in the United States. However, these checks generally are not equivalent to a Level 3 STA. For example, as part of the FAA certification process, all flight students undergo a terrorism-only check, but this check does not include either a fingerprint-based background check for disqualifying criminal offenses or an immigration check. The FAA threat assessment focuses only on terrorism, based on the information provided by the candidate through either FAA's IACRA or Form 8710 (variations) used to apply for an airman certificate or rating.[91] Application information is not verified by the FAA until after the student receives training and begins their practical test with a check airman, which does not meet the 49 U.S.C. 44939 requirement that a provider may conduct flight training for a non-U.S. citizen ''only if that person has notified the Secretary that the individual has requested such training and furnished the Secretary with that individual's identification in such form as the Secretary may require'' and only after the Secretary, through TSA in accord with this regulation, has determined that the individual does not ''present a risk to aviation or national security.'' Section II.C.2 describes some of the background checks that are equivalent to a Level 3 STA.

TSA does not profile individuals on the basis of race or ethnicity and has never condoned racial profiling. TSA screens all candidates based on factors that do not focus or discriminate on the basis of race or ethnicity.

b. Frequency of Security Threat Assessment

Comments: The ASAC and several commenters expressed concern that the IFR required an STA for each flight training event. Some noted that the burden of resubmitting documentation and fees for multiple STAs made it difficult for flight students to change flight training providers or seek additional training from independent instructors.

A flight training provider requested that TSA allow providers to register a candidate for multiple training events on a single STA. Another provider noted that certain candidates are part of a team of pilots and may want to register as a team for flight training events, usually for type-rated or recurrent type-rated training. A provider commented that the options to register multiple training events for a candidate and multiple candidates for a single training event would improve efficiency and reduce clerical errors.

Other commenters requested that TSA limit the number of STAs and associated fees to reduce the financial burden on candidates and flight training providers and, thereby, reduce obstacles to flight training in the United States. Some commenters objected to TSA's calculations described in the IFR; others objected to collecting fees on the behalf of the Government. A flight training provider relayed that its candidates would be willing to pay a higher fee to avoid submitting multiple fees over a 5-year period.

TSA response: The IFR complied with 49 U.S.C. 44939, which required TSA to ensure that an individual is eligible for each flight training event. TSA's vetting capabilities when the IFR was issued were more limited than they are today, making it necessary to conduct an STA with each training event.

Newer capabilities to conduct recurrent criminal and terrorist vetting allow TSA to implement a time-based approach in place of the IFR's event-based approach. Implementing a 5-year STA under the final rule aligns this program with other TSA programs, including TSA PreCheck®, TWIC®, and HME. TSA chose the 5-year term when creating these vetting programs several years ago to align with government security clearance programs and to balance the legitimate need for accurate contact and biographic information against the costs associated with requiring multiple enrollments for individuals.

Flight training providers are required to notify TSA before every flight training event to confirm that a candidate remains eligible for flight training. The final rule allows candidates to pursue flight instruction from one or more providers and continue their flight training curriculum without having to undergo multiple STAs. This use of the 5-year STA is possible because the flight training provider notifies TSA of each training

[88] *See supra* note 20.

[89] *See id.* and related discussion. *See also* discussion in section IV.B.5.

[90] *See https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/all-visa-categories.html* for more information on visa categories.

[91] For more information on IACRA, *see https://iacra.faa.gov/IACRA/Default.aspx.*

event and receives confirmation that the candidate has a current Determination of Eligibility. If flight training providers were not required to notify TSA of each training event, TSA could not provide this more fluid use of the STA.

Candidates must register with TSA individually through the FTSP portal. Team or group registrations are not permitted, because TSA requires individual biographic and biometric information to complete any required STA, and to confirm that each individual remains eligible for flight training.

Requirements specified in subpart B of the final rule reduce the overall fee burden for candidates by reducing the number of required STAs. The consolidated fee paid by the candidate and discussed in section II.C.2 covers any covered training events that may occur during the duration of the candidate's STA. Under § 1552.51(a) and (b), the flight training provider (not the candidate) is responsible for notifying TSA of all candidate flight training events. Table 7 shows fees collected under the IFR compared to estimated fees that will be collected for the final rule's 5-year STA and one or more training event notifications. This comparison demonstrates anticipated cost savings for a candidate resulting from the final rule's change from an event-based approach to a time-based approach for the candidate STA.

TABLE 7—COMPARISON OF IFR FEES AND FINAL RULE FEES

One to many event-based STA fees paid by candidates over a 5-year period fell into these broad ranges			One consolidated 5-year time-based STA fee paid by the candidate under the final rule for the type of STA processing shown
Number of candidates (percent of total candidates)	Number of STAs	Fees paid under the IFR	5-year fee paid under the final rule
12	1	$130	Reduced fee eligible—$125
6	2	140–260	
41	3–5	210–650	
28	6–10	420–1240	Regular fee—140
13	11+	770+	

X

In contrast to repetitive fees for multiple STAs under the IFR, under the final rule, candidates in each of these examples pay only one consolidated fee, which covers their STA and all notifications of flight training event(s) for up to 5 years. Fee requirements for conducting a new STA, requesting an FBI CHRC, and validating a prior or comparable STA are discussed further in sections II.C.2.

c. Portability of a Determination of Eligibility

Comments: Industry representatives, flight training providers, and candidates reported cost and time burdens due to the inability under the IFR to transfer a Determination of Eligibility between flight training providers. Providers requested that TSA limit or discontinue charging a separate fee for moving a candidate's STA from one flight training provider to another.

Many candidates noted that the time-based approach would allow them to transfer to other flight training providers more easily, and many providers noted that a single STA for a specified time period would ease managing multiple events for one candidate.

A provider observed that a Determination of Eligibility to provide flight training ''should be valid at any school'' registered with TSA. Another provider encouraged TSA to establish the portability of candidate Determinations of Eligibility, stating that this could generate more business for the U.S. flight training industry. An industry representative stated that most professional pilots cannot always train with the same flight training provider because of their schedules.

A flight training provider requested clarification of the 180-day waiting period specified in the IFR. Another commenter characterized the IFR's requirement for a candidate STA for each training event as rigid and not allowing for time it may take to obtain a visa. Pilots may need to change from one provider to another because of visa delays or changes in immigration status.

TSA response: The final rule allows portability of a candidate's Determination of Eligibility, which means that a candidate may engage in flight training from multiple providers after successfully completing one STA, resulting in cost and time savings for candidates, providers, and the government. The IFR's limitation that a candidate must start training within 180 days no longer applies. Generally, a candidate's Determination of Eligibility remains valid for 5 years, unless TSA determines through continuous vetting that the candidate is no longer eligible. For instance, if a candidate were convicted of a disqualifying criminal offense in year 3 of the STA, TSA would disqualify the candidate because they no longer meet the standard. This same determination could take place due to terrorism concerns or lack of permission to enter or remain in the United States.

d. Security Threat Assessment Comparability

Comments: A number of commenters requested that TSA accept STAs conducted by other U.S. government agencies. A non-U.S. citizen pilot working for a foreign aircraft operator under 49 CFR part 1546 recommended TSA accept a Determination of Eligibility acquired under that program. Another aircraft operator requested that TSA eliminate redundant requirements for an STA that the candidate obtained when working for a U.S. air carrier or that the candidate was previously issued for another flight training event.

TSA response: The statute requires an STA for all flight training candidates. However, TSA recognizes that many aircraft operators already conduct comparable STAs of candidates to comply with other TSA regulations or other U.S. Government requirements. The final rule specifies that TSA may verify and accept STAs that include comparable, unexpired terrorism, criminal, and immigration checks. For example, TSA may accept Determinations of Eligibility held by individuals who participate in TSA's TWIC®, HME, TSA PreCheck®, and CBP's Global Entry, SENTRI, and NEXUS programs, and any other program that TSA publishes on the FTSP Portal as acceptable.

The final rule includes three deregulatory adjustments that mitigate the burdens imposed by the IFR's STA requirements. First, under § 1552.31, the rule eliminates the need to undergo an

STA with each training request and instead adopts an STA valid for up to 5 years. Second, TSA now allows for the transfer or portability of a Determination of Eligibility by the candidate from one flight training provider to another without submitting duplicate paperwork. Third, under § 1552.37, TSA may accept comparable STAs for a reduced fee.

e. Security Threat Assessment Application Process

Comments: TSA received many comments that the IFR's application process was burdensome, and that small business entities are limited in their ability to gather, maintain, and transmit records. Many commenters requested that TSA limit data collected on candidates to the six data elements listed in 49 U.S.C. 44939, which are: full name, including aliases and variations of spelling; passport and visa information; country or countries of citizenship; date of birth; estimated dates of training; and biometrics, specifically fingerprints. Lawful permanent residents requested that TSA accept their lawful permanent resident documentation in lieu of a valid passport.

Many 2004 commenters objected to the IFR's requirement that flight training providers capture and submit a photograph of the candidate on their arrival for training, citing such reasons as: the statute does not require a photograph upload; immigration authorities already have taken photographs of lawful permanent residents; training should not be delayed for up to 5 days; and some businesses cannot afford to comply. A 2018 commenter suggested that TSA reduce the ''amount of paperwork required'' such as uploading images and providing other documentation.

Several commenters suggested that TSA accept fingerprints obtained when a candidate applied for a visa or lawful permanent resident status. Early commenters noted a scarcity of fingerprinting locations abroad, which they predicted would harm their operations. Aircraft operators commented that they may have to send their pilots to the United States to be fingerprinted, and that it could take more than 30 days to receive criminal history records returned to TSA for adjudication. An aircraft operator suggested that TSA provide locations abroad for pilots to be fingerprinted. Many flight training providers requested that TSA accept fingerprints they collect themselves rather than through TSA-authorized fingerprint collection services. One provider noted that many pilots participate in FAA-certified flight training exclusively outside the United States and that it is difficult for many of them to fly to the United States just to be fingerprinted.

TSA response: Verification of citizenship for each flight training event is required by 49 U.S.C. 44939. To conduct the required STA, TSA collects the six basic biographic and biometric data elements listed in that statute. As is standard practice across all TSA vetting programs, TSA requires additional information to conduct the scope of STA necessary to determine whether a candidate presents a risk to aviation or national security, which is what TSA must do to comply with the requirements of 49 U.S.C. 44939. TSA only collects the candidate information necessary to determine whether the candidate presents a risk to aviation or national security. The additional information also helps to verify identity, confirm that the applicant is presenting information that is true, and aids in Federal response if TSA determines the individual poses a threat. TSA collects this information in all vetting programs.

TSA provides all vetting applicants with Privacy Act notices that explain what their data is being used for and with whom it is shared. TSA added explanatory text to the preamble in response to similar comments. In many cases, candidates also use TSA's preliminary Determination of Eligibility as a reference document to obtain a visa from the U.S. Department of State. The final rule adopts a broader list of acceptable documentation to identify and document a candidate's presence in the United States, as provided in table 4.

TSA collects information in accordance with the Paperwork Reduction Act (PRA) [92] and the Privacy Act.[93] Wherever possible, the final rule adjusts the FTSP's operational, administrative, and recordkeeping requirements to minimize burdens while maintaining the appropriate level of security.

The final rule addresses burdens posed by multiple STAs required under the IFR by implementing a time-based approach to the STA requirement. Under the procedures in the final rule, TSA may issue a Determination of Eligibility that remains valid for up to 5 years to candidates that successfully complete an STA. When TSA published the IFR, recurrent terrorism and CHRCs were not available, which led to TSA's use of an event-based approach to STAs. Having implemented continuous review of terrorism databases for other programs and the use of continuous criminal vetting, TSA is confident in the efficiencies and security effectiveness of this capability as it is expanded to the FTSP.

In accordance with 49 U.S.C. 44939, TSA does not accept fingerprints directly from any individual, to minimize the risks of fraud and collection of unreadable prints. TSA works with vendors to provide fingerprinting services domestically and abroad. The FBI currently returns criminal history records to TSA within 2 business days of receipt. Under current policy, the FBI restricts the sharing of fingerprints collected for one purpose with the intent of those fingerprints being reused for a different purpose. Accordingly, TSA will not accept fingerprint information from another agency. Under the final rule, candidates pay for an STA and submit fingerprints once every 5 years, unless otherwise directed by TSA. TSA believes the final rule's reduction in costs achieved in part by reducing how often candidates must be fingerprinted will provide relief for candidates and flight training providers. The requirement that the flight training provider upload a current photo of each candidate when the candidate arrives for flight training is an important security measure. TSA may compare that photo with photos obtained by other agencies as part of its candidate vetting process.

f. Immigration Checks

Comments: Many commenters recognized that non-U.S. citizens must undergo an immigration check during the STA process, and offered opinions on what documents should be required to participate in flight training in the United States. Some felt that flight training should not be allowed on a tourist visa, while others felt TSA should accept tourist visas, particularly for professional pilots, rather than requiring a visa specific to education or professional training. One commenter recommended that TSA accept a flight training candidate's USCIS Form I–9, Employment Eligibility Verification. Some commenters recommended limiting the STA to the expiration of the candidate's passport or immigrant or nonimmigrant documents.

A flight training provider encouraged TSA to work closely with DOS to provide clarity as to which immigration categories may permit a candidate to participate in flight training. The provider noted that embassies and consulates vary widely in how they adjudicate visas. The ASAC and various

[92] *See* 44 U.S.C. 3501, *et seq.*

[93] *See supra* note 32.

commenters encouraged DHS to include TSA in any discussions between agencies regarding immigration categories and eligibility for flight training. One commenter noted that the IFR did not address immigration violations and another commenter suggested that immigration authorities should consider creating a visa specific for candidates.

Commenters felt that professional pilots should not be required to undergo the DHS Form I–20 (Certificate of Eligibility for Nonimmigrant Student Status) process and obtain an M–1 visa [94] for short-duration training in the United States.

A commenter noted that many flight instructors who provide training in the United States are not U.S. citizens. Many are lawful permanent residents or individuals employed by airlines and sent to the United States to obtain or provide training on company owned simulators. These instructors, who are not lawful permanent residents, often use the B1/B2 visa [95] for doing business in the United States, and most of them are subject to an STA under 49 CFR parts 1544 or 1546.

Finally, an industry representative noted that lawful permanent residents do not present the same security risk as other non-U.S. citizen candidates and recommended TSA give lawful permanent residents special consideration when processing their STAs.

TSA response: TSA is required by 49 U.S.C. 44939 to ensure that all non-U.S. citizens, including lawful permanent residents, undergo an STA for flight training.[96] Completion of a favorable STA that includes an immigration check is sufficient to pursue flight training under TSA regulations. TSA does not limit eligibility for flight training to specific types of visas; any non-U.S. citizen that is authorized to be in the United States is potentially eligible for flight training.[97] Any restrictions, however, on a candidate's permission to remain in the United States will affect the duration of an STA issued under this part. Candidates deemed ineligible following an immigration check may submit new documentation to correct the record regarding their immigration status, parolee status, visa expiration date, or other permission to remain in the United States.

TSA does not set immigration policy and implements policy guidance established by U.S. Government immigration authorities. Some U.S. embassies require a Form I–20 and a completed STA from TSA prior to issuing a visa specific for vocational or formal flight training. Other U.S. embassies do not require the TSA STA prior to issuing a visa. TSA relies on the DOS and DHS's agencies with immigration responsibilities for direction on immigration policies and, to the fullest extent possible, applies their policies to a candidate's immigration check. TSA will deny flight training to candidates who may have violated any applicable Federal immigration policies.

TSA does not accept a Form I–9 because the I–9 is not an identification document or proof of permission to remain in the United States. Although the I–9 collects information that an employer has reviewed, that information has not been reviewed or confirmed by a U.S. Government official.

Section 1552.35 requires the STA expiration date to coincide with the expiration of a candidate's documentation that establishes their permission to remain in the United States, or 5 years, whichever comes first, as discussed further in section II.D. If a candidate's initial documentation limits the STA to less than 5 years (such as a visa that expires before 5 years), the candidate may subsequently provide additional documentation on their FTSP Portal account, which may allow TSA to extend their STA up to the 5-year maximum.

Finally, TSA recognizes that non-U.S. citizens granted lawful permanent residence status in the United States may be a lower-risk population relative to other candidates. Under § 1552.51(f), lawful permanent residents are now eligible for expedited processing. These individuals will still be required to successfully complete the STA, but the availability of data related to their status as a lawful permanent residence permits TSA to provide the expedited process.

g. Correction of Record

Comments: Two commenters recommended TSA add a provision to the rule that gives a candidate a right of appeal if TSA denies their application for training, noting that other TSA rules permit applicants to appeal a decision made by TSA.

TSA response: Following publication of the IFR, TSA allowed candidates to provide additional information to correct the record, if the candidate's application for an STA was denied. The final rule codifies this process without change. *See* § 1552.31(e). Candidates who receive a Determination of Ineligibility or have their Determination of Eligibility revoked may submit new information to TSA to correct inaccurate identification or immigration information. TSA cannot correct any information it receives from a CHRC. This information typically comes from a U.S. state or U.S. Federal criminal history records information system. To challenge the accuracy or completeness of any information on a criminal record, the candidate must contact the State or Federal agency that originated the record, or the candidate may contact the FBI directly.

6. Security Awareness Training Requirements

a. Flight Training Provider Employees

Comments: TSA received many comments about the IFR's security awareness training requirements. An industry association asserted that these requirements exceeded the scope authorized under 49 U.S.C. 44939 by applying the security awareness training requirements to flight instructors who are not employed by flight schools. One commenter recommended that the final rule clarify security awareness training requirements for independent instructors.

Flight training provider commenters in 2018 also requested that TSA define ''flight training provider employee.'' Specifically, providers sought direction as to whether the following individuals were covered by the rule: management; administrative staff; CFIs; ground instructors; a director of training; and/or any other person employed by a flight school, including an independent contractor. An aircraft operator recommended that TSA require security awareness training only for those employees who have direct contact with a flight school student. An aircraft operator commented that the definition of flight school employee did not appear to include employees of training schools operating under 14 CFR part 121 or 14 CFR part 135.

TSA response: 49 U.S.C. 44939 requires security awareness training and refresher security awareness training for flight training provider employees. The final rule defines ''flight training provider employee'' as an individual, whether paid or unpaid, who has direct contact with flight training students and

[94] M–1 visa is a type of student visa reserved for vocational and technical schools.

[95] B1/B2 visa allows an individual to enter the United States temporarily for business or pleasure.

[96] Under 8 U.S.C. 1101(a)(20), the term ''lawfully admitted for permanent residence'' means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with U.S. immigration laws.

[97] *See* ICE SEVP Guidance, Non-Immigrants: Who can Study? (2018), available at *https://www.ice.gov/doclib/sevis/pdf/Nonimmigrant%20Class%20Who%20Can%20Study.pdf.*

candidates. Through the definition of ''flight training provider'' in § 1552.3, this final rule also clarifies that all flight training providers, including CFIs, must comply with the security awareness training requirement.

As noted in section II.B.6, the employees of a flight training provider may be the first or only line of defense against a determined terrorist or insider threat. Initial security awareness training when flight training provider employees are hired and biennial training thereafter bolsters an employee's ability to assess and identify potential threats. Flight training provider employees, after training, should be able to identify anomalies or aberrant behavior by their customers or by other persons in or around their flight training operations and report such observations to Federal, State, Tribal, or local law enforcement and to TSA.

Section 1552.13(a) and (b) of the final rule excludes from the security awareness training requirement those flight training provider employees who do not have direct contact with candidates and students, *e.g.,* baggage handlers, custodians, or grounds maintenance staff who are unlikely to have direct contact with candidates and students. Section II.B.6 provides additional discussion of covered and excluded employees.

b. Frequency of Training

Comments: Some commenters recommended that TSA provide more flexibility in scheduling requirements for security awareness training. Others requested clarification on security awareness training recordkeeping requirements. An industry representative requested TSA mitigate the redundancy of the IFR's requirement to conduct security awareness training for those companies who already conduct security awareness training under a TSA-approved security program such as those conducted under 49 CFR parts 1542, 1544, and 1546. An aircraft operator asked TSA to allow aircraft operators and their affiliated aviation training centers certified by the FAA under 14 CFR part 142 to satisfy the refresher security awareness training requirement through training they conduct under a TSA-approved security program.

Many flight training providers asked TSA to allow a longer interval between refresher security awareness training events. Another provider requested TSA eliminate the requirement for refresher security awareness training and allow email updates instead.

TSA response: The final rule reduces the required frequency of security awareness training to provide economic and logistical relief to flight training providers and more flexibility in how they schedule refresher training. As discussed in section II.B.6, the final rule replaces the IFR's annual security awareness training requirement with an initial training requirement that must be completed by all covered flight training provider employees within 60 days of hiring and a biennial refresher training requirement thereafter. A provider may conduct refresher training on or before the 2-year anniversary of the previous initial or refresher training. The final rule allows aircraft operators to meet initial and refresher training requirements by documenting their compliance with other TSA security programs, such as security awareness training provided under 49 CFR parts 1544 and 1546.

Flight training providers may either leverage security awareness training modules created by industry organizations or create their own. Providers should include any nuanced security concerns pertinent to their site-specific operations.

TSA believes an email message is not adequate for security awareness training because an email cannot replace a full course. Emails cannot fully refresh previously taught security awareness principles or memorably introduce new security concerns raised since the previous training.

7. Recordkeeping Requirements and the FTSP Portal

a. Electronic Submission of Information and Recordkeeping

Comments: TSA received many comments in both 2004 and 2018 asserting that the IFR's recordkeeping requirements were duplicative, costly, and burdensome. In 2018, commenters overwhelmingly responded to TSA's query as to the projected ''impact of allowing regulated parties to use electronic recordkeeping, in whole or in part, to establish compliance'' [98] by recommending that TSA accept and facilitate electronic recordkeeping to demonstrate compliance with this regulation.

Some commenters suggested that TSA allow them to retain or use their own electronic recordkeeping systems. An aircraft operator requested that TSA make a determination that its FAA-approved recordkeeping system satisfies TSA's training documentation and recordkeeping requirements. Another commenter estimated that electronic recordkeeping through TSA would reduce their costs by two-thirds.

TSA response: The final rule establishes that TSA will implement and maintain an electronic recordkeeping capability via the FTSP Portal to provide regulatory and cost relief for flight training providers. This capability will give providers the option to demonstrate compliance electronically in lieu of maintaining physical or manual records. TSA recognizes that many flight training providers already have robust facilities and systems to document all records required under this part. The final rule allows providers to use their own recordkeeping systems, but permits use of the FTSP Portal to provide a consolidated resource.

b. Registration Requirements for Flight Training Providers

Comments: Flight training industry representatives and flight training providers questioned whether providers who do not instruct non-U.S. citizens must register with TSA. A few providers recommended that they be allowed to register with TSA first and that TSA verify their certificated status with FAA. One provider recommended that TSA provide an alternative for registration at an FAA flight standards district office. Other commenters requested clarification as to whether flight training providers operating under 14 CFR part 61 should register as independent CFIs or part 61 flight training providers.

A commenter requested that TSA identify non-U.S. citizen flight students obtaining an FAA certificate along with the instructor or school signing off on the certificate.

Some providers expressed concern about the IFR's requirement that the point of contact or administrator of a flight training provider must hold an FAA certificate.

TSA response: Flight training providers who do not train non-U.S. citizens are not required to register with TSA; however, they may want to do so in order to take advantage of the FTSP Portal to store other records required to demonstrate compliance with the final rule. Flight training providers who provide instruction to non-U.S. citizens must register online with TSA. TSA concurs with the recommendations that providers be allowed to register through the FTSP Portal and that TSA confirm that registration with the FAA. FAA confirms the CFI's certificate under 14 CFR part 61 or the flight training provider's certificate(s) under 14 CFR parts 141, 142, 121, or 135. As discussed in section II.B.5, § 1552.9 of the final

[98] *See* 83 FR at 23238.

rule allows a non-certificated individual to register as the flight training provider's Security Coordinator.

c. Providing Information to TSA

Comments: A few flight training providers and an aircraft operator asked TSA to clarify how candidates and providers should submit information to TSA. A provider expressed concern that some candidates and providers may not have access to the internet. An aircraft operator requested TSA avoid electronic signatures as a way of verifying accuracy.

TSA response: TSA adopted the information collection procedures previously established by the Department of Justice when TSA assumed responsibility for the FTSP program almost 2 decades ago. At the time, candidates and providers were encouraged to apply online, but also were allowed to provide information by fax transmission. Use of fax machines to transmit paper records often introduced human error, excessive cost and effort for TSA, and frustration for candidates and providers. TSA has not processed a fax-and-paper application since 2007. Validation of the information provided by candidates and providers through the FTSP Portal reduces human error and allows candidates and providers to check for accuracy, reuse information provided to TSA previously, and upload information in a timely manner.

Internet access has improved significantly since the IFR was issued, to a degree that all flight training providers likely have multiple means of internet access at all times. Similarly, the use of digital signatures on electronic documents is now common. In recognition of these developments, the final rule requires digital signatures and use of the FTSP Portal where appropriate.

d. FTSP Customer Support

Comments: A flight training provider relayed dissatisfaction with responses to emails and phone calls to TSA. Another provider requested TSA provide guidance to candidates on how to apply for an STA, and that the guidance be made available to flight training providers so they may assist candidates.

TSA response: Flight training candidates apply for STAs from countries in all time zones around the world. TSA has found that flight training candidates, whose English proficiency may be limited, communicate best with the program via email, as it is more efficient to understand the candidate's concern and address the problem in a written format.

TSA maintains detailed candidate and provider user guides and frequently asked questions on the FTSP Portal. A candidate still experiencing difficulties with the application process may contact FTSP via email to *FTSP.Help@tsa.dhs.gov.* TSA generally responds to emails within 5 to 7 business days.

e. Security of Information in FTSP Portal

Comments: Some commenters in 2004 were concerned about the FTSP Portal's security. Some expressed concern about maintaining personally identifiable information at their place of business or in their homes and desired a more secure location or system provided by TSA. Some commenters stated this would enable TSA to apply its cybersecurity standards to those records, thereby increasing security. A commenter in 2018 suggested that, with more than 5,000 flight training providers registered with TSA, maintaining their records on a Federal system would result in economies of scale and enhanced cybersecurity.

TSA response: TSA shares users' concerns about the security of their data and the protection of personally identifiable information. All TSA systems and networks, including the FTSP Portal, meet DHS enterprise cybersecurity protocols and best practices, in accordance with statutory authorities such as the Federal Information Security Modernization Act[99] and the Privacy Act.[100] TSA enhanced the portal's information technology infrastructure in 2007 and 2012, and through ongoing efforts from 2018 to the present. In implementing the final rule, TSA will continue to use DHS-required cybersecurity technologies and standards to protect the security of all data and records stored by TSA, including flight training provider records uploaded to the FTSP Portal.

f. Privacy Concerns

Comments: Several commenters in 2004 raised concerns about democratic processes and civil liberties. A few were concerned about privacy issues raised by the IFR's recordkeeping requirements. Some commenters expressed that TSA does not have the statutory authority to require third parties to establish pilot citizenship files or the legal protections for those files.

An industry association noted that the documentation flight training providers maintain in a pilot's employment file is already subject to privacy protection requirements. Other commenters stated they did not have the ability to properly store and maintain sensitive documents.

TSA response: TSA is required by 49 U.S.C. 44939 to collect the information required by this rule. TSA follows all pertinent laws and DHS policies governing the collection of this information, including the publication of a Privacy Impact Assessment (PIA) and System of Records Notice (SORN) maintained and posted online through DHS.[101] TSA's compliance with the privacy and information collection requirements is discussed in section V.

In response to the concern that CFIs and other providers are required to retain student and candidate personal information, TSA notes that providers must as a business practice maintain files that are certain to contain protected privacy information about persons they employ. For example, employers must complete paperwork, such as the Form I–9, to verify an individual's eligibility for employment in the United States, that contains an employee's name, address, and other personally identifiable information. Enhancements to the FTSP Portal provide an electronic, secure alternative for all flight training providers to ensure the privacy and security of all flight student, candidate, and flight training provider information.

D. Compliance

1. Enforceability of the Rule

Comments: In 2004, a few commenters felt that the rule would be ''unenforceable.''

TSA response: TSA has successfully enforced this rule and administered the FTSP for more than 18 years. In accordance with TSA's statutory and regulatory authorities stated in § 1503.207 and discussed in section I.E, TSA's domestic and international compliance offices will continue to conduct audits and inspections. FTSP coordinates closely with these other TSA offices to identify and thwart attempts to circumvent this regulation. In addition, the FAA sends TSA an electronic record of all airmen, updated each month, who have been issued new pilot certificates. TSA reconciles this FAA data with TSA's own record of non-U.S. citizens who have applied for flight training through the FTSP

[99] Public Law 113–283 (128 Stat. 3073; Dec. 18, 2014).

[100] Public Law 93–579 (88 Stat. 1896; Dec. 31, 1974), *as codified at* 5 U.S.C. 552a.

[101] For the FTSP PIA and SORN, *see* DHS–TSA Privacy Impact Assessment, DHS–TSA–PIA–026, Alien Flight Student Program, at *https://www.dhs.gov/publication/dhs-tsa-pia-026-alien-flight-student-program. See also supra* note 32 for information on the SORN.

program. Any discrepancies between the TSA and FAA records are promptly resolved and, if necessary, addressed through a combination of civil or criminal penalties.

2. Compliance, Audits, and Inspections

Comments: A major industry flight training provider asked TSA to publish its inspection rhythm or schedule and provide clear guidance to enable flight training providers to anticipate when inspections and audits will occur and what will be required. Other providers asked TSA to give them the same guidelines TSA inspectors use to conduct audits.

TSA response: Figure 2 itemizes what providers must do to comply with this regulation. The provider guide posted on the FTSP Portal has more detailed guidance on recordkeeping. In addition, TSA's published Enforcement Sanction Guidance Policy [102] describes the range of civil and criminal penalties that can be assessed against a candidate or a provider for noncompliance with this regulation. TSA does not publish a schedule for audits or inspections to enable candid reviews of flight training provider operations by the inspector. TSA believes that expanding the capability for providers to maintain their records electronically may mitigate the impact of audits and inspections.

3. Documenting Compliance

Comments: Many commenters felt it redundant to require a flight training provider to maintain a record already provided to TSA through the FTSP Portal and unfair to penalize a provider during an audit who did not have a hard copy of a record electronically available to both TSA and the provider online. Many 2018 commenters recommended that TSA accept information provided through the FTSP Portal as demonstration of their compliance with this regulation. They stated this would allow TSA to review records electronically and shift the burden of maintaining physical files and facilities or information technology systems from flight training providers to TSA. Some commenters recommended TSA expand its electronic storage capability to facilitate TSA and FAA compliance audits and reduce their employees' time and effort complying with a TSA audit.

Another commenter requested that TSA provide access to FAA authorities to verify citizenship as part of FAA's audits and inspections. Flight training providers and industry representatives stated that electronic recordkeeping would bring TSA into conformity with other regulatory agencies such as FAA and USCIS. A provider suggested TSA provide specific guidance providers can follow to demonstrate compliance. One commenter expressed frustration with the requirement to document whether or not a candidate has completed training.

TSA response: TSA auditors will accept either electronic records or physical records. TSA issues a unique electronic confirmation whenever a flight training provider uploads or enters new information through the FTSP Portal. Providers may present this electronic confirmation to demonstrate compliance with this regulation. Section 1552.15 of the final rule eliminates the requirement for hard-copy records if the records are retained electronically, whether through a provider's system or the FTSP Portal.

TSA provides access to the FTSP Portal to FAA, USCIS, DoD, and SEVP to facilitate their audits and inspections. Providers recording completion of training events facilitates audits and inspections by other government agencies.

TSA anticipates that flight training providers' use of the FTSP Portal for electronic recordkeeping will facilitate audits and inspections. Providers who do not use the FTSP Portal for recordkeeping must retain records for 5 years, in a form and manner acceptable to TSA, to demonstrate compliance. Compliance guidance is provided in the provider guide posted on the FTSP Portal. Section II.B.7 provides more details concerning this requirement.

E. Additional Comments Received in Response to 2018 Reopening

1. General Rulemaking Comments

Comments: In the 2018 comment period, many commenters expressed general support for the regulation and focused on TSA's specific requests for information and recommending improvements to the rule. Industry commenters suggested that TSA revise the final rule to (1) use simpler language; (2) reduce economic burdens and enhance security; and (3) consolidate and formalize notices and interpretations of the regulation issued since the IFR was published. Two commenters criticized the current program as a ''waste of time and money'' that harms the aviation industry and law enforcement.

One commenter recognized the importance of the FTSP in preventing terrorists from using aircraft to attack the United States and suggested that TSA use a ''risk-based approach'' to ''improve'' the IFR.

Another commenter felt that FTSP requirements, such as the STA process and recordkeeping, have resulted in a loss of business and that modifying these requirements could stimulate a return of non-U.S. citizen customers to U.S.-based flight training instruction.

An industry representative requested that TSA enable the capture of metrics from the information they supply to TSA, to help providers promote their business and boost their competitiveness in the world market. One commenter requested that TSA periodically publish the number of FTSP candidates.

TSA response: In response to these comments, TSA has made changes to the rule that are intended to strengthen elements of the program while mitigating many industry concerns. The final rule provides clarity on many of the requirements, codifies or otherwise consolidates all previously issued instructions and interpretations, and modifies requirements to significantly reduce the burden while meeting the security purpose of the rule. Through both the rule text and this preamble, as well as the use of the FTSP Portal, TSA has attempted to provide a more user-friendly regulatory program for industry, candidates, the general public, and government partners.

TSA is considering how to adapt the FTSP Portal to generate metrics, population data, and other operational data collected for flight training providers.

2. Recommending Against Requiring Flight Training Providers To Undergo an STA

Comments: In the 2018 request for comments, TSA requested feedback on whether the FTSP should require flight training providers to undergo an STA. As a result, TSA received many comments concerning the costs and benefits of extending the STA requirements to providers. Many commenters expressed reservations about the prospect, and others believed that requiring an STA should be implemented only for non-U.S. citizens employed by flight training providers.

A flight training provider asserted that enough security requirements should be in place to ensure that a provider employee does not pose a threat to aviation or national security. This individual doubted their employees would be involved in disqualifying offenses or would not be permitted to enter or remain in the United States. An industry representative opposed STAs for flight training providers because of

[102] *See https://www.tsa.gov/travel/frequently-asked-questions/how-was-penalty-amount-determined.*

the likelihood providers have undergone threat assessments under other U.S. Government programs.

A few commenters recognized that some providers could pose a threat. A commenter noted that each ''foreign instructor'' has access to simulators or aircraft without having undergone an STA. Another commenter noted that the majority of U.S. terrorist acts since 9/11 ''have been performed by people born in the USA.'' An industry representative proposed that every flight training provider employee be required to undergo an STA to ensure ''the general aviation flight training industry remains safe.''

A major flight training provider reminded TSA that a large part of its operations occurs overseas. Several foreign aircraft operators noted that they recognize efficiencies by allowing their pilots to train to FAA certification standards closer to where they operate. An industry representative requested that TSA ensure that flight training providers maintain the ability to conduct training toward FAA certificates and ratings at locations outside the United States.

A few commenters felt that non-U.S. citizens should not be allowed to participate in training from individual instructors certificated under 14 CFR part 61, and that the only non-U.S. citizens who should undergo an STA are those training with pilot schools or other institutions or businesses certificated under 14 CFR parts 121, 135, 141, or 142. An industry representative requested that TSA ensure that providers operating under either 14 CFR part 61 or part 141, or both, are permitted to provide flight training to non-U.S. citizens under TSA's regulations. To show their support for this regulation, industry representatives emphasized that all flight training providers, including independent CFIs, should comply with TSA regulations and ICE/SEVP regulations, as applicable.

Some commenters indicated that an STA for flight training providers could be warranted if TSA could provide examples of threats posed and actual occurrences supporting the imposition of this requirement on providers. One commenter suggested TSA require a TSA-approved Flight Training Provider Security Program for each flight training provider.

TSA response: As with the IFR, the final rule requires STAs only for candidates. The statute focuses on individuals who request training. Consistent with the statute, this rule is narrowly tailored to impose only those burdens on industry that are mandated by Congress, while maintaining or improving the current level of security.

Many flight training provider employees may also be subject to an STA under other TSA-regulated public trust programs such as 49 CFR part 1542 for airports and 49 CFR part 1544 for aircraft operators. Nonetheless, TSA considered imposing a new requirement that flight training provider employees undergo an STA under the provision in 49 U.S.C. 44939 as an ''other individual specified by the Secretary of Homeland Security.'' TSA decided that the net economic impact of the final rule should reduce burdens on industry, and that imposing an STA requirement on flight training providers would add more costs than other provisions of the final rule would reduce.

TSA is not pursuing the institution of flight training provider-specific security programs, either domestically or for flight training providers operating in international locations, because of the uniqueness of each flight training provider operation and because the costs required for TSA to develop and oversee more than 5,000 such programs appears to be prohibitive.

V. Rulemaking Analyses and Notices

A. Economic Impact Analyses

1. Regulatory Impact Analysis Summary

Changes to Federal regulations must undergo several economic analyses. First, E.O. 12866 of October 4, 1993 (Regulatory Planning and Review),[103] as supplemented by E.O. 13563 of January 21, 2011 (Improving Regulation and Regulatory Review) [104] and E.O. 14094 of April 6, 2023 (Modernizing Regulatory Review) [105] directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (RFA) [106] requires agencies to consider the economic impact of regulatory changes on small entities. Third, the Trade Agreement Act of 1979 [107] prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the UMRA [108] () requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).[109]

2. Executive Orders 12866, 13563, and 14094 Assessment

Under the requirements of E.O. 12866, agencies must assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). These requirements were supplemented by E.O. 13563 and E.O. 14094, which emphasize the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

TSA summarizes the findings:

1. This final rule is a significant regulatory action under E.O. 12866. However, this final rule is not an economically significant rulemaking under the definition in section 3(f)(1) of E.O. 12866, as amended by E.O. 14094, because its annual effect on the economy does not exceed $200 million in any year of the analysis;

2. Under the Regulatory Flexibility Act of 1980, TSA is not required to perform a Regulatory Flexibility Analysis because it did not publish a proposed rule;

3. This final rule does not constitute a barrier to international trade as defined by the Trade Agreement Act of 1979; and

4. This final rule is not likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). Therefore, no actions were deemed necessary under the provisions of the UMRA.

As part of completing the final rule, TSA has prepared an analysis of the estimated costs and cost savings for both the IFR baseline and overall cost of the rule (using the pre-IFR baseline). The costs and cost savings are summarized in the following paragraphs and in the OMB Circular A–4 Accounting Statement.

The IFR baseline provides an accounting of the final rule changing three IFR requirements: (1) moving from an *event-based* to a *time-based* STA; (2) implementing a TSA-sponsored

[103] 58 FR 51735 (Oct. 4, 1993).

[104] 76 FR 3821 (Jan. 21, 2011).

[105] 88 FR 21879 (Apr. 11, 2023).

[106] Public Law 96–354 (94 Stat. 1164; Sept. 19, 1980), codified at 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[107] Public Law 96–39 (93 Stat. 144; July 26, 1979), codified at 19 U.S.C. 2531–2533.

[108] Public Law 104–4 (109 Stat. 66; Mar. 22, 1995), codified at 2 U.S.C. 1531–1538.

[109] *Id.*

electronic recordkeeping system; and (3) reducing the frequency of security awareness training. The IFR baseline also provides an accounting of two new costs introduced under the final rule: (a) designation of a Security Coordinator; and (b) familiarization with the final rule. TSA's key reasons for implementing cost changes and the rationale for each change are:

- *Implementation of a time-based STA.* As with the IFR, the final rule requires candidates to apply to TSA for an STA, and the flight training provider must notify TSA of each training event. The final rule, however, allows a candidate to receive a single STA that could be valid up to 5 years. Under the IFR, an STA was required each time a candidate requested flight training. For the final rule, the $140 *time-based* fee replaces the IFR's multiple, *event-based* STA fees. In addition, this change to a *time-based* STA reduces candidates' time burden for training event requests. In the final rule, TSA also includes a $125 reduced fee for candidates who may already have a comparable STA. Lastly, the final rule continues to offer and expand expedited processing, at no additional fee, for eligible candidates that request completion of their STA within 5 business days.
- *Implementation of a TSA-sponsored electronic recordkeeping system.* To facilitate compliance with final rule requirements, the final rule allows flight training providers to use the FTSP portal if they wish to do so for electronic recordkeeping of candidate STA and flight training event requests, whereas the IFR required paper records. TSA calculated three estimates related to this new resource—first, cost savings for providers from reduced physical storage costs; second, less time burden for providers preparing physical records for compliance inspections; and, third, cost savings for TSA from reduced time and other associated costs required for physical records inspections.
- *Reduced frequency of security awareness training.* The final rule allows providers to administer security awareness training for their employees at least every 2 years, whereas the IFR required this training to occur annually. TSA estimates the time-burden savings for providers resulting from the reduced frequency of security awareness training.
- *Implementation of a Security Coordinator requirement.* The final rule introduces a new requirement for providers to designate a Security Coordinator and provide their contact information to TSA. TSA estimates the time-burden cost for this new requirement to be between approximately $16 to $24 per coordinator.

In addition to the IFR baseline, the change between the final rule and the IFR, TSA also presents the overall cost of the rule using the pre-IFR baseline. In completing this final rule, TSA updated the costs, data points, and assumptions of the original IFR published in 2004 and estimated costs of IFR requirements that were previously unaccounted for in the accompanying analysis. The final rule retains these requirements from the IFR, including: (1) flight training candidates are required to submit fingerprints to TSA; (2) flight training candidates and providers are required to create and maintain FTSP portal accounts; (3) flight training providers are required to submit a candidate's photograph to TSA; (4) flight training providers are required to update and maintain refresher security awareness training for employees; and (5) TSA must conduct regulatory compliance inspections of all flight training providers.

Table 8 below presents the annualized costs and cost savings associated with implementing all final rule requirements relative to the pre-IFR baseline over the 10-year period of analysis (2024–2033).

The 10-year annualized difference of $14.37 million, presented in table 8, under the pre-IFR baseline differs from the $14.60 million annualized net cost savings presented in table 9. The later compares the net impact of the final rule to the IFR baseline. As part of this final rule, TSA analyzed two baselines, to estimate the costs relative to the respective baselines. For two of the requirements, the start year 2005 (year 1 of the IFR) versus 2024 (year 1 of the final rule) affected the recurrent generations of inspections and number of new providers, which accounts for the small difference.

TABLE 8—ANNUALIZED 10-YEAR COST OF THE IFR WITH UPDATED COSTS VS. FINAL RULE BY REQUIREMENT

[2022 Dollars]

Final rule (FR requirements	49 CFR	IFR with updated costs and FR comparison (discounted at 7 percent; $ millions)			Description
		Updated IFR costs	FR costs	10-Year difference	
Compliance Inspections Time.	§ 1503.207	$8.65	$1.49	($7.15)	Under the IFR and FR, each flight training provider must allow TSA to enter and conduct any audits, assessments, tests, or inspections of operations, and to view, inspect, and copy records. Cost savings result from a reduction in the number of hours spent on TSA on-site inspections.
Security Awareness Training.	§ 1552.13	8.09	5.03	(3.06)	Under the IFR and FR, providers must update and maintain refresher training to include but not limited to new security measures and procedures implemented by provider, security incidents, and any new TSA guidelines or recommendations. Providers must ensure that all employees complete security awareness training. The final rule changes the requirement from annual to biennial.
Recordkeeping	§ 1552.15 and § 1552.17	2.08	0.05	(2.03)	Cost savings derived from electronic recordkeeping.

TABLE 8—ANNUALIZED 10-YEAR COST OF THE IFR WITH UPDATED COSTS VS. FINAL RULE BY REQUIREMENT—Continued

[2022 Dollars]

Final rule (FR requirements	49 CFR	IFR with updated costs and FR comparison (discounted at 7 percent; $ millions)			Description
		Updated IFR costs	FR costs	10-Year difference	
FTSP Portal Accounts.	§ 1552.17	0.16	0.16		Under the IFR and FR, flight training provider and candidates must create and maintain portal accounts to use the FTSP portal. Providers can also use the portal for electronic record-keeping.
Fingerprinting	§ 1552.31	2.59	2.59		Under the IFR and FR, candidates are required to submit fingerprints to TSA in order for TSA to initiate the STA. Fingerprints must be collected at a TSA-approved location.
Candidate Security Threat Assessment Fees.	§ 1552.39	5.12	2.45	(2.67)	All candidates must apply for an STA. Under the IFR, the candidate had to get an STA each time the candidate requested flight training. Costs under the IFR were based on Category 1, 2, and 3 training events paying a fee of $130 per event and Category 4 paying a fee of $70 per event. Under the final rule, the candidate applies for one STA that could be valid for up to 5 years, for a fee of $140. Under the final rule, a candidate with a comparable STA may pay a reduced fee of $125.
Notification and Processing of Flight Training Events.	§ 1552.51	1.44	1.12	(0.32)	The flight training provider must notify TSA through the FTSP portal about all proposed and actual flight training events, whether or not that training is intended to result in certification.
Candidate Photograph Submission.	§ 1552.51	0.04	0.04		Under the IFR and FR, providers must take a photograph of the candidate upon the candidate's arrival for each training event. Photographs must be uploaded to the FTSP portal.
Designation of Security Coordinator.	§ 1552.9		0.13	0.13	The FR implements the new requirement for the provider to assign a Security Coordinator to serve as a security liaison with TSA. Costs include initial and updated submissions from Security Coordinator turnover.
Familiarization with Final Rule.	§ 1552		0.73	0.73	TSA assumes a time burden cost for familiarization with the final rule.
Total		28.17	13.80	(14.37)	

Note: Totals may not add due to rounding.

When estimating the cost of a rulemaking, agencies typically estimate future expected costs imposed by a regulation over a period of analysis. For this final rule, TSA uses a 10-year period of analysis to estimate the costs and cost savings, compared to the IFR baseline, to flight training providers, candidates, and TSA. TSA provides an analysis of costs and cost savings under the final rule, compared to the IFR baseline, as well as an overall cost of the rule using a pre-IFR baseline savings in the Regulatory Impact Assessment (RIA) placed in the docket.

Using the IFR baseline, TSA estimates the net impacts of the changes in this final rule in comparison to the costs of the IFR. TSA estimates the 10-year total net impact of the final rule, compared to the IFR baseline, to be a net cost savings of $102.56 million discounted at seven percent. The annualized net impact of the final rule, compared to the IFR baseline, is $14.60 million discounted at seven percent.

TSA estimates the final rule cost savings, compared to the IFR baseline, to be $108.57 million over 10 years, discounted at seven percent. The estimated new costs of the final rule, compared to the IFR baseline is $6.01 million over 10 years, discounted at seven percent. Combining the cost savings and new costs of the final rule, the resulting net cost savings, compared to the IFR baseline, is $102.56 million, over 10 years, discounted at 7 percent. TSA's analysis summarizes the net impacts of the new costs and costs

savings of the final rule to be borne by three parties: flight training providers, flight training candidates, and TSA. As displayed in table 9 below, TSA estimates the 10-year total net impact of this final rule, compared to the IFR baseline, to be a cost savings of $149.72 million undiscounted, $126.36 million discounted at three percent, and $102.56 million discounted at seven percent.

TABLE 9—FINAL RULE'S NEW COST AND COST SAVINGS BY ENTITY TYPE AS COMPARED TO THE IFR BASELINE

[2024–2033; $ millions]

Year	Costs to flight training providers	Cost savings to flight training providers	Cost savings to candidates	TSA cost savings	Total final rule net impact		
					Undiscounted	Discounted at 3%	Discounted at 7%
	a	b	c	d	e = a − Σb,c,d		
1	$4.51	$11.54	$0.90	$0.73	($8.65)	($8.40)	($8.09)
2	0.27	9.83	3.34	0.17	(13.07)	(12.32)	(11.42)
3	0.28	12.91	3.38	0.73	(16.75)	(15.33)	(13.67)
4	0.28	10.15	3.43	0.22	(13.52)	(12.01)	(10.31)
5	0.29	13.69	3.49	0.73	(17.62)	(15.20)	(12.57)
6	0.30	10.57	1.50	0.26	(12.03)	(10.08)	(8.02)
7	0.30	14.45	3.55	0.74	(18.43)	(14.99)	(11.48)
8	0.31	11.07	3.65	0.30	(14.70)	(11.61)	(8.56)
9	0.32	15.20	3.76	0.75	(19.39)	(14.86)	(10.55)
10	0.33	11.64	3.89	0.34	(15.54)	(11.56)	(7.90)
Total	7.19	121.05	30.90	4.96	(149.72)	(126.36)	(102.56)
Annualized						(14.81)	(14.60)

Note: Totals may not add due to rounding.

TSA breaks out the ten-year total cost *savings,* presented in table 9, by *savings* to flight training candidates, flight training providers, and TSA. TSA estimates the flight training candidates ten-year cost *savings* to be $30.90 million undiscounted, $25.98 million discounted at three percent, $20.99 million discounted at seven percent. These candidate costs savings represent the ultimate effect of fewer STAs conducted by TSA. While TSA no longer has to pay for additional STA's ($18.74 million over 10 years, discounted at seven percent) these savings are transferred to candidates in the form of reduced fees. Candidate cost savings could have an important distributional effect if the set of candidates are disproportionately represented by certain groups of people. TSA sums the $18.74 million fee transfer, discounted at seven percent, with the $2.25 million, discounted at seven percent, for time savings to estimate a total cost *savings* to candidates of $20.99 million, discounted at seven percent. Next, TSA estimates then ten-year cost *savings* to flight training providers to be $121.05 million undiscounted, $102.76 million discounted at three percent, and $84.08 million discounted at seven percent. Lastly, TSA estimates the ten-year cost *savings* to TSA to be $4.96 million undiscounted, $4.24 million discounted at three percent, and $3.50 million discounted at seven percent.

Table 10 displays the two new cost categories introduced and cost savings under the final rule, compared to the IFR baseline, by rule component.

TABLE 10—NEW COSTS AND COST SAVINGS BY FINAL RULE COMPONENT AS COMPARED TO THE IFR BASELINE

[2024–2033; $ millions]

Year	Cost savings					Costs		Net impact		
	STA structure change fee	STA structure change time burden	Record-keeping	Security awareness training	Inspections time	Familiarity	Security coordinators	Undiscounted	Discounted at 3%	Discounted at 7%
	a	b	c	d	e	f	g	h = Σf,g − Σa,b,c,d,e		
1	$0.59	$0.31	$1.32		$10.95	$4.01	$0.50	($8.65)	($8.40)	($8.09)
2	3.03	0.31	1.92	$5.59	2.50	0.20	0.06	(13.07)	(12.32)	(11.42)
3	3.07	0.31	1.95	0.74	10.95	0.21	0.07	(16.75)	(15.33)	(13.67)
4	3.12	0.32	1.98	5.22	3.16	0.21	0.07	(13.52)	(12.01)	(10.31)
5	3.17	0.32	2.02	1.37	11.03	0.22	0.07	(17.62)	(15.20)	(12.57)
6	1.18	0.32	2.06	4.98	3.79	0.23	0.07	(12.03)	(10.08)	(8.02)
7	3.23	0.32	2.10	1.92	11.17	0.23	0.07	(18.43)	(14.99)	(11.48)
8	3.32	0.33	2.14	4.82	4.40	0.24	0.07	(14.70)	(11.61)	(8.56)
9	3.43	0.33	2.19	2.39	11.37	0.24	0.08	(19.39)	(14.86)	(10.55)
10	3.55	0.34	2.24	4.75	4.99	0.25	0.08	(15.54)	(11.56)	(7.90)
Total	27.68	3.22	19.92	31.78	74.31	6.05	1.14	(149.72)	(126.36)	(102.56)
Annualized									(14.81)	(14.60)

Note: Totals may not add due to rounding.

The primary benefit of the final rule, compared to the IFR baseline, is the replacement of the IFR's *event-based* STA approach with a *time-based* STA approach. The change will reduce STA-related time burdens for flight training candidates and flight training providers and reduce fee expenses for the vast majority of candidates. TSA expects this change to reduce delays and fees, assist in tracking of candidate training events, and support the portability of a candidate's STA between providers.

In completing this final rule, TSA updated the accounting of requirements of the 2004 IFR to estimate the overall cost of the rule using the pre-IFR baseline. Table 11 presents the total cost of the rule from 2005 through 2033, covering 29 years of analysis. This covers the cost of the IFR with updated costs from 2005 through 2023 and the cost of the IFR, less the net cost savings of the final rule, compared to the no action baseline, from 2024 through 2033. The total cost to flight training candidates, flight training providers, and TSA would be $579.43 million undiscounted, $699.05 discounted at three percent, and $957.79 million discounted at seven percent.

TABLE 11—TOTAL COST OF THE RULE INCORPORATING IFR WITH UPDATED COSTS (2005–2023) AND FINAL RULE'S NET COST SAVINGS (2024–2033)

[$ Millions, 2022 dollars]

Year	Cost to candidates	Cost to providers	Cost to TSA	d = Σa,b,c		
	a	b	c	Total undiscounted	Discounted at 3%	Discounted at 7%
2005 18	$8.52	$18.94	$1.80	$29.25	$49.80	$98.88
2006 17	8.26	8.97	0.45	17.68	29.23	55.86
2007 16	8.19	13.89	1.80	23.88	38.32	70.50
2008 15	8.13	9.57	0.56	18.26	28.45	50.38
2009 14	9.63	12.96	1.82	24.40	36.91	62.92
2010 13	9.55	8.98	0.66	19.19	28.17	46.23
2011 12	9.47	13.32	1.84	24.63	35.11	55.46
2012 11	9.40	9.62	0.76	19.77	27.37	41.62
2013 10	9.33	13.74	1.87	24.94	33.51	49.05
2014 9	9.27	10.27	0.85	20.39	26.61	37.49
2015 8	9.22	14.21	1.91	25.33	32.09	43.52
2016 7	9.17	10.94	0.95	21.05	25.89	33.81
2017 6	9.13	14.72	1.96	25.81	30.82	38.73
2018 5	9.10	11.63	1.04	21.77	25.23	30.53
2019 4	9.07	15.29	2.01	26.37	29.68	34.57
2020 3	9.06	12.34	1.13	22.53	24.62	27.60
2021 2	9.05	15.90	2.08	27.03	28.67	30.94
2022 1	9.05	13.09	1.23	23.37	24.07	25.00
2023 0	9.06	16.57	2.14	27.77	27.77	27.77
2024 1	8.12	11.91	2.18	22.21	21.56	20.76
2025 2	5.71	2.27	0.52	8.50	8.01	7.43
2026 3	5.72	7.32	2.18	15.22	13.93	12.42
2027 4	5.72	3.05	0.65	9.42	8.37	7.19
2028 5	5.78	7.12	2.20	15.10	13.02	10.76
2029 6	7.80	3.74	0.77	12.31	10.31	8.20
2030 7	5.85	7.03	2.22	15.10	12.28	9.40
2031 8	5.87	4.35	0.89	11.11	8.77	6.47
2032 9	5.88	7.02	2.26	15.17	11.63	8.25
2033 10	5.94	4.92	1.01	11.87	8.83	6.03
Total	234.03	303.66	41.74	579.43	699.05	957.79

Next, TSA presents the total cost of the rule if TSA did not implement this final rule. While all requirements from the IFR would be retained, the costs in the table below would not capture the cost *savings* derived, compared to the IFR baseline. This includes the STA fee and time reduction, electronic recordkeeping, less frequent security awareness training, and reduction in inspection burdens. Furthermore, absent implementation of this final rule, TSA would not introduce a requirement to designate Security Coordinators and for providers to familiarize themselves with the changes between the final rule and IFR. Table 12 covers both the IFR period (2005—2023) and 10-years into the future (2024—2033) similar to the final rule period of analysis. The total cost to flight training candidates, flight training providers, and TSA would be $728.86 million undiscounted, $824.40 discounted at three percent, and $1,058.71 million discounted at seven percent.

TABLE 12—TOTAL COST OF THE IFR RULE (IFR; (2005–2033), ABSENT IMPLEMENTATION OF THE FINAL RULE

[$ Millions, 2022 dollars]

Year	Cost to candidates	Cost to providers	Cost to TSA	Total undiscounted	Discounted at 3%	Discounted at 7%
2005 18	$8.52	$18.94	$1.80	$29.25	$49.80	$98.88
2006 17	8.26	8.97	0.45	17.68	29.23	55.86

TABLE 12—TOTAL COST OF THE IFR RULE (IFR; (2005–2033), ABSENT IMPLEMENTATION OF THE FINAL RULE—Continued

[$ Millions, 2022 dollars]

Year	Cost to candidates	Cost to providers	Cost to TSA	Total undiscounted	Discounted at 3%	Discounted at 7%
2007 16	8.19	13.89	1.80	23.88	38.32	70.50
2008 15	8.13	9.57	0.56	18.26	28.45	50.38
2009 14	9.63	12.96	1.82	24.40	36.91	62.92
2010 13	9.55	8.98	0.66	19.19	28.17	46.23
2011 12	9.47	13.32	1.84	24.63	35.11	55.46
2012 11	9.40	9.62	0.76	19.77	27.37	41.62
2013 10	9.33	13.74	1.87	24.94	33.51	49.05
2014 9	9.27	10.27	0.85	20.39	26.61	37.49
2015 8	9.22	14.21	1.91	25.33	32.09	43.52
2016 7	9.17	10.94	0.95	21.05	25.89	33.81
2017 6	9.13	14.72	1.96	25.81	30.82	38.73
2018 5	9.10	11.63	1.04	21.77	25.23	30.53
2019 4	9.07	15.29	2.01	26.37	29.68	34.57
2020 3	9.06	12.34	1.13	22.53	24.62	27.60
2021 2	9.05	15.90	2.08	27.03	28.67	30.94
2022 1	9.05	13.09	1.23	23.37	24.07	25.00
2023 0	9.06	16.57	2.14	27.77	27.77	27.77
2024 1	9.02	13.87	1.33	24.21	23.51	22.63
2025 2	9.05	17.28	2.22	28.56	26.92	24.94
2026 3	9.10	14.68	1.43	25.20	23.06	20.57
2027 4	9.15	18.04	2.30	29.50	26.21	22.51
2028 5	9.27	15.53	1.53	26.34	22.72	18.78
2029 6	9.31	18.86	2.39	30.56	25.60	20.37
2030 7	9.40	16.43	1.64	27.47	22.34	17.11
2031 8	9.51	19.74	2.49	31.74	25.06	18.47
2032 9	9.64	17.38	1.75	28.77	22.05	15.65
2033 10	9.83	20.67	2.59	33.09	24.62	16.82
Total	264.92	417.42	46.51	728.86	824.40	1,058.71

TSA then compares the 10-year cost, from 2024 to 2033, of the IFR with updated costs and final rule in table 13. As part of completing this final rule, TSA updated the IFR costs to include all requirements outlined in the 2004 IFR. The first column estimates what the future expected costs of the IFR would be over the next 10 years (without any changes from this final rule). The second column estimates the future expected costs under the final rule over the same 10-year period. The final rule cost column represents the total cost of the IFR less the net savings from the final rule.

TABLE 13—10-YEAR COMPARISON OF THE IFR WITH UPDATED COSTS AND FINAL RULE

[$ Millions, discounted at 7 percent, 2022 dollars]

Year	IFR with updated costs	Final rule cost	Difference
1	$22.63	$20.76	($1.87)
2	24.94	7.43	(17.52)
3	20.57	12.42	(8.15)
4	22.51	7.19	(15.32)
5	18.78	10.76	(8.01)
6	20.37	8.20	(12.16)
7	17.11	9.40	(7.70)
8	18.47	6.47	(12.01)
9	15.65	8.25	(7.40)
10	16.82	6.03	(10.79)
Total	197.84	96.92	(100.92)

3. OMB A–4 Statement

The OMB A–4 Accounting Statement shown in table 14 below presents the annualized costs and qualitative benefits of the final rule under the IFR baseline. TSA also presents a second OMB A–4 Accounting Statement (table 15), which covers the annualized costs and qualitative benefits of the entire FTSP program beginning from the IFR (2005) through the end of the final rule period (2033).[110] All monetary values are presented in 2022 dollars.

[110] TSA, as part of this rule, analyzes two baselines. Table 14 presents the net impact of the final rule to the IFR baseline over the 10-year period of 2024 to 2033. Table 15 reflects 29 year annualized with a start year of 2005 (year 1 of the

TABLE 14—OMB A–4 ACCOUNTING STATEMENT FOR THE IFR BASELINE (2024–2033)
[In millions, 2022 dollars]

Category	Estimates			Units			Notes and source citation (final rule RIA, preamble, etc.)
	Primary estimate	Low estimate	High estimate	Year dollar	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized	N/A	N/A	N/A	N/A	7	N/A	*See* FR RIA.*
	N/A	N/A	N/A	N/A	3	N/A	
Qualitative	In addition to regulatory relief, the final rule results in additional benefits which are derived from improved standardization of the vetting process, including security enhancements through the implementation of Rap Back for the CHRC portion of the STA. Furthermore, TSA extends the duration of STAs for up to 5 years, improving comparability amongst STA programs.						
Costs:							
Annualized	($14.60)	N/A	N/A	2022	7	10	*See* FR RIA*.
	(14.81)	N/A	N/A	2022	3	10	
Qualitative	N/A						
Transfers:							
Federal Annualized Monetized ($ millions/year)	N/A	N/A	N/A	N/A	7	N/A	
	N/A	N/A	N/A	N/A	3	N/A	
From/To	From:	N/A		To:	N/A		
Other Annualized Monetized ($ millions/year)	N/A	N/A	N/A	N/A	7	N/A	
	N/A	N/A	N/A	N/A	3	N/A	
From/To	From:	N/A		To:	N/A		
Effects:							
State, Local, and/or Tribal Government	None						Not quantified.
Small Business	No Final Regulatory Flexibility Analysis (FRFA)						
Wages	None						
Growth	Not measured						

Note: Totals may not add due to rounding.
*The RIA is posted on the public docket at *https://www.regulations.gov/docket?D=TSA-2004-19147*.

TABLE 15—OMB A–4 ACCOUNTING STATEMENT FOR OVERALL COST OF THE RULE (2005–2033)
[In millions, 2022 dollars]

Category	Estimates			Units			Notes and source citation (final rule RIA, preamble, etc.)
	Primary estimate	Low estimate	High estimate	Year dollar	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized	N/A	N/A	N/A	N/A	7	N/A	
	N/A	N/A	N/A	N/A	3	N/A	
Qualitative	The primary benefit of FTSP is the increased protection of U.S. citizens and property from acts of terrorism. The requirements under the IFR and final rule are proposed to ensure that non-U.S. citizen flight training candidates do not pose a risk to the U.S. This addresses the security vulnerability which was exploited in the 9/11 attacks with the non-U.S. citizen hijackers receiving flight training from U.S. flight training providers and then using the knowledge and experienced gained to hijack aircraft and use them to commit acts of terrorism.						
Costs:							
Annualized	$78.01	N/A	N/A	2022	7	29	*See* FR RIA.*
	36.43	N/A	N/A	2022	3	29	
Qualitative	N/A						
Transfers:							
Federal Annualized Monetized ($ millions/year)	N/A	N/A	N/A	N/A	7	N/A	

IFR), versus 2024 (year 1 of the final rule), whose different timeline affects recurrent inspection and new providers calculations that results in a small difference between the two tables. When comparing annualized cost of both baselines, discounted at 7 percent, over the same 10-year period (2024–2033), the annualized cost of the no-action baseline (presented in table 14) remains unchanged at $14.60 million while the annualized cost the pre-IFR baseline (presented in table 15) would be $14.37 million.

TABLE 15—OMB A–4 ACCOUNTING STATEMENT FOR OVERALL COST OF THE RULE (2005–2033)—Continued
[In millions, 2022 dollars]

Category	Estimates			Units			Notes and source citation (final rule RIA, preamble, etc.)
	Primary estimate	Low estimate	High estimate	Year dollar	Discount rate (%)	Period covered (years)	
	N/A	N/A	N/A	N/A	3	N/A	
From/To:	From:	N/A		To:	N/A		
Other Annualized Monetized ($ millions/year)	N/A	N/A	N/A	N/A	7	N/A	
	N/A	N/A	N/A	N/A	3	N/A	
From/To:	From:	N/A		To:	N/A		
Effects:							
State, Local, and/or Tribal Government	None						
State, Local, and/or Tribal Government	None						
Small Business	No Final Regulatory Flexibility Analysis (FRFA)						Not quantified.
Wages	None						
Growth	Not measured						

Note: Totals may not add due to rounding.
*The RIA is posted on the public docket at *https://www.regulations.gov/docket?D=TSA-2004-19147*.

4. Alternatives Considered

In addition to the final rule, TSA also considered three regulatory alternatives compared to the IFR baseline. The first alternative (Alternative 1) includes cost-savings resulting from *time-based* candidate STAs, biennial employee security awareness training, and electronic recordkeeping. Alternative 1 removes the new requirement to designate Security Coordinators. TSA did not choose Alternative 1 over the final rule provisions because the opportunity costs to designate a Security Coordinator per provider would be approximately $16 to $24. TSA believes the benefits of having a Security Coordinator as a primary contact with TSA and who can address security related issues outweigh this low-cost burden. Furthermore, the designation of a Security Coordinator will support TSA in scheduling and managing audits and inspections, and bring FTSP in synchronization with other aviation programs, including the Airport Operator Standard Security Program, which have similar Security Coordinator requirements.

The second alternative (Alternative 2) would maintain the IFR or baseline STA requirements for a candidate to pay for an STA each time that candidate requests flight training. Alternative 2 would allow for electronic recordkeeping and security awareness training every 2 years, and would not require the designation of the Security Coordinator. This alternative does not include the regulatory relief resulting from the switch to *time-based* candidate STAs of approximately $20.99 million annually discounted at seven percent. TSA does not endorse Alternative 2 because it is contrary to the top recommendation from the ASAC to move from an *event-based* STA to a *time-based* STA. Maintaining an *event-based* STA commands a 10-year cost of $46.06 million, discounted at 7 percent, over the final rule. While the move from *event-based* STAs would reduce the number of STAs for returning flight training candidates, the level of security remains unchanged as a result of TSA's adoption of continuous vetting methods, including the use of the Rap Back program.

The third alternative (Alternative 3) would mirror all the changes under the final rule with the exception of the employees' refresher security awareness training. Under this alternative, the training would be required triennially. Alternative 3 would still result in cost savings through the adoption of a *time-based* STA and adoption of electronic recordkeeping. TSA does not endorse Alternative 3, despite greater cost savings, as it does not align with industry's recommendation to bring employees' security awareness training in line with other flight industry required training, including the FAA's biennial flight reviews. Table 16 below compares costs of the alternatives using a 'no action' baseline.

TABLE 16—COMPARISON OF NET IMPACTS BETWEEN FINAL RULE AND ALTERNATIVES
[IFR baseline; 2024–2033]

Alternative	Requirements	10-Year cost ($ millions); discounted at 7 percent			
		Candidates/ providers	TSA	Total cost	Difference from FR
Final Rule	Migration to time-based STAs; allows electronic recordkeeping and security awareness training every 2 years; adds new designation of Security Coordinators.	($99.06)	($3.50)	($102.56)	N/A
Alternative 1	Provisions of final rule but removes new requirement of designation of Security Coordinators.	(99.95)	(3.50)	(103.45)	(0.90)
Alternative 2	Maintaining training event based STAs, while allowing electronic recordkeeping; and removes designation of Security Coordinators.	(78.97)	(3.50)	(82.47)	20.09

TABLE 16—COMPARISON OF NET IMPACTS BETWEEN FINAL RULE AND ALTERNATIVES—Continued
[IFR baseline; 2024–2033]

Alternative	Requirements	10-Year cost ($ millions); discounted at 7 percent			
		Candidates/ providers	TSA	Total cost	Difference from FR
Alternative 3	Provisions of final rule but changes the frequency of employee security awareness training to a triennial cycle.	(105.44)	(3.50)	(108.94)	(6.38)

Note: Totals may not add due to rounding.

5. Regulatory Flexibility Act Assessment

The RFA was enacted by Congress to ensure that small entities (small businesses, small not-for-profit organizations, and small governmental jurisdictions) are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires agencies to review rules to determine whether they have ''a significant economic impact on a substantial number of small entities.'' Section 603(a) of the RFA requires that agencies prepare and make available for public comment an initial RFA whenever the agency is required by law to publish a general notice of proposed rulemaking. However, 49 U.S.C. 44939 required TSA to promulgate an IFR implementing its requirements. TSA is not required to perform a final regulatory flexibility analysis, because it was not ''required by [5 U.S.C. 553] or any other law to publish a general notice of proposed rulemaking.'' TSA did, however, estimate additional costs resulting from this final rule's new requirement for designation of Security Coordinators and for providers to familiarize themselves with the requirements of the final rule in its regulatory evaluation. *See* section I.B.1. for a discussion of statutory authorities pertinent to the IFR and the final rule.

6. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that the standards constitute the basis for U.S. standards. TSA has assessed the potential effects of this rule and determined that the rule imposes the same costs on domestic and international entities and thus has a neutral trade impact.

7. Unfunded Mandates Reform Act Assessment

The UMRA does not apply to a regulatory action in which no notice of proposed rulemaking is published, as is the case in this rulemaking action. Accordingly, TSA has not prepared a statement under the UMRA.

B. Paperwork Reduction Act

The PRA requires Federal agencies to consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of 44 U.S.C. 3507(d), obtain approval from the OMB for each collection of information it conducts, sponsors, or requires through regulations.[111]

OMB approved the information collection request for the IFR, Flight Training for Aliens and Other Designated Individuals, under OMB Control No. 1652–0021. This final rule contains a new information collection activity for Security Coordinators to provide their contact information to TSA. Accordingly, TSA has submitted the following information requirements to OMB for its review. The Supporting Statement for this information collection request is available in the docket for this rulemaking.

Title: Flight Training Security Program

Summary: This final rule requires the following information collections:

First, prior to taking flight training, the non-U.S. citizen flight training candidate is required to submit their biographic and biometric information to TSA to conduct an STA. The candidate also must keep their biographical information current in their FTSP account in order to maintain their Determination of Eligibility. The final rule will change the frequency in which candidates apply for STAs from each time there is a request for flight training required by the IFR to one STA that will last up to 5 years. These changes will save candidates from paying STAs fees each time they request flight training and will save them an increment of time formerly required for each training event notification because candidates no longer provide these notifications to TSA. These changes also will result in a reduction in the final rule's information collection hour burden and a reduction in costs from multiple STA fees.

Second, the final rule maintains recordkeeping requirements necessary for TSA to verify that flight training providers ensured their candidates had appropriate STAs, confirmed the citizenship or nationality status of each flight student, and conducted employee security awareness training. The final rule will allow for records that were previously only allowed to be stored in hard copy to be stored electronically, creating further cost savings from reduced physical storage costs.

Third, the final rule adds a new collection of information for each provider to submit information for their Security Coordinator. This new requirement for a Security Coordinator supports communications with TSA concerning intelligence information, security related activities, and incident or threat response with appropriate law enforcement and emergency response agencies. TSA has added a burden estimate to the collection for this activity.

Fourth, the final rule may allow TSA inspectors to reduce time spent inspecting paper records, because records may be electronically stored on the FTSP portal. TSA's estimate includes the updated TSA inspection time burden.

Respondents (including number of): There are two categories of respondents: candidates and flight training providers. TSA estimates there would be 58,069 flight training candidates over a 3-year period, beginning on the effective date of the final rule. TSA estimates there are approximately 4,206 flight training providers who actively provide flight training to candidates, U.S. citizens, and U.S. nationals, and 19,738 flight training

[111] Public Law 96–511 (94 Stat. 2812; Dec. 11, 1980), as codified at 44 U.S.C. 3501 *et seq.*

providers who exclusively train U.S. citizens and U.S. nationals.

Frequency: Under the IFR, a candidate applied for an STA prior to each flight training event. Thus, the frequency varied by candidate. Under the final rule, the STA frequency is reduced from every time a candidate trains (*event-based*) to once every 5 years (*time-based*). The provider is still required to notify TSA of each training event. Providers must also maintain an employees' security awareness training record; however, this training is now required to be conducted every 2 years for each covered employee, as opposed to the IFR's requirement that this training be conducted annually. The final rule allows for electronic recordkeeping of these records using the FTSP portal.

Annual Burden Estimate: The final rule's average yearly burden for candidate flight training event notifications, Security Coordinator designations, recordkeeping of candidates' flight training requests, and recordkeeping of employee security awareness training, is estimated to be 93,915 responses and 33,594 hours. TSA estimates the annual hourly cost burden to be $1.47 million. TSA estimates annual fees of $2.71 million for this collection to cover the Federal burden for administering the STAs. Table 17 below displays the annual number of responses and hours per information collection activity.

TABLE 17—PRA INFORMATION COLLECTION RESPONSES AND BURDEN HOURS

Collection activity	Responses			Total responses	Average annual responses	Time burden per response (hours)	Total hours	Average annual hours
	Year 1	Year 2	Year 3					
Security Coordinator Submission	32,097	4,120	4,225	40,442	13,481	0.0250	10,110	3,370
Candidate Training Requests (with new or renewing STA)	30,847	13,611	13,611	58,069	19,356	0.7500	43,552	14,517
Candidate Training Requests (with existing STA)	14,329	31,643	31,794	77,766	25,922	0.5833	45,363	15,121
Employee Security Awareness Training Recordkeeping	51,002	6,768	47,699	105,469	35,156	0.0167	1,758	586
Total	.....	.....	.....	281,745	93,915	.....	100,783	33,594

Note: Totals may not add due to rounding.

C. Privacy Act

The FTSP Portal stores and protects information in accordance with the Privacy Act and NARA regulations and schedules. Personally identifiable information may only be shared in accordance with DHS/TSA's PIA. The PIA is updated whenever there is a change to how PII is handled or what PII is being collected and/or retained. The current PIA was published July 28, 2014.[112]

The FTSP system covers the following categories of designated individuals:

- Other individuals who are connected to the transportation industry for whom DHS/TSA conducts STAs to ensure transportation security.
- Non-U.S. citizens/nationals or other individuals designated by DHS/TSA who apply for flight training or recurrent training.
- Individuals who are owners, operators, or directors of any transportation mode facilities, services, or assets.

D. Executive Order 13132 (Federalism)

E.O. 13132 of August 4, 1999 (Federalism), requires TSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The phrase ''policies that have federalism implications'' is defined in this E.O. to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

TSA has analyzed this rule under the principles and criteria of E.O. 13132 and has determined that this action does 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, and, therefore, does not have federalism implications.

E. Environmental Analysis

TSA has reviewed this rule for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have a significant effect on the human environment.

F. Energy Impact Analysis

TSA has assessed the energy impact of this rule in accordance with the Energy Policy and Conservation Act (EPCA),[113] and has determined that this rulemaking is not a major regulatory action under the provisions of EPCA.

List of Subjects

49 CFR Part 1500

Air carriers, Air transportation, Aircraft, Airports, Buses, Hazardous materials transportation, Law enforcement officers, Maritime carriers, Mass transportation, Railroad safety, Railroads, Reporting and recordkeeping requirements, Security measures, Transportation, Vessels.

49 CFR Part 1503

Administrative practice and procedure, Investigations, Law enforcement, Penalties.

49 CFR Part 1515

Explosives, Harbors, Hazardous materials transportation, Maritime security, Motor carriers, Seamen, Security measures, Vessels.

49 CFR Part 1540

Air carriers, Aircraft, Airports, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1542

Airports, Arms and munitions, Aviation safety, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1544

Air carriers, Aircraft, Airmen, Airports, Arms and munitions, Aviation safety, Explosives, Freight forwarders, Law enforcement officers, Reporting and

[112] *See* the DHS/TSA PIA web page at *https://www.dhs.gov/publication/dhs-tsa-pia-026-alien-flight-student-programregardingTSA/AFSP* compliance with Privacy Act (5 U.S.C. 552a) requirements.

[113] Public Law 94–163 (89 Stat. 871; Dec. 22, 1975), as amended and codified at 42 U.S.C. 6362.

recordkeeping requirements, Security measures.

49 CFR Part 1546

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1548

Air transportation, Aviation safety, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1549

Air transportation, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1550

Aircraft, Aviation safety, Security measures.

49 CFR Part 1552

Aircraft, Aircraft simulator, Aliens, Aviation safety, Citizenship, Expedited processing, Fees, Flight training, Lease agreements, Reporting and recordkeeping requirements, Security awareness training, Security Coordinator, Security measures, Security threat assessment, Training.

49 CFR Part 1554

Aircraft, Aviation safety, Repair stations, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1570

Buses, Common carriers, Crime, Fraud, Hazardous materials transportation, Highway safety, Mass transportation, Motor Carriers, Railroad safety, Railroads, Reporting and recordkeeping requirements, Security measures, Transportation.

49 CFR Part 1572

Crime, Explosives, Hazardous materials transportation, Motor carriers, Railroads, Reporting and recordkeeping requirements, Security measures.

For the reasons set forth in the preamble, the Transportation Security Administration amends chapter XII, of title 49, Code of Federal Regulations, to read as follows:

PART 1500—APPLICABILITY, TERMS, AND ABBREVIATIONS

■ 1. The authority citation for part 1500 is revised to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44939, 44942, 46105; Pub. L. 110–53 (121 Stat. 266, Aug. 3, 2007) secs. 1408 (6 U.S.C. 1137), 1501 (6 U.S.C. 1151), 1517 (6 U.S.C. 1167), and 1534 (6 U.S.C. 1184).

■ 2. Amend § 1500.3 by adding the definitions of ''Citizen of the United States or U.S. Citizen'', ''Day'', ''Lawful permanent resident'', ''National of the United States or U.S. national'', and ''Non-U.S. citizen'' in alphabetical order to read as follows:

§ 1500.3 Terms and abbreviations used in this chapter.

* * * * *

Citizen of the United States or *U.S. Citizen* means any person who is a United States citizen by law, birth, or naturalization as described in 8 U.S.C. 1401 *et seq.*

Day means calendar day, unless called ''business day,'' which refers to Monday through Friday, excluding days when the U.S. Government is closed.

* * * * *

Lawful permanent resident means a person ''lawfully admitted for permanent residence'' as defined in 8 U.S.C. 1101(a)(20).

* * * * *

National of the United States or *U.S. national* means:

(1) A citizen of the United States; or

(2) A person who, though not a citizen of the United States, owes permanent allegiance to the United States, as defined in 8 U.S.C. 1101(a)(22).

Non-U.S. citizen means an individual who is not a citizen or national of the United States. This term is synonymous with the term ''alien'' as defined in 8 U.S.C. 1101(a)(3).

* * * * *

PART 1503—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 3. The authority citation for part 1503 is revised to read as follows:

Authority : 6 U.S.C. 1142; 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 114, 20109, 31105, 40113–40114, 40119, 44901–44907, 44939, 46101–46107, 46109–46110, 46301, 46305, 46311, 46313–46314; Pub. L. 110–53 (121 Stat. 266, Aug. 3, 2007) secs. 1408 (6 U.S.C. 1137), 1501 (6 U.S.C. 1151), 1517 (6 U.S.C. 1167), and 1534 (6 U.S.C. 1184).

Subpart B—Scope of Investigative and Enforcement Procedures

§ 1503.103 [Amended]

■ 4. Amend § 1503.103 by removing the definition of ''Public transportation agency''.

Subpart C—Investigative Procedures

■ 5. Add § 1503.207 to read as follows:

§ 1503.207 Inspection authority.

(a) Each person subject to any of the requirements in this chapter or other applicable authority must allow TSA and other authorized DHS officials, at any time and in a reasonable manner, without advance notice, to enter, assess, inspect, and test property, facilities, equipment, and operations; and to view, inspect, and copy records, as necessary to carry out TSA's security-related statutory or regulatory authorities and without a subpoena, including its authority to—

(1) Assess threats to transportation.

(2) Enforce security-related laws, regulations, directives, and requirements.

(3) Inspect, maintain, and test the security of facilities, equipment, and systems.

(4) Ensure the adequacy of security measures for the transportation of passengers and cargo.

(5) Oversee the implementation, and ensure the adequacy, of security measures for conveyances and vehicles, at transportation facilities and infrastructure and other assets related to transportation.

(6) Review security plans and/or programs.

(7) Determine compliance with any requirements in this chapter.

(8) Carry out such other duties, and exercise such other powers, relating to transportation security, as the Administrator for TSA considers appropriate, to the extent authorized by law.

(b) At the request of TSA, each person subject to the requirements of this chapter must provide evidence of compliance with this chapter, including copies of records.

(c) TSA and other authorized DHS officials, may enter, without advance notice, and be present within any area or within any vehicle or conveyance, terminal, or other facility covered by this chapter without access media or identification media issued or approved by a person subject to requirements in this chapter or other applicable authority in order to inspect or test compliance, or perform other such duties as TSA may direct.

(d) TSA inspectors and other authorized DHS officials working with TSA will, on request, present their credentials for examination, but the credentials may not be photocopied or otherwise reproduced.

PART 1515—APPEAL AND WAIVER PROCEDURES FOR SECURITY THREAT ASSESSMENTS FOR INDIVIDUALS

■ 6. The authority citation for part 1515 continues to read as follows:

Authority: 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469.

§ 1515.3 [Amended]

■ 7. Amend § 1515.3 by removing the definition of ''Day''.

PART 1540—CIVIL AVIATION SECURTIY: GENERAL RULES

■ 8. The authority citation for part 1540 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44925, 44935–44936, 44942, 46105.

■ 9. Add § 1540.7 to read as follows:

§ 1540.7 Severability.

Any provision of this subchapter held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this subpart is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this subchapter and shall not affect the remainder thereof.

PART 1542—AIRPORT SECURITY

■ 10. The authority citation for part 1542 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44913–44914, 44916–44917, 44935–44936, 44942, 46105.

Subpart A—General

§ 1542.5 [Removed and Reserved]

■ 11. Remove and reserve § 1542.5.

PART 1544—AIRCRAFT OPERATOR SECURITY: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 12. The authority citation for part 1544 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44913–44914, 44916–44918, 44932, 44935–44936, 44942, 46105.

Subpart A—General

§ 1544.3 [Removed and Reserved]

■ 13. Remove and reserve § 1544.3.

PART 1546—FOREIGN AIR CARRIER SECURITY

■ 14. The authority citation for part 1546 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44914, 44916–44917, 44935–44936, 44942, 46105.

Subpart A—General

§ 1546.3 [Removed and Reserved]

■ 15. Remove and reserve § 1546.3.

PART 1548—INDIRECT AIR CARRIER SECURITY

■ 16. The authority citation for part 1548 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44913–44914, 44916–44917, 44932, 44935–44936, 46105.

§ 1548.3 [Removed and Reserved]

■ 17. Remove and reserve § 1548.3.

PART 1549—CERTIFIED CARGO SCREENING PROGRAM

■ 18. The authority citation for part 1549 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44913–44914, 44916–44917, 44932, 44935–44936, 46105.

Subpart A—General

§ 1549.3 [Removed and Reserved]

■ 19. Remove and reserve § 1549.3.

PART 1550—AIRCRAFT SECURITY UNDER GENERAL OPERATING AND FLIGHT RULES

■ 20. The authority citation for part 1550 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

§ 1550.3 [Removed and Reserved]

■ 21. Remove and reserve § 1550.3.

■ 23. Revise part 1552 to read as follows:

PART 1552—FLIGHT TRAINING SECURITY PROGRAM

Subpart A—Definitions and General Requirements

Sec.
1552.1 Scope.
1552.3 Terms used in this part.
1552.5 Applicability.
1552.7 Verification of eligibility.
1552.9 Security Coordinator.
1552.11 [Reserved]
1552.13 Security awareness training.
1552.15 Recordkeeping.
1552.17 FTSP Portal.
1552.19 Fraud, falsification, misrepresentation, or omission.

Subpart B—Security Threat Assessments

1552.31 Security threat assessment required for flight training candidates.
1552.33 [Reserved]
1552.35 Presence in the United States.
1552.37 Comparable security threat assessments.
1552.39 Fees.

Subpart C—Flight Training Event Management

1552.51 Notification and processing of flight training events.

Authority: 49 U.S.C. 114, 44939, and 6 U.S.C. 469.

Subpart A—Definitions and General Requirements

§ 1552.1 Scope.

This part includes requirements for the following persons:

(a) Persons who provide flight training or flight training equipment governed by 49 U.S.C. subtitle VII, part A, to any individual.

(b) Persons who lease flight training equipment.

(c) Non-U.S. citizens who apply for or participate in flight training.

(d) U.S. citizens and U.S. nationals who participate in flight training.

§ 1552.3 Terms used in this part.

In addition to the terms in §§ 1500.3 and 1540.5 of this chapter, the following terms apply to this part:

Aircraft simulator means a flight simulator or flight training device, as those terms are defined under 14 CFR part 61. Simulated flights for entertainment purposes or personal computer, video game, or mobile device software programs involving aircraft flight are not aircraft simulators for purposes of the requirements in this part.

Candidate means a non-U.S. citizen who applies for flight training or recurrent training from a flight training provider. The term does not include foreign military personnel who are endorsed for flight training by the U.S. Department of Defense (DoD), as described in § 1552.7(a)(2); and does not include a non-U.S. citizen providing in-aircraft or in-simulator services or support to another candidate's training event (commonly referred to as ''side-seat support'') if the individual providing this support holds a type rating or other set of pilot certificates required to operate the aircraft or simulator in which the supported individual is receiving instruction.

Demonstration flight for marketing purposes means a flight for the purpose of demonstrating aircraft capabilities or characteristics to a potential purchaser; an orientation, familiarization, discovery flight for the purpose of demonstrating a flight training provider's training program to a potential candidate; or an acceptance flight after an aircraft manufacturer delivers an aircraft to a purchaser.

DoD means the Department of Defense.

DoD endorsee means a non-U.S. citizen who is or will be employed as a pilot by a foreign military, endorsed by the DoD or one of its component services, and validated by a DoD attaché for flight training as required by § 1552.7(a)(2).

Determination of Eligibility means a finding by TSA, upon completion of a security threat assessment, that an individual meets the standards of a security threat assessment, and is eligible for a program, benefit, or credential administered by TSA.

Determination of Ineligibility means a finding by TSA, upon completion of a security threat assessment, that an individual does not meet the standards of a security threat assessment, and is not eligible for a program, benefit, or credential administered by TSA.

Flight training means instruction in a fixed-wing or rotary-wing aircraft or aircraft simulator that is consistent with the requirements to obtain a new skill, certificate, or type rating, or to maintain a pilot certificate or rating. For the purposes of this rule, flight training does not include instruction in a balloon, glider, ultralight, or unmanned aircraft; ground training; demonstration flights for marketing purposes; simulated flights for entertainment purposes; or any flight training provided by the DoD, the U.S. Coast Guard, or any entity providing flight training under a contract with the DoD or the Coast Guard.

Flight training provider means—

(1) Any person that provides instruction under 49 U.S.C. subtitle VII, part A, in the operation of any aircraft or aircraft simulator in the United States or outside the United States, including any pilot school, flight training center, air carrier flight training facility, or individual flight instructor certificated under 14 CFR parts 61, 121, 135, 141, or 142;

(2) Similar persons certificated by foreign aviation authorities recognized by the Federal Aviation Administration (FAA), who provide flight training services in the United States; and

(3) Any lessor of an aircraft or aircraft simulator for flight training, if the person leasing their equipment is not covered by paragraph (1) or (2) of this definition.

Flight training provider employee means an individual who provides services to a flight training provider in return for financial or other compensation, or a volunteer, and who has direct contact with flight training students and candidates. A flight training provider employee may be an instructor, other authorized representative, or independent contractor.

Flight Training Security Program (FTSP) means the TSA program that provides regulatory oversight of the requirements in this part and provides related resources for individuals within the scope of this part.

FTSP Portal means a website that must be used to submit and receive certain information and notices as required by this part.

FTSP Portal account means an account created to access the FTSP Portal.

Recurrent training means

(1) Periodic flight training—

(i) Required for certificated pilots under 14 CFR parts 61, 121, 125, 135, or subpart K of part 91 to maintain a certificate or type rating; or

(ii) Similar training required by a civil aviation authority recognized by the FAA and conducted within the United States and its territories.

(2) Recurrent training does not include—

(i) Training that may be credited toward a new certificate or a new type rating; or

(ii) Checks or tests that do not affect the validity of the certificate(s) or the qualifications of a type rating.

Security threat means an individual determined by TSA to pose or to be suspected of posing a threat to national security, to transportation security, or of terrorism.

Security threat assessment means both a product and process of evaluating information regarding an individual seeking or holding approval for a program administered by TSA, including criminal, immigration, intelligence, law enforcement, and other security-related records, to verify the individual's identity and to determine whether the individual meets the eligibility criteria for the program. An individual who TSA determines is a security threat, or who does not otherwise meet the eligibility criteria for the program, is ineligible for that program.

Simulated flight for entertainment purposes means a ground-based aviation experience offered exclusively for the purpose of entertainment by a person that is not a flight training provider. Any simulated aviation experience that could be applied or credited toward an airman certification is not a simulated flight for entertainment purposes.

Type rating means an endorsement on a pilot certificate that the holder of the certificate has completed the appropriate training and testing required by a civil or military aviation authority to operate a certain make and type of aircraft.

§ 1552.5 Applicability.

Each of the following persons must comply with the requirements in this part:

(a) Any individual applying for flight training or recurrent flight training from a flight training provider;

(b) Flight training providers;

(c) Flight training provider employees; and

(d) Persons using a leased aircraft simulator to provide flight training as follows:

(1) If one or more persons using the leased aircraft simulator to provide flight training is certificated by the FAA as a flight instructor, then at least one of those certificated persons must register with TSA as a flight training provider and comply with the requirements of this part; or

(2) If one or more persons using a leased aircraft simulator to provide flight training are neither registered with TSA as a flight training provider nor certificated by the FAA as an instructor, then the lessor of the aircraft simulator must register with TSA as a flight training provider and comply with the requirements of this part.

§ 1552.7 Verification of eligibility.

(a) No flight training provider may provide flight training or access to flight training equipment to any individual before establishing that the individual is a U.S. citizen, U.S. national, DoD endorsee, or candidate with a valid Determination of Eligibility resulting from a TSA-accepted security threat assessment completed in accordance with subpart B of this part.

(1) To establish that an individual is a U.S. citizen or a U.S. national, each flight training provider must examine the individual's government-issued documentation as proof of U.S. citizenship or U.S. nationality. A student who claims to be a U.S. citizen or a U.S. national and who fails to provide valid, acceptable identification documents must be denied flight training. A list of acceptable identification documents may be found on the FTSP Portal.

(2) To establish that an individual has been endorsed by the DoD to receive U.S. Government-sponsored flight training in the United States, each flight training provider must use the FTSP Portal to confirm that the endorsee's government-issued photo identification matches the information provided in the U.S. DoD endorsement available on the FTSP Portal. A DoD endorsee is exempt from the requirement to undergo the

security threat assessment required by this part if the DoD attaché with jurisdiction for the foreign military pilot's country of citizenship has notified TSA through the FTSP Portal that the pilot may participate in U.S. Government-sponsored flight training.

(3) To establish that a candidate has undergone a TSA-accepted security threat assessment, each flight training provider must use the FTSP Portal to confirm that TSA has issued a Determination of Eligibility to that candidate and that the determination is valid.

(b) Each flight training provider must immediately terminate a candidate's participation in all ongoing or planned flight training events when TSA either sends a Determination of Ineligibility for that candidate or notifies the flight training provider that the candidate presents a security threat.

(c) Each flight training provider must acknowledge through the FTSP Portal receipt of any of the following TSA notifications: Determination of Ineligibility; Candidate Security Threat; and Deny Candidate Flight Training.

(d) Each flight training provider must notify TSA if the provider becomes aware that a candidate is involved in any alleged criminal disqualifying offenses, as described under § 1544.229(d) of this subchapter; is no longer permitted to remain in the United States, as described in § 1552.35; or has reason to believe the individual otherwise poses a security threat.

§ 1552.9 Security Coordinator.

(a) *Designation of a Security Coordinator.* Each flight training provider must designate and use a primary Security Coordinator. The Security Coordinator must be designated at the corporate level.

(b) *Notification to TSA.* Each flight training provider must provide to TSA the names, title(s), phone number(s), and email address(es) of the Security Coordinator and the alternate Security Coordinator(s), as applicable, no later than November 1, 2024. Once a flight training provider has notified TSA of the contact information for the designated Security Coordinator and the alternate Security Coordinator(s), as applicable, the provider must notify TSA within 5 days of any changes in any of the information required by this section. This information must be provided through the FTSP Portal.

(c) *Role of Security Coordinator.* Each flight training provider must ensure that at least one Security Coordinator—

(1) Serves as the primary contact for intelligence information and security-related activities and communications with TSA. Any individual designated as a Security Coordinator may perform other duties in addition to those described in this section.

(2) Is accessible to TSA on a 24-hours a day, 7 days a week basis.

(3) Coordinates security practices and procedures internally, and with appropriate law enforcement and emergency response agencies.

(d) *Training for Security Coordinator.* Security Coordinator must satisfactorily complete the security awareness training required by § 1552.13, and have the resources and knowledge necessary to quickly contact the following, as applicable:

(1) Their local TSA office;

(2) The local Federal Bureau of Investigation (FBI) office; and

(3) Local law enforcement, if a situation or an individual's behavior could pose an immediate threat.

§ 1552.11 [Reserved]

§ 1552.13 Security awareness training.

(a) Each flight training provider must ensure that each flight training provider employee who has direct contact with flight students completes a security awareness training program that meets the requirements of this section.

(b) Each flight training provider must ensure that each flight training provider employee who has direct contact with flight students receives initial security awareness training within 60 days of hiring. At a minimum, initial security awareness training must—

(1) Require direct participation by the flight training provider employee receiving the training, either in person or through an online training module;

(2) Provide situational scenarios requiring the flight training provider employee receiving the training to assess specific situations and determine appropriate courses of action; and

(3) Contain information that enables a flight training provider employee to identify the following:

(i) Any restricted areas of the flight training provider or airport where the flight training provider operates and individuals authorized to be in these areas or in or on equipment, including designations such as uniforms or badges unique to the flight training provider and required to be worn by employees or other authorized persons.

(ii) Behavior that may be considered suspicious, including, but not limited to—

(A) Excessive or unusual interest in restricted airspace or restricted ground structures by unauthorized individuals;

(B) Unusual questions or interest regarding aircraft capabilities;

(C) Aeronautical knowledge inconsistent with the individual's existing airman credentialing; and

(D) Sudden termination of instruction by a candidate or other student.

(iii) Indications that candidates are being trained without a Determination of Eligibility or validation of exempt status.

(iv) Behavior by other persons on site that may be considered suspicious, including, but not limited to—

(A) Loitering on or around the operations of a flight training provider for extended periods of time; and

(B) Entering ''authorized access only'' areas without permission.

(v) Circumstances regarding aircraft that may be considered suspicious, including, but not limited to—

(A) Unusual modifications to aircraft, such as the strengthening of landing gear, changes to the tail number, or stripping of the aircraft of seating or equipment;

(B) Damage to propeller locks or other parts of an aircraft that is inconsistent with the pilot training or aircraft flight log; and

(C) Dangerous or hazardous cargo loaded into an aircraft.

(vi) Appropriate flight training provider employee responses to specific situations and scenarios, including—

(A) Identifying suspicious behavior requiring action, such as identifying anomalies within the operational environment considering the totality of the circumstances, and appropriate actions to take;

(B) When and how to safely question an individual if the individual's behavior is suspicious; and

(C) Informing a supervisor and the flight training provider's Security Coordinator, if a situation or an individual's behavior warrants further investigation.

(vii) Any other information relevant to security measures or procedures unique to the flight training provider's business, such as threats, past security incidents, or a site-specific TSA requirement.

(c) All flight training providers must ensure that each employee receives refresher security awareness training at least every 2 years. At a minimum, a refresher security awareness training program must—

(1) Include all the elements from the initial security awareness training;

(2) Provide instruction on any new security measures or procedures implemented by the flight training provider since the last security awareness training program;

(3) Relay information about recent security incidents at the flight training provider's business, if any, and any

lessons learned as a result of such incidents;

(4) Cover any new threats posed by, or incidents involving, general or commercial aviation aircraft; and

(5) Provide instruction on any new TSA requirements concerning the security of general or commercial aviation aircraft, airports, or flight training operations.

(d) Flight training providers who must conduct security awareness training under part 1544 or 1546 of this subchapter may deliver that training in lieu of compliance with paragraphs (a) through (c) of this section.

§ 1552.15 Recordkeeping.

(a) *Retention.* Except as provided in paragraph (e) of this section, each flight training provider subject to the requirements in this part must, at a minimum, retain the records described in this section to demonstrate compliance with TSA's requirements and make these records available to TSA upon request for inspection and copying.

(b) *Employee records.* Each flight training provider required to provide security awareness training under § 1552.13 must—

(1) Retain security awareness training records for each employee required to receive training that includes, at a minimum—

(i) The employee's name;

(ii) The dates the employee received security awareness training;

(iii) The name of the instructor or manager for training; and

(iv) The curricula or syllabus used for the most recently provided training that establishes the training meets the criteria specified in § 1552.13.

(2) Retain records of security training for no less than 1 year after the individual is no longer an employee.

(3) Provide records to current and former employees upon request and at no charge as necessary to provide proof of training. At a minimum, the information provided must include—

(i) The information in paragraph (b)(1) of this section, except that, in lieu of providing the curriculum or syllabus, the flight training provider may provide a statement certifying that the training program used by the flight training provider met the criteria specified in § 1552.13; and

(ii) The signature or e-signature of an authorized official of the provider.

(4) A flight training provider that conducts security awareness training under parts 1544 or 1546 of this subchapter may retain that documentation in lieu of compliance with this section.

(c) *Records demonstrating eligibility for flight training for U.S. citizens and U.S. nationals.* (1) Each flight training provider must maintain records that document the provider's verification of U.S. citizenship or U.S. nationality as described in § 1552.7(a)(1).

(2) Each flight training provider may certify that verification of U.S. citizenship or U.S. nationality occurred by making the following endorsement in both the instructor's and the student's logbooks: ''I certify that [insert student's full name] has presented to me a [insert type of document presented, such as U.S. birth certificate or U.S. passport, and the relevant control or sequential number on the document, if any] establishing that [the student] is a U.S. citizen or U.S. national in accordance with 49 CFR 1552.7(a). [Insert date and the instructor's signature and certificate number.]''

(3) In lieu of paragraph (c)(1) or (2) of this section, the flight training provider may make and retain copies of the documentation establishing an individual as a U.S. citizen or U.S. national.

(d) *Leasing agreements.* Each flight training provider must retain all lease agreement records for aircraft simulators leased from another person, as identified under this section, as necessary to demonstrate compliance with the requirements of this part.

(e) *Records maintenance.* (1) With the exception of the retention schedule for training records required under paragraph (b)(2) of this section, all records required by this part must be maintained electronically using methods approved by TSA or as paper records for at least 5 years after expiration or discontinuance of use.

(2) A flight training provider that uses its FTSP Portal account to confirm or manage the following records is not required to maintain separate electronic or paper copies of the following records:

(i) Security awareness training records;

(ii) Security Coordinator training records;

(iii) Verification of U.S. citizenship or U.S. nationality;

(iv) Verification of DoD Endorsee identity; or

(v) Aircraft or aircraft simulator lease agreements.

§ 1552.17 FTSP Portal.

(a) Candidates must obtain an FTSP Portal account and use the FTSP Portal to submit the information and fees necessary to initiate a security threat assessment under subpart B of this part.

(b) Flight training providers who provide flight training to candidates must obtain an FTSP Portal account and use the FTSP Portal to notify TSA of all candidate flight training events and confirm that a candidate is eligible for flight training. The flight training provider also may use the FTSP Portal for other recordkeeping purposes related to the requirements in § 1552.15.

(c) The FTSP Portal account administrator for flight training providers who operate under 14 CFR part 61, either as an individual certified flight instructor, or for a group of certified flight instructors, must be an FAA certificate holder. The FTSP Portal account administrator for flight training providers who operate under 14 CFR parts 121, 135, 141, and 142 is not required to be an FAA certificate holder.

(d) TSA may suspend a flight training provider's access to the FTSP Portal at any time, without advance notice.

§ 1552.19 Fraud, falsification, misrepresentation, or omission.

If an individual covered by this part commits fraud, makes a false statement or misrepresentation, or omits a material fact when submitting any information required under this part, the individual may be—

(a) Subject to fine or imprisonment or both under Federal law, including, but not limited to, 18 U.S.C. 1001 and 49 U.S.C. 46301;

(b) Denied a security threat assessment under this chapter; and/or

(c) Subject to other enforcement or administrative action, as appropriate, including, but not limited to, proceedings under § 1540.103 of this subchapter.

Subpart B—Security Threat Assessments

§ 1552.31 Security threat assessment required for flight training candidates.

(a) *Scope of security threat assessment.* Each candidate must complete a security threat assessment and receive a Determination of Eligibility from TSA prior to initiating flight training.

(b) *Information required.* To apply for a security threat assessment, each candidate must submit the following, in a form and manner acceptable to TSA—

(1) Biographic and biometric information determined by TSA to be necessary for conducting a security threat assessment;

(2) Identity verification documents; and

(3) The applicable security threat assessment fee identified in § 1552.39.

(c) *TSA Determination of Eligibility.* TSA may issue a Determination of Eligibility to the flight training provider

after conducting a security threat assessment of the candidate that includes, at a minimum—

(1) Confirmation of the candidate's identity;

(2) A check of relevant databases and other information to determine whether the candidate may pose or poses a security threat and to confirm the individual's identity;

(3) An immigration check; and

(4) An FBI fingerprint-based criminal history records check to determine whether the individual has a disqualifying criminal offense in accordance with the requirements of § 1544.229 of this subchapter.

(d) *Term of TSA Determination of Eligibility.* (1) The TSA Determination of Eligibility expires 5 years after the date it was issued, unless—

(i) The candidate commits a disqualifying criminal offense described in § 1544.229(d) of this subchapter and, in such case, the Determination of Eligibility expires on the date the candidate was convicted or found not guilty by reason of insanity;

(ii) TSA determines that the candidate poses a security threat; or

(iii) The candidate's authorization to remain in the United States expires earlier than 5 years and, in such case, the Determination of Eligibility expires on the date that the candidate's authorization to remain in the United States expires. Candidates may extend the term of their Determination of Eligibility up to a total of 5 years by submitting updated documentation of authorization to remain in the United States.

(2) No candidate may engage in flight training after the expiration of the candidate's Determination of Eligibility.

(e) *Processing time.* TSA will process complete security threat assessment applications within 30 days.

(f) *Correction of the record.* A Determination of Ineligibility made by TSA on the basis of a candidate's complete and accurate record is final. If the Determination of Ineligibility was based on a record that the candidate believes is erroneous, the candidate may correct the record by submitting all missing or corrected documents, plus all additional documents or information that TSA may request, within 180 days of TSA's initial determination.

§ 1552.33 [Reserved]

§ 1552.35 Presence in the United States.

(a) A candidate may be eligible to participate in flight training if the candidate—

(1) Is lawfully admitted to the United States, or entered the United States and has been granted permission to stay by the U.S. Government, or is otherwise authorized to be employed in the United States; and

(2) Is within their period of authorized stay in the United States.

(b) A candidate who has yet to obtain a valid document issued by the United States evidencing eligibility to take flight training may be issued a preliminary Determination of Eligibility pending the individual's ability to provide proof of eligibility.

(c) A candidate who engages in a flight training event that takes place entirely outside the United States is not required to provide eligibility for flight training in the United States, but must provide any United States visas held by the candidate.

(d) Any history of denial of a United States visa may be a factor in determining whether a candidate is eligible to participate in flight training, regardless of training location.

§ 1552.37 Comparable security threat assessments.

(a) TSA may accept the results of a comparable, valid, and unexpired security threat assessment, background check, or investigation conducted by TSA or by another U.S. Government agency, which TSA generally describes as a Determination of Eligibility. A candidate seeking to rely on a comparable security threat assessment must submit documents confirming their Determination of Eligibility through the FTSP Portal, including the biographic and biometric information required under § 1552.31. TSA will post a list of acceptable comparable security threat assessments on the FTSP Portal.

(b) TSA will charge a fee to cover the costs of confirming a comparable security threat assessment, but this fee may be a reduced fee.

(c) An FTSP reduced-fee security threat assessment based on a comparable security threat assessment will be valid in accordance with § 1552.31.

§ 1552.39 Fees.

(a) *Imposition of fees.* (1) A candidate must remit the fees required by this part, as determined by TSA, which will be published through notice in the **Federal Register** and posted on the FTSP Portal.

(2) Changes to the fee amounts will be published through notice in the **Federal Register** and posted on the FTSP Portal.

(3) TSA will publish the details of the fee methodology in the rulemaking docket.

(b) *Refunding fees.* TSA will not issue fee refunds unless the fee is paid in error.

Subpart C—Flight Training Event Management

§ 1552.51 Notification and processing of flight training events.

(a) *Notification of flight training events.* Each flight training provider must notify TSA through the FTSP Portal of all proposed and actual flight training events scheduled by a candidate, without regard to whether that training is intended to result in certification.

(b) *Training event details.* Each flight training provider must include the following information with each flight training event notification:

(1) Candidate name;

(2) The rating(s) that the candidate could receive upon completion of the flight training, if any;

(3) For recurrent flight training, the type rating for which the recurrent training is required;

(4) Estimated start and end dates of the flight training; and

(5) Location(s) where the flight training is anticipated to occur.

(c) *Acknowledgement.* TSA will acknowledge receipt of the information required by paragraphs (a) and (b) of this section.

(d) *Candidate photograph.* When the candidate arrives for training, each flight training provider must take a photograph of the candidate and must upload it to the FTSP Portal within 5 business days of the date that the candidate arrived for flight training.

(e) *Waiting period.* Each flight training provider may initiate flight training if more than 30 days have elapsed since TSA acknowledged receipt of the information required by paragraphs (a) and (b) of this section.

(f) *Waiting period for expedited processing.* A flight training provider may initiate flight training if:

(1) More than 5 business days have elapsed since TSA acknowledged receipt of the information required by paragraphs (a) and (b) of this section; and

(2) TSA has provided confirmation in its acknowledgement to the flight training provider that the candidate is eligible for expedited processing. A candidate is eligible for expedited processing if the candidate has provided proof to TSA that the candidate—

(i) Holds an FAA airman certificate with a type rating;

(ii) Holds an airman certificate, with a type rating, from a foreign country that is recognized by an agency of the United States, including a military agency;

(iii) Is employed by a domestic or foreign air carrier that has an approved security program under parts 1544 or 1546 of this subchapter, respectively;

(iv) Is an individual that has unescorted access to a secured area of an airport as determined under part 1542 of this subchapter; or

(v) Is a lawful permanent resident.

(g) *Update training event details.* Each flight training provider must update on the FTSP Portal the following information for each reported flight training event:

(1) Actual start and end dates.

(2) Actual training location(s).

(3) Notification if training was not completed, to include a brief description of why the training was not completed, *e.g.,* cancellation by the provider or the candidate, failure of the candidate to meet the required standard, or abandonment of training by the candidate.

PART 1554—AIRCRAFT REPAIR STATION SECURITY

■ 24. The authority citation for part 1554 continues to read as follows:

Authority: 49 U.S.C. 114, 40113, 44903, 44924.

§ 1554.3 [Removed and Reserved]

■ 25. Remove and reserve § 1554.3.

Subchapter D—Maritime and Surface Transportation Security

PART 1570—GENERAL RULES

■ 26. The authority citation for part 1570 continues to read as follows:

Authority: 18 U.S.C. 842, 845; 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; Pub. L. 108–90 (117 Stat. 1156, Oct. 1, 2003), sec. 520 (6 U.S.C. 469), as amended by Pub. L. 110–329 (122 Stat. 3689, Sept. 30, 2008) sec. 543 (6 U.S.C. 469); Pub. L. 110–53 (121 Stat. 266, Aug. 3, 2007) secs. 1402 (6 U.S.C. 1131), 1405 (6 U.S.C. 1134), 1408 (6 U.S.C. 1137), 1413 (6 U.S.C. 1142), 1414 (6 U.S.C. 1143), 1501 (6 U.S.C. 1151), 1512 (6 U.S.C. 1162), 1517 (6 U.S.C. 1167), 1522 (6 U.S.C. 1170), 1531 (6 U.S.C. 1181), and 1534 (6 U.S.C. 1184).

Subpart A—General

§ 1570.3 [Amended]

■ 27. Amend § 1570.3 by removing the definitions of ''Alien'', ''Lawful permanent resident'', ''National of the United States'', and ''Security threat''.

§ 1570.9 [Removed and Reserved]

■ 28. Remove and reserve § 1570.9.

PART 1572—CREDENTIALING AND SECURITY THREAT ASSESSMENTS

■ 29. The authority citation for part 1572 continues to read as follows:

Authority: 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469.

§ 1572.400 [Amended]

■ 30. Amend § 1572.400 by removing the definition of ''Day.''

Dated: April 19, 2024.

David P. Pekoske,

Administrator.

[FR Doc. 2024–08800 Filed 4–30–24; 8:45 am]

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Part VI

Department of the Interior

Bureau of Land Management

43 CFR Part 2800

Rights-of-Way, Leasing, and Operations for Renewable Energy; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2800

[BLM_HQ_FRN_MO# 4500177145]

RIN 1004–AE78

Rights-of-Way, Leasing, and Operations for Renewable Energy

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule updates procedures governing the BLM's renewable energy and right-of-way programs, focusing on two main topics. The first topic is solar and wind energy generation rents and fees, implementing new authority from the Energy Act of 2020 to ''reduce acreage rental rates and capacity fees, or both, for existing and new wind and solar authorizations'' and making certain findings required by the statute. The second topic is expanding agency discretion to process applications for solar and wind energy generation rights-of-way inside designated leasing areas (DLAs). In addition to these two main topics, this final rule makes technical changes, corrections, and clarifications to the regulations. This final rule will update the BLM's procedures governing the BLM's administration of rights-of-way issued under Title V of the Federal Land Policy and Management Act (FLPMA), including for solar and wind energy applications and development authorizations.

DATES: This rule is effective July 1, 2024.

FOR FURTHER INFORMATION CONTACT: Jayme Lopez, Interagency Coordination Liaison, by phone at (520) 235–4581, or by email at *energy@blm.gov* for information relating to the BLM Renewable Energy programs and information about the final rule. Please use ''RIN 1004–AE78'' in the subject line. 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:

I. Executive Summary

In 2021, the Bureau of Land Management (BLM) initiated preliminary activities related to rulemaking through listening sessions seeking public comment on the BLM's potential use of the Energy Act of 2020 (43 U.S.C. 3003) authority to ''reduce acreage rental rates and capacity fees'' to ''promote the greatest use of wind and solar energy resources.'' In May 2022, the BLM published BLM Manual section 2806.60 as interim guidance to implement that authority from the Energy Act of 2020 pending completion of this final rule. On June 16, 2023, the BLM published a proposed rule (88 FR 39726 [1]) in the **Federal Register**, that, among other things, proposed updates to the BLM's methodology for determining acreage rents and capacity fees for solar and wind energy development projects, including providing opportunities for reductions to rents and fees under the authority of the Energy Act of 2020. The BLM also proposed more flexibility in how the BLM processes applications for solar and wind energy development inside DLAs, and updates to how to prioritize solar and wind energy applications. The proposed rule also suggested technical changes, corrections, and clarifications to the existing right-of-way regulations. After considering comments on the proposed rule and other factors, the BLM prepared this final rule.

II. Background

The BLM's governing regulations for rights-of-way, including for solar and wind energy generation, are found at Title 43 CFR part 2800. These regulations were last comprehensively updated by a final rule published in the **Federal Register** on December 19, 2016, ''Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections'' (81 FR 92122). That final rule built upon existing rights-of-way regulations and policies to expand BLM's ability to responsibly facilitate solar and wind energy development.

Most recently, the BLM amended components of 43 CFR part 2800 under its final rule, ''Update of the Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of FLPMA for Rights-of-Way,'' (89 FR 25922) on April 12, 2024. That final rule updated BLM regulations to enhance the communications uses program, update its cost recovery fee schedules, and add provisions governing the development and approval of operations, maintenance, and fire prevention plans and agreements for rights-of-way for electric transmission and distribution facilities (*i.e.,* powerlines). That final rule also included technical changes to certain sections that this renewable energy rule proposed to make changes to, as will be discussed further in the section-by-section discussion of this final rule.

Solar and Wind Energy Rents and Fees

Title V of FLPMA (43 U.S.C. 1761–1772) generally requires grant holders, leaseholders, or both (holders) to ''pay in advance the fair market value'' for use of the public lands, subject to certain exceptions. The Energy Act of 2020, 43 U.S.C. 3003, introduced a new exception to FLPMA's fair market value requirement, authorizing the Secretary to ''reduce acreage rental rates and capacity fees, or both, for existing and new wind and solar authorizations'' if the agency makes certain findings. These findings can include that the existing rates ''exceed fair market value,'' ''impose economic hardships'' or ''limit commercial interest in a competitive lease sale or right-of-way grant,'' or ''that a reduced rental rate or capacity fee is necessary to promote the greatest use of wind and solar energy resources.'' 43 U.S.C. 3003(b)(1)(A)–(C) and 3003(b)(2).

As reflected in this final rule, the BLM determined that the changes to the acreage rents and capacity fees for solar and wind energy right-of-way authorizations are needed to ''promote the greatest use of wind and solar energy resources'' and maximize ''commercial interest'' in lease sales and right-of-way grants. Reducing the acreage rent and capacity fee in this final rule will encourage solar and wind energy development with a goal of increasing the share of clean energy that is part of the United States' domestic power infrastructure as authorized by the Energy Act of 2020 and directed by Executive Orders 14008 and 14057. This will be done by decreasing the costs for developers to construct and operate solar and wind energy development, allowing them to increase investments in new facilities and thus promote additional development. These changes will result in the most additional deployment of solar and wind energy development (see Regulatory Impact Analysis 3.1.D). The BLM's determination is supported by a regulatory impact analysis of economic impacts, public comments received on

[1] *https://www.federalregister.gov/documents/2023/06/16/2023-12178/rights-of-way-leasing-and-operations-for-renewable-energy.*

the proposed rule, and the BLM's experience with solar and wind energy development on public lands.

Reductions in costs will also benefit smaller-scale projects or projects that are on the margins of being economically profitable. Additionally, the BLM expects that the rule will not only increase interest among renewable energy developers to use BLM-administered public lands, but it will decrease the cost for developers such that they may be able to invest in additional wind and solar projects on Tribal, State, or private lands. Further, the decrease in cost to developers is expected to translate, over time, to a reduction in the average cost per MW of solar and wind energy, which will make solar- and wind-generated energy more competitive with other energy sources and will stabilize or even reduce the cost of energy to consumers, even as the cost of other energy sources may experience increased volatility.

The BLM also determined that the authority provided under the Energy Act of 2020, 43 U.S.C. 3003, supports two other reductions to the capacity fees under two potentially qualifying circumstances: (1) a Domestic Content reduction when a grant holder or lease holder demonstrates the use of American-made iron, steel, construction materials, or manufactured products in the construction of the project consistent with the requirements set forth in this final rule; and (2) a reduction for Project Labor Agreements (PLAs), *i.e.,* when the holder uses PLAs to hire labor for the development and construction of a solar or wind development. The additional, voluntary reductions offered in this final rule advance the Energy Act of 2020 goal of promoting the greatest use of solar and wind energy resources. First, a Domestic Content reduction will provide an incentive to use components made or manufactured in the United States in the construction of the solar or wind energy development project by offsetting those costs, which, if broadly adopted, could increase demand for domestically produced renewable energy parts and materials and, over the long term, lead to decreased costs for parts and materials, decreased reliance on potentially volatile foreign-sourced parts and materials, and ultimately increased economic certainty for and promotion of wind and solar energy resources on public lands. Second, the PLA reduction will incentivize good labor practices and in turn lead to responsible and productive construction, minimize the potential duration, and improve construction standards, thereby promoting the greatest use of wind and solar resources. These reductions will also incentivize project proponents to advance other Congressional and Administration goals that strengthen the use of American products and manufacturing and the associated labor markets.

Therefore, reductions in the final rule that rely upon authority from the Energy Act of 2020 include an 80 percent reduction to the MWh rate when setting the capacity fee and the two additional reductions to the capacity fee for which right-of-way holders may qualify: a 20 percent Domestic Content reduction and a 20 percent PLA reduction. The MWh rate reduction applies to projects when they are permitted (or grants or rights-of-way are re-issued under 2806.51(c)) and continues for the life of the grant. The MWh rate reduction will be 80 percent through 2035, 60 percent for new authorizations in 2036, 40 percent for new authorizations in 2037, and 20 percent for new authorizations in 2038 and beyond. Additional information on the MWh rate is found under the discussions of §§ 2801.5 and 2806.52(b) of this preamble, as well as more broadly under part 2806 of this preamble.

This final rule also codifies a new rate-setting methodology for solar and wind energy development projects. Under this rule, the BLM will collect from right-of-way holders the greater of either an acreage rent or a capacity fee. The BLM will assess acreage rent by applying the rate schedule, based on a survey of values for pastureland from the National Agricultural Statistics Service (NASS) Cash Rents Survey, to the number of acres that the right-of-way authorizes for use. Capacity fees reflect the value of generating electricity from solar and wind energy resources, which are quantified by the number of megawatt hours (MWh) of electricity produced from public lands. In this rule, the BLM has changed the definition of capacity to move away from the maximum capacity that a solar facility could produce and towards ensuring that the capacity fee reflects the actual capacity for solar or wind energy generation of a site covered by a given right-of-way grant or lease, taking into consideration environmental or other factors that may impact generation capacity of the site, including weather, servicing, and Acts of God. As provided in the final rule, the BLM will determine the capacity fee by considering the wholesale prices for major trading hubs serving 11 western States, and documentation concerning the price received by the right-of-way holder under a Power Purchase Agreement.

The final rule provides that, when issuing a grant or lease for solar or wind energy development, or a renewal of such grant or lease, the BLM will set the per-acre rate and the MWh rate (including applicable reductions). The acreage rent and capacity fee will be adjusted annually, however, using an annual adjustment factor set at the beginning of the grant or lease term. Upon renewal of a right-of-way, the per-acre rate and the MWh rate and reductions would be updated based on the then-current rates, as well as any applicable reductions for which the right-of-way holder qualifies at that time.

Existing right-of-way holders may elect to continue using their current rate setting methodology, which may be updated periodically for changes in the market, or change to the new rate setting methodology in this final rule. Otherwise, the new rate setting methodology would only apply to new or renewed rights-of-way. If an existing right-of-way holder elects to change to the new rate setting methodology, that methodology will apply until the end of the right-of-way term.

This final rule bases the capacity fee for solar and wind energy generation facilities on actual energy generation at each facility rather than on nameplate capacity. The BLM believes this change more accurately reflects the actual capacity for energy production of an individual project based on a developer's selection of technology, project design, and the solar or wind resource available at a particular site. This change to the capacity fee indexes the required payment to the projects' energy generation, being greater when the project generates more energy and less when it generates less.

This rule improves payment predictability for grant and leaseholders by revising the key data used for determining the acreage rent and the capacity fee—the state-wide pastureland rent values and the wholesale price of electricity—at the time the right-of-way is issued. In doing so, the per-acre and MWh rates are set for the term of the right-of-way and only adjusted by the annual adjustment factor and, in the case of the capacity fee, by the holder's actual annual energy production. See preamble §§ 2806.50 and 2805.52 for a more detailed discussion of the BLM's proposed methodology for determining the acreage rent and capacity fee.

Solar and Wind Energy Applications Inside Designated Leasing Areas

In this final rule, the BLM clarifies that it will review and process applications, including on a non-

competitive basis, for proposed solar and energy generation rights-of-way inside DLAs, which are defined at 43 CFR 2801.5(b). The BLM retains discretion to conduct competitive processes, either inside or outside of DLAs, where the authorized officer decides to do so. In the proposed rule, the BLM used the terms ''competitive offer'' and ''competitive process'' interchangeably. To provide clarity and minimize confusion, the final rule uses only the term ''competitive process'' to describe the method by with the BLM will offer parcels in a competitive bidding process. To learn more about BLM's DLAs, see the 2012 Western Solar Plan (*https://blmsolar.anl.gov/documents/solar-peis/*), which identified approximately 285,000 acres of agency preferred development locations (*i.e.,* DLAs) with high potential for solar energy production and low conflicts with other resources and uses. Subsequently, the BLM designated approximately 388,000 acres of preferred development locations for solar energy in California through the 2016 Desert Renewable Energy Conservation Plan (*https://blmsolar.anl.gov/documents/drecp/*) and over 192,000 acres of preferred development locations for solar, wind, and geothermal energy in Arizona through the 2017 Restoration Design Energy Project. Currently, the BLM is in the process of updating its 2012 Western Solar Plan to, among other things, make programmatic planning decisions for solar development on BLM-administered lands in 11 western states, including Arizona, California (exclusive of the area covered by the Desert Renewable Energy Conservation Plan), Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Oregon, Washington, and Wyoming (See *https://eplanning.blm.gov/eplanning-ui/project/2022371/510*).

Under this final rule, if no competitive interest exists for a particular parcel, the BLM may issue leases without a competitive process. This change to the rule provides the BLM with increased flexibility and discretion to issue grants and leases through either competitive or non-competitive processes across all public lands inside and outside of DLAs, which is expected to maximize interest in renewable energy leasing and accelerate the deployment of solar and wind energy on the public lands. See subpart 2809 for a discussion of the competitive process for solar and wind energy.

Need for the Rule

FLPMA provides the BLM with comprehensive authority for the administration and protection of the public lands and their resources and directs that the public lands be managed ''on the basis of multiple use and sustained yield'' unless otherwise provided by law (43 U.S.C. 1732(a)). Further, FLPMA authorizes the BLM to issue rights-of-way on the public lands for electric generation systems, including solar and wind energy generation systems, and mandates that the United States receive fair market value for the use of the public lands and their resources unless otherwise provided for by statute (43 U.S.C. 1764(g)).

On December 27, 2020, the Energy Act of 2020 was enacted, establishing a minimum goal of ''authoriz[ing] production of not less than 25 gigawatts of electricity from wind, solar, and geothermal energy projects by not later than 2025'' on Federal lands. 43 U.S.C. 3004. Current information regarding the BLM's approved energy development projects and number of gigawatts is available on its website.[2] The Energy Act of 2020 also provides the BLM with new authority to reduce rates below fair market value based on specific findings, including ''that a reduced rental rate or capacity fee is necessary to promote the greatest use of wind and solar energy resources'' 43 U.S.C. 3003(b)(2). The BLM has determined that reduced rates and fees are necessary to promote the greatest use of wind and solar energy resources, and this rule seeks to implement such reductions consistent with the direction in the Energy Act of 2020.

On January 27, 2021, President Biden issued Executive Order (E.O.) 14008, ''Tackling the Climate Crisis at Home and Abroad.'' Section 207 of E.O. 14008, titled ''Renewable Energy on Public Lands and in Offshore Waters,'' instructs DOI ''to increase renewable energy production on (public) lands.''

The changes in this rulemaking will provide clearer direction for the BLM in processing proposed renewable energy right-of-way applications on public lands while also supporting the goals of the Energy Act of 2020 and E.O. 14008.

Statutory Authority

Section 310 of FLPMA (43 U.S.C. 1740) authorizes the Secretary to promulgate regulations to carry out the purposes of FLPMA and other laws applicable to public lands. Section 302 of FLPMA (43 U.S.C. 1732) also provides comprehensive authority for the administration and protection of the public lands and their resources and directs that the public lands be managed ''under principles of multiple use and sustained yield,'' unless otherwise provided by law (43 U.S.C. 1732(a)). Sections 501, 504, and 505 of FLPMA authorize the Secretary to grant rights-of-way on public lands; to issue regulations governing such rights-of-way and charge rent for such rights-of-way; and to impose terms and conditions on rights-of-way grants, respectively (43 U.S.C. 1761, 1764, and 1765). Sections 304 and 504 of FLPMA (43 U.S.C. 1734(b) and 1764(g)) also authorize the BLM to collect funds from right-of-way applicants or holders to reimburse the agency for its costs incurred while working on a proposed or authorized right-of-way. As defined by FLPMA, the term ''right-of-way'' includes an easement, lease, permit, or license to occupy, use, or traverse public lands (43 U.S.C. 1702(f)). See Title V of FLPMA (43 U.S.C. 1761–1772).

The Energy Act of 2020 authorizes the Secretary to reduce acreage rental rates and capacity fees if the Secretary makes certain findings, which can include that the existing rates ''impose economic hardships'' or ''limit commercial interest in a competitive lease sale or right-of-way grant,'' or ''that a reduced rental rate or capacity fee is necessary to promote the greatest use of wind and solar energy resources'' (43 U.S.C. 3003).

III. Discussion of Public Comments on the Proposed Rule

This section of the preamble briefly summarizes broad and general comments on the proposed rule and the BLM's responses. Comment responses within this section of the preamble have been grouped and summarized by category that would apply to one or more sections of this final rule. You will find additional comments that are more specific to sections of this final rule, and their responses, in Section IV (Section-by-Section Discussion) of this preamble.

Solar and Wind Energy Rents and Fees—Part 2806

Summary of Comments: While several commenters supported the proposal for reduced rents and fees, other commenters questioned the need for reduced rents and fees and requested more research and discussion to determine if current costs exceed fair market value, impose economic hardships, limit commercial interest, are not competitively priced, or

[2] *https://www.blm.gov/programs/energy-and-minerals/renewable-energy/active-renewable-projects.*

disincentivize the greatest use of wind and solar energy resources.

Response: Under the Energy Act of 2020 (43 U.S.C. 3003(b)), Congress recognized the need to promote wind and solar energy projects on Federal lands, giving the Secretary the authority to reduce acreage rental rates, capacity fees, or both if she determines that ''the existing rates (A) exceed fair market value; (B) impose economic hardships; (C) limit commercial interest in a competitive lease sale or right-of-way grant; or (D) are not competitively priced compared to other available land;'' or that a reduction is ''necessary to promote the greatest use of wind and solar energy resources.'' 43 U.S.C. 3003(b)(1)–(2). The BLM considered whether capacity fee reductions are necessary to promote the greatest use of wind and solar energy resources and has determined reductions are necessary. This final rule describes how the capacity fee reductions will increase interest in and incentivize wind and solar energy development on public lands and thereby accelerate deployment of renewable energy resources in the United States. This final rule also includes changes to the BLM's rate-setting methodology that improve future rate predictability (see Regulatory Impact Analysis) and reduce potential for economic hardships.

Summary of Comments: Commenters suggested that the BLM should not speculate on the economic impacts of the proposed rule or requested additional analysis and use of additional sources to back up statements made.

Response: The BLM prepared an economic analysis for the proposed rule and then completed a Regulatory Impact Analysis for this final rule that provides a transparent analysis of the anticipated economic consequences for this rulemaking. This analysis informs the agency decision, including whether this rulemaking would accomplish its goals. For further information on the economic impacts of this rule, please see the Regulatory Impact Analysis that is available with a search at *regulations.gov* of this Regulatory Identifying Number ''1004–AE78.''

Summary of Comments: Commenters suggested rents and fees should be increased rather than decreased due to the environmental impacts of solar and wind energy development, as well as their incompatibility with other uses. Some further suggested that reducing fees on projects that are on the margins of being profitable creates the risk of projects failing and not being properly removed and rehabilitated.

Response: The BLM disagrees with the commenters' suggestion that rents and fees should be increased rather than decreased. As explained in more detail in the previous section on Solar and Wind Energy Rents and Fees, the Energy Act of 2020 (43 U.S.C. 3003) provides the BLM with authority to reduce acreage rents and capacity fees, including for the purpose of promoting the greatest use of wind and solar resources. The BLM has determined that reductions in acreage rents and capacity fees will promote wind and solar resources and is within the BLM's discretion under the Energy Act of 2020. Further, the BLM has carefully considered its final rule and concluded that decreasing rents and fees is necessary to accomplish the goals set forth by Congress in the Energy Act of 2020, by the President in E.O. 14008, and by the Secretary in Secretary's Order 3399. Congress set a national goal for renewable energy production on Federal land, directing the Secretary to seek to issue permits authorizing production of not less than 25 gigawatts of electricity from wind, solar, and geothermal energy projects on Federal land by not later than 2025. 43 U.S.C. 3004. Congress further provided the Secretary with discretion to reduce the acreage rental rates and capacity fees, including where necessary to promote the greatest use of solar and wind energy resources on BLM-administered public lands, which would advance the goals set by the Energy Act of 2020, as well as those in E.O. 13990, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,'' 86 FR 7037; E.O. 14008, ''Tackling the Climate Crisis at Home and Abroad,'' 86 FR 7619; and Secretary's Order 3399, ''Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process.'' The use of public lands for energy generation systems is specifically contemplated in the FLPMA and the Energy Act of 2020. The BLM considers the potential environmental effects of solar or wind energy development when conducting land use planning and evaluating project applications, not when identifying appropriate rental rates and fees for development projects. The BLM considers and analyzes environmental impacts of proposed energy development, including appropriate mitigation measures, before authorizing any such project. Additionally, the BLM does not believe there is any correlation between reductions in capacity fees and the ability of project proponents to properly remove and remediate facilities. Any applicable fee reductions contemplated in this rule would not alter a project proponent's obligations to provide for adequate bonding associated with construction and remediation associated with terminated or abandoned facilities, as required by 43 CFR 2805.12(b), 2805.20, and 2809.18(e).

Summary of Comments: Commenters noted that reducing rents and fees for renewable energy projects on public lands would economically impact the developers of similar projects on private or Tribal lands and could impact property values.

Response: This final rule changes the BLM's administrative processes and rates for solar and wind energy development projects on public lands. While the final rule is intended to encourage solar and wind energy development on the public lands, it would be speculative for the BLM to attempt to analyze whether and to what extent there may be secondary impacts to solar and wind energy development on private or Tribal property. This is particularly the case due to the wide variety of factors that influence developers' decisions about whether and where to pursue solar and wind energy projects, including, but not limited to, state, Tribal, and local permitting requirements, the ability to enter into power purchase or offtake agreements, the availability of existing or proposed transmission, and project-specific financing considerations. Notwithstanding these different factors, the final rule will generally decrease costs for developers on public lands, which may permit them to pursue additional opportunities for development on Tribal, state, and private lands and thereby further promote the greatest use of solar and wind energy.

Summary of Comments: Some comments asked about rate changes that would occur after 2036. Commenters raised four specific issues that the 2036 rate change causes. First, some commenters asserted that rates after 2036 would run higher than fair market value and are therefore a violation of FLPMA's requirement that the BLM charge no more than fair market value. Second, some commenters asserted that the Secretary's authority to reduce rates under the Energy Act extends beyond 2035, and America's need for renewable energy, set by Congressional and Presidential goals, would require incentives beyond 2036. Third, some commenters asserted that the 2036 rate increase would discourage right-of-way renewals after that year. Last, some commenters asserted that the BLM has

not adequately explained why it is choosing to phase out the final rule's rate reductions in 2036.

Response: This final rule helps lead the way to accomplishing the national goal of a carbon pollution-free electricity sector by 2035, as highlighted in Executive Orders 14008 and 14057. Based on its review of comments, the BLM has modified the sunset provision in the final rule. Instead of immediately transitioning the capacity fee reduction from 80 percent to 20 percent, the final rule will lower the reduction by 20 percentage points per year over a period of three years starting in 2036. Instituting a phased sunset period to the 80 percent reduction in the capacity fee is appropriate as the renewable energy industry may no longer need this reduction to achieve the greatest use of wind and solar on public lands, and progress toward our national goal of a carbon-pollution free electricity sector may indicate that a reduction is no longer warranted. After the sunset period ends, this final rule will continue to provide a 20 percent reduction for solar and wind energy development projects. The BLM will evaluate progress towards reaching national goals and the benefit of the reduction before 2036 and could reinitiate rulemaking to adjust incentives, including extending them beyond 2036.

The BLM believes that knowing beforehand what the rates are for a facility and the increased predictability of those rates in the future will improve the economic certainty for project development and support a developer's or operator's decisions in power purchasing, financing, and other agreements that are necessary for a successful renewable energy project. This would be the same for existing authorization holders who choose to change to this new rate setting methodology, as well as for authorization renewals. Lastly, the BLM believes that the economics for renewable energy will continue to improve over time, and that the magnitude of such a reduction in 2036 is uncertain.

Lands Available for Solar and Wind Energy Applications

Summary of Comments: Some commenters recommended that the BLM further restrict renewable energy development outside of solar energy zones and prohibit such development close to sensitive habitats or recreation areas. Commenters stated that competitive offers should not be allowed outside of designated zones.

Response: Through the National Environmental Policy Act (NEPA) process, the BLM considers the environmental impacts of proposed uses on the public lands, including solar and wind energy development, to inform the BLM decisions to deny, approve, or approve with modification the proposed use. The BLM will include terms and conditions as appropriate to address resource and environmental impacts of the project. The BLM also performs broader analysis to inform whether certain lands may be made available for that use through the land use planning process required by FLPMA, 43 U.S.C. 1712. As described further below, the BLM's ongoing planning process to update to its 2012 Western Solar Plan [3] will amend BLM land use plans in 11 Western States (Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming), or portions thereof, to identify new priority areas for solar energy development, variance areas, and public lands that are excluded from solar energy development, and to update requirements that holders must comply with, including for sensitive resources and uses that the BLM has previously authorized. This rulemaking does not make land use planning decisions—including determining whether areas should be excluded from solar and wind energy development because they would impact sensitive habitats or recreation areas—which are completed under a separate BLM process. This rulemaking does not change the competitive process outside of designated zones, but rather aligns the competitive process for solar and wind applications across all areas within and outside of designated areas. The BLM believes that where competitive interest exists—for example, in the form of multiple overlapping applications or a high level of interest in a general area—competitive processes should be used, regardless of whether the lands are in a DLA, to advance the projects that are most likely to proceed to development.

Summary of Comments: Commenters noted that the BLM references solar energy zones from the 2012 Western Solar Plan in the proposed rule without discussing that the 2012 Plan is now under revision and will include an additional 5 states (Idaho, Montana, Oregon, Washington, and Wyoming). Commenters requested that the BLM coordinate the rulemaking process with the land use planning effort accompanying the Western Solar Programmatic Environmental Impact Statement (Western Solar PEIS), recognizing the various alternatives being considered and the impacts that each (Western Solar PEIS vs. proposed rule) have on the other. Commenters believed many of the changes in this rule that refer to decisions or processes that occur prior to project approval are currently being considered as part of the Western Solar PEIS plan amendment process and may be better suited for the PEIS.

Response: This rulemaking effort and the Western Solar PEIS are two separate actions that complement one another, but they have different goals, are subject to different authorities, and will address different aspects of the ROW authorization process. This final rule sets out how the BLM will process applications and calculate rents, in order to implement new authorities and meet National goals established in the Energy Act and directed by Executive Order 14008 for both wind and solar energy development. This rulemaking does not make land use planning decisions. In contrast, the plan amendment process associated with the Western Solar PEIS focuses exclusively on solar development on public lands through a separate process governed by Section 202 of FLPMA (43 U.S.C. 1712) and the BLM resource management planning regulations at 43 CFR 1610, *et seq.* to update the BLM's Western Solar Plan. That programmatic land use planning process will consider updating the BLM's Western Solar Plan, with a primary focus on identifying the best locations for utility-scale solar energy development, as well as restrictions and mitigation applicable to such development, on BLM-managed public lands in 11 Western States. The BLM's land use planning decisions, including any amendments to plans, will comply with applicable laws and regulations.

Comment Summary: The BLM understands from comments it has received that some believe that the proposed rule has insufficient analysis under E.O. 12866. These comments suggest that the BLM must coordinate more closely with local governments to collect economic data.

Response: The BLM appreciates the interest and engagement from partners across the multiple landscapes in the United States, however the BLM disagrees with comments that additional coordination must be performed with local governments for this rulemaking. This rule governs the BLM's administration of applications and authorizations for solar and wind energy development projects on public lands. While the rule does have some financial

[3] *https://www.federalregister.gov/documents/2022/12/08/2022-26659/notice-of-intent-to-prepare-a-programmatic-environmental-impact-statement-to-evaluate-utility-scale.*

implications with adjustments to the BLM's rates, these are transfer payments as explained more fully in the Regulatory Impact Analysis accompanying this final rule and would not materially affect the resources available to the American economy. The BLM will continue to engage with the public it serves, and its many partners through BLM's public processes, including project-specific analysis and programmatic and land use planning analysis through NEPA. No change made based on these comments.

Need for the Rule

Summary of Comments: Commenters requested the BLM include a more meaningful explanation of the necessity of this rulemaking, including technical data that supports a need for increased preferences and favorable treatment for lease terms. Commenters stated that solar development is not in line with FLPMA and does not allow for multiple use on public lands.

Response: The BLM received new authority and guidance from Congress (Energy Act of 2020) and direction from the President (Executive Order 14008, among others) to promote renewable energy generation on public lands. This rule implements the new authority and direction for management of the public lands. The BLM disagrees with the comments suggesting that solar energy development is inconsistent with FLPMA's multiple use mandate. In managing the public lands, the BLM is not required to make every parcel of land available for all purposes. Consistent with FLPMA's multiple use mandate, the BLM has discretion through land use planning to identify areas that are available for, or excluded from, solar or wind energy development and to evaluate each proposed solar or wind energy development through a site-specific environmental analysis, including the need for environmental mitigation, as part of the decision-making process prior to issuing a grant or lease.

Summary of Comments: Other commenters stated that they believe the BLM must improve its approach to facilitating renewable energy development to meet congressional goals. Other commenters expressed a belief that the free market would provide better solutions to greenhouse gas emissions and the climate crisis without authorizing projects on public land or providing additional incentives to site projects on public land.

Response: The BLM does not agree that the free market alone would provide better solutions to greenhouse gas emissions and the climate crisis. Additionally, the approach suggested by commenters would be inconsistent with direction from Congress and the President to promote renewable energy generation on public lands. Particularly, the Energy Act of 2020, which is aimed at facilitating and promoting further development of wind and solar energy on Federal lands, specifically directs the BLM to ''issue permits that, in total, authorize production of not less than 25 gigawatts of electricity from wind, solar, and geothermal energy projects by not later than 2025, *through management of public lands and administration of Federal laws,*'' 43 U.S.C. 3004(b) (emphasis added). Additionally, as described above, on January 27, 2021, President Biden issued E.O. 14008, ''Tackling the Climate Crisis at Home and Abroad.'' Section 207 of E.O. 14008, titled ''Renewable Energy on Public Lands and in Offshore Waters,'' instructs DOI ''to increase renewable energy production on [public] lands.'' This final rule updates and improves the BLM's approach to facilitating renewable energy development on public lands based on lessons learned from implementation of the 2016 rule as well as changes in National renewable energy goals and the maturation of energy market over the past eight years. This update to the BLM's rules improves the BLM's orderly administration of public lands and helps reach the goals set by Congress and at the direction of the President. The BLM expects to continue working with the public to provide better solutions to resource concerns, such as greenhouse gas emissions and climate change, to best manage the public lands and its resources. Addressing such resource solutions are not part of this rulemaking.

Summary of Comments: Commenters stated that the current market conditions, state and Federal mandates and regulations, and demand for green energy makes reducing fees unnecessary and that the BLM has failed to explain why the reductions are necessary.

Response: The changes in this rule clarify how the BLM will process renewable energy right-of-way applications on public lands while supporting the goals of the Energy Act of 2020 and direction from the President (E.O. 14008 and 14057). Through the BLM's experience administering solar and wind energy development rights-of-way, the BLM understands the importance of stable and predictable rates for the term of an authorization. The BLM expects that the rule will help to meet national renewable goals more expeditiously. The BLM expects that the rule will not only increase interest among renewable energy developers to use BLM-administered public lands, but will decrease the cost for developers such that they may be able to invest in additional wind and solar projects on Tribal, State, or private lands. The BLM explains more fully the need for the rule and its reductions in the section-by-section discussion portion of this rule under subpart 2806.

Summary of Comments: A commenter stated that section 3003(b) of the Energy Act does not explicitly authorize the Secretary of the Interior to reduce right-of-way rents and fees below fair market value and that Congress did not explicitly repeal, amend, or supersede FLPMA's unequivocal fair market value requirement. They questioned if the Energy Act supersedes FLPMA's fair market value requirement for rights-of-way.

Response: The BLM disagrees with the comments suggesting that the Energy Act of 2020 does not authorize the Secretary to reduce right-of-way rents and fees below fair market value. First, a plain reading of the Energy Act authorizes the Secretary to reduce rental rates and capacity fees below fair market value. Specifically, it authorizes the Secretary to reduce ''acreage rental rates, capacity fees, and other recurring annual fees in total'' for solar and wind energy generation projects on BLM-managed public lands under a broad set of circumstances. Additionally, Congress presumably understood the fair market value requirement in FLPMA, and the discretion in the Energy Act to reduce rental rates and capacity fees is as a modification of that existing requirement. The reductions authorized in Section 3003 of the Energy Act would be meaningless if Congress intended the reductions to be limited by FLPMA's general requirement to collect fair market value for rights-of-way.

Statutory Authority

Summary of Comments: One commenter expressed concern that this proposed rule will set precedent for a similar issue DOI is trying to address under the Fluid Mineral Leases and Leasing process.

Response: This final rule modifies procedures that are specific to identifying rental rates and capacity fees for wind and solar authorizations; it does not apply to or set a precedent for other BLM authorizations or processes, including those under the Mineral Leasing Act (MLA).

Summary of Comments: Another commenter requested information about how this final rule interacts with other BLM rules and administration

directives, including the Conservation and Landscape Health Rule, Secretary's Order 3362, *Improving Habitat Quality in Western Big-Game Winter Range and Migration Corridors* (Feb. 9, 2018), and BLM Instruction Memorandum 2023–005 Change 1, *Habitat Connectivity on Public Lands* (Nov. 18, 2022).

Response: This final rule updates the processes used in the BLM's orderly administration of the public lands. Any decisions made in connection with right-of-way grants following the procedures laid out in this rule will also be subject to all other applicable legal requirements and administrative directives, including the Conservation and Landscape Health Rule, Secretary's Order 3362, and BLM policies and guidance.

National Environmental Policy Act (NEPA)

Comment Summary: Commenters requested the BLM prepare a NEPA analysis to evaluate the environmental effects of the final rule, including because extraordinary circumstances (43 CFR 46.215) apply and therefore reliance on a Categorical Exclusion is not appropriate.

Response: The BLM disagrees with comments that an environmental assessment or environmental impact statement analysis under NEPA is required, or that extraordinary circumstances apply to this rulemaking. The BLM has determined that the categorical exclusion at 43 CFR 46.210(i), which excludes, ''regulations . . . that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case,'' applies to this final rule. The BLM has reviewed the extraordinary circumstances listed in 43 CFR 46.215 and determined that none applies. This categorical exclusion documentation is provided on the BLM's ePlanning web page at the following URL: *https://eplanning.blm.gov/eplanning-ui/project/2016102/510.* As such, the final rule fits within the categorical exclusion for rules, regulations, or policies to establish bureau-wide administrative procedures, program processes, or instructions. This final rule does not authorize any project or other on-the-ground activity and therefore would have no significant individual or cumulative effect on the quality of the human environment. At such time that specific solar or wind energy development projects are proposed, the BLM will consider those proposed actions in compliance with NEPA.

Comment Summary: Some commenters suggested that there should not be a requirement of a published environmental assessment (EA) or environmental impact statement (EIS) before foreclosing the opportunity to hold a competitive offer. Some commenters believed the BLM should require analysis of a competitive offer through an EIS to identify and disclose the impacts of such an action.

Response: The BLM is not required to perform environmental analyses on whether to hold a competitive process; nonetheless, in § 2809.12(b) the BLM reserves the right to complete a NEPA analysis before holding a competitive process. The BLM does not typically complete a NEPA analysis for a competitive leasing process, but at least one NEPA analysis will be completed before authorizing solar or wind energy development. Determining that there may be competitive interest and utilizing a competitive process is administrative and procedural only, does not trigger the need to prepare an environmental analysis under NEPA or have any significant effect on the human environment, and is simply based on whether there is adequate interest from more than one applicant. The BLM would complete a land use planning and NEPA analysis were it to change allocations in a current land use plan to allocate areas of public lands to either allow or exclude solar or wind energy development—a process the BLM is currently undertaking regarding solar energy for 11 western states by updating the 2012 Western Solar Plan through a PEIS.

For example, in the case of solar or wind energy development leasing, the BLM must first identify public lands as a designated leasing area for solar or wind energy development through a land use planning process with an associated NEPA analysis. If the BLM receives competitive interest in those lands, the BLM would hold a competitive process to determine the presumptive leaseholder. Alternatively, the BLM may determine that the NEPA analysis for a designated leasing area should be updated to reflect new or changing circumstances and in turn may offer such lands competitively to determine a preferred applicant. Upon determining the presumptive leaseholder or preferred applicant, the BLM would then complete a NEPA analysis before determining whether to authorize the wind or solar energy generation project proposed. For either the presumptive leaseholder or preferred applicant, even if the BLM does not complete a NEPA analysis to consider whether to hold a competitive process, the resulting project will be subject to multiple NEPA analyses before it is approved.

Additional comments: Additional comments and their responses are found in Section IV (Section-by-Section Discussion) of this preamble.

The BLM is a multiple-use agency, and solar and wind energy development is one of the many uses for which the BLM manages the public lands. While all comments that the BLM received are important, this final rule does not respond to those that are out of scope for the action the BLM is taking. Comments that are out of scope for this rulemaking include those regarding project-specific considerations, state laws and authorities, national energy policies and priorities that do not affect solar and wind energy or the public lands, engaging in specific partnerships, general statements of support or opposition to the rule which do not require a detailed response, and availability and distribution of financial resources, among others that are not specific to the BLM's administration of solar and wind energy development applications and rights-of-way and rate-setting.

The BLM will continue to engage with the public and Tribal, Federal, State, and local government partners on the BLM's management of its public lands, as appropriate. Subsequent actions that the BLM may take will be subject to the policies, laws, and regulations in place at that time, including those for consultation, environmental review, and entering into agreements or partnerships with others.

IV. Section-by-Section Discussion

43 CFR Part 2800 Rights-of-Way Authorized Under FLPMA

Part 2800 of the CFR describes requirements for rights-of-way issued under Title V of FLPMA. This final rule revises the per acre rent and per MWh capacity fee schedules for solar and wind energy development rights-of-way. It updates the application process for public lands and focuses the BLM's competitive processes to places where there is competitive interest. This final rule also includes the principles for prioritizing solar and wind energy applications, establishing criteria for a ''complete application,'' and corrects or clarifies existing regulations.

The BLM conducted extensive public and Tribal outreach on this rule both prior to its publication as a proposed rule and during the public comment period on the proposed rule. Prior to the

publication of the proposed rule, the BLM notified Tribes in August 2021 of its upcoming rule and requested any comments and concerns that Tribes may have on such a rule. The BLM then held three public listening sessions in September 2021 on its potential use of the Energy Act of 2020 authority. The BLM also requested and received feedback from the public on preferred alternatives to use of the Energy Act of 2020 authority in its Manual 2806.60, ''Rent,'' which was later published in May 2022 after three public listening sessions and public review and comment on the draft Manual. The BLM published its proposed rule in June 2023, receiving nearly 900 comments after holding three virtual public meetings. The BLM also sent Tribes another notice about the rulemaking in July 2023, requesting Tribal input and whether there was any interest to consult on the rule. No Tribes responded with interest to consult on the BLM's rulemaking.

Section 2801.5 What acronyms and terms are used in the regulations in this part?

The existing § 2801.5 contains the acronyms and defines the terms used in this part of the regulations. The BLM proposed to remove, revise, and add acronyms and terms to this section. Section 2801.5 of this final rule has some revisions in response to comments that are discussed further in this section for each respective revision.

Under this section, several commenters recommended the BLM engage relevant stakeholders and industry experts to ensure definitions accurately reflect industry practices and standards. The BLM regularly engages, and will continue to engage with, industry; Tribal, Federal, State and local authorities; and resource experts to supplement its knowledge about renewable energy and market advancements. The BLM sought public comment on the proposed rule and will seek public comment on any changes to its acronyms and terms in future rulemakings.

The BLM received comments requesting the BLM consider the full life cycle of materials, energy inputs and technology types, and resource and land use footprints, and suggesting that labeling all wind and solar energy as renewable energy is misleading. The BLM agrees that it should analyze land use footprints and resource impacts of proposed projects on public lands. However, analyzing the full life cycle of materials, energy inputs, and technology types are addressed by other parts of the Federal government where such analysis is within their expertise. The BLM also believes that for purposes of this final rule, all solar and wind energy generation projects are renewable energy development projects insofar as they use a natural resource on public lands that is not depleted to produce power.

One comment suggested that the BLM should include a definition for ''current land use plan'' to mean ''a document developed through a formal planning process to guide the management of activities and uses of public lands that has been approved, amended, or recertified within the past ten years.'' The BLM has separate rules governing its land use planning processes found at 43 CFR Chapter V, Subchapter A, that provides definitions related to the BLM's land use planning. Accordingly, the BLM did not make changes in response to that comment since they are out of scope for this rule under 43 CFR part 2800.

Commenters suggested that the term ''economic hardship'' under 43 U.S.C. 3003 should be defined in this final rule and that the BLM should require proof of economic hardship for rent and fee reductions. The BLM does not define economic hardship in this rule as suggested. Each instance of hardship is unique to a holder and their circumstances and will be assessed on a case-by-case basis. The BLM does not intend to define hardship (economically, financially, or otherwise) so as not to unintentionally preclude reasonable requests to consider hardship.

Commenters stated that the proposed rule uses unclear language and is inconsistent with underlying resource management plans, agency guidance, and regulatory frameworks, and requested the BLM use more specific language such as pastureland, rangeland, habitat, or other terminology to denote the uses of the landscape. The BLM disagrees with the commenters' suggestion that the proposed rule uses unclear language and that the rule should include other definitions in this final rule. The BLM's use of ''pastureland rents'' comes from the name of the survey data used as the basis in determining the acreage rent in this final rule: The NASS Survey of Pastureland Rents. This is a newer source of data from NASS that was not available in the original 2012 Western Solar Plan or when the BLM promulgated its 2016 rule for solar and wind energy and has not yet carried through to other guidance materials from the BLM. It is appropriate for the BLM to use this terminology in describing the data used and its source in the regulations. Future BLM guidance and actions would include this terminology as appropriate.

Commenters requested the BLM settle on one standard term (''preferred renewable energy development areas'') for the preferred renewable energy project locations to avoid conflicts with other resources and uses. Commenters also suggested that the definitions for ''variance areas'' and ''exclusion areas'' should be added to the rule. The BLM understands the interest in defining such terms and has already done so in its land use planning efforts, such as the ongoing Solar Energy PEIS effort to update the 2012 Western Solar Plan. The BLM believes these terms are best identified and defined as part of the land use planning process and is not making any changes to this rule due to comments.

Paragraph (a) of this final rule provides for the acronyms and paragraph (b) provides for the terms used in this part. The final rule would remove, revise, and add certain terms to the BLM's acronyms and definitions found in part 2800.

This final rule adds the acronym ''FLPMA'' to paragraph (a) meaning the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*). This acronym replaces the term ''Act'' from paragraph (b), providing clarity as to which act the BLM is referencing.

The BLM received no substantive comments on replacing the term ''Act'' with ''FLPMA,'' and therefore this final rule makes no changes to the proposed rule.

This final rule removes definitions of ''Megawatt (MW) capacity fee,'' ''Net capacity factor,'' ''Megawatt hour (MWh) price,'' ''Rate of return,'' and ''Hours per year.'' The BLM no longer charges a megawatt capacity fee based on solar and wind energy generation facility nameplate capacity; definitions related to the nameplate capacity fee are removed. The BLM did not make changes to the definitions in the final rule.

Some commenters noted inconsistencies related to the terms ''Rate of Return'' and ''Hours per year.'' Commenters pointed out that the proposed rule stated that these terms would be removed from § 2801.5(b), noting the paragraph numbering for the **Federal Register** instructions were confusing whether the terms were removed or not. The BLM agrees with commenters and has revised the **Federal Register** instructions, removing the proposed instruction number vi, ''removing paragraphs (1) and (2) in the term ''Megawatt rate'' and redesignating

paragraphs (3) and (4) as paragraphs (1) and (2). There are no paragraphs for the revised term, and removing the instructions is consistent with the proposed definition. The BLM did not make any other changes to this definition in the final rule.

This final rule adds the term ''Capacity fee'' to mean the fee based on the amount of electricity produced from solar or wind energy resources on the public lands. This is consistent with the BLM's change implementing a capacity fee that is based on electricity production. There were no substantive comments on the term, and the BLM did not make changes to this definition in the final rule.

The BLM includes in this final rule a new term ''Domestic Content reduction'' to define the circumstances in which a holder meets the domestic content criteria and thus qualifies for a fee reduction. This final rule includes changes to the term for ''domestic content'' to mean an item or product that qualifies for the Buy America preference as set forth in Section 70914 of the Build America, Buy American (BABA) Act, Public Law 117–58, 135 Stat. 429, §§ 70901–70927 (Nov. 15, 2021), and implementing guidance at 2 CFR part 184. The final rule modifies the definition for ''domestic content'' from the definition of ''domestic end product,'' as that term is used in Section 52.225–1 of the Federal Acquisition Regulations (FAR) (48 CFR 52.225–1) in the proposed rule, to the criteria for ''domestic content preference'' provided in the BABA Act and 2 CFR part 184. As described below, the qualifying definition in this final rule offers clarity and consistency among Federal programs regarding what constitutes domestic content and therefore is appropriate to apply to determine when a holder may obtain a fee reduction as identified under § 2806.52(b).

The BLM has determined that offering a Domestic Content reduction will further promote the greatest use of solar and wind resources because it will support the development of secure, reliable domestic supply chains while also reducing economic hardships for developers. As discussed in the preamble to the proposed rule, uncertainty in global supply chain dynamics, as seen in recent years, can delay deployment of solar and wind energy development projects on public lands (88 FR 39726, 39740–39742). By offsetting some of the costs of domestically sourced parts and materials, the Domestic Content reduction will insulate developers from global supply chain shocks of all kinds by reducing the economic dependence of developers on global supply chains and will also support the efforts of domestic suppliers. In this way, the proposed Domestic Content reduction supports the transition to more reliable domestic supply chains that will, in turn, increase interest in developing solar and wind energy projects throughout the country, including on public lands (43 U.S.C. 3003(b)(1)(C)), and thereby would promote the development of solar and wind energy resources on public lands (43 U.S.C. 3003(b)(2)).

Similar to the BLM's use in the proposed rule of a definition for Buy American based on section 52.225–1(b) of the FAR, this final rule's use of the term ''domestic content,'' following the BABA Act and 2 CFR part 184, identifies the components of projects through categories—iron or steel products, manufactured products, or construction material—that must be produced or manufactured in the United States in order to qualify for the Domestic Content reduction. The BABA Act applies to Federal financial assistance funds for ''infrastructure projects,'' which require the use of material produced in the United States. The Office of Management and Budget (OMB) published its final guidance implementing the BABA Act on August 23, 2023, under 2 CFR part 184. Generally, under 2 CFR 184.4(e), a ''domestic content'' preference would apply to three separate product categories: (i) iron or steel products; (ii) manufactured products; and (iii) construction materials. The OMB's guidance defines each of these categories and makes clear how a proponent satisfies the categorical requirements to demonstrate that the components of an infrastructure project meet the domestic content standards. This final rule uses the term ''domestic content'' as a catch-all term to refer to items for which the holder might satisfy the Domestic Content reduction based on the definitions established 2 CFR part 184.

Some commenters suggested that the proposed Buy American definition should be revised to reflect eligibility for the reduction to mimic the guidance published by the Treasury Department and Internal Revenue Service for the domestic content bonus credit from section 13701 of the Inflation Reduction Act (IRA), 117 Public Law 169, 136 Stat. 1818 (Aug. 16, 2022). Other commenters requested the BLM utilize a domestic content definition that incentivizes the use of domestically manufactured core solar components, as laid out in Section 13502 of the Inflation Reduction Act. Commenters also urged the BLM to refine its approach and apply more robust origin standards to its domestic content proposal.

The BLM has considered the various comments suggesting different definitions for what constitutes American-made products for the purposes of this reduction. In response to this public input, the BLM has changed from the FAR definition to the BABA Act (and implementing guidance at 2 CFR part 184) definition for the domestic content preference. The BLM is aware that the Treasury Department and Internal Revenue Service have issued guidance about the domestic content bonus under the Inflation Reduction Act for clean energy projects and facilities that meet American manufacturing and sourcing requirements. However, that guidance describes an intent to propose regulations that have not yet been finalized. This final rule's definition for domestic content aligns with definitions in other Federal programs with oversight over domestic products and content. This approach will promote consistency among these Federal programs, reducing the potential for unintended consequences resulting from conflicting definitions. As noted above, the BABA Act definition focuses on construction materials and components for infrastructure projects and is closely aligned with the type of projects covered in this final rule.

The final rule revises the term ''grant'' to reflect that solar or wind energy leases are not covered under the definition. The change provides clarity for where the BLM will issue a solar or wind energy grant and where a solar or wind energy lease will be issued.

Commenters suggested the term ''lease'' is unnecessary and to use ''grants'' instead, as the difference between a lease and a grant under the proposed rule is the location of a right-of-way either inside or outside a DLA. As identified in the BLM's 2012 Western Solar Plan, leases will be issued in areas designated for leasing under the relevant land use plan. The BLM disagrees with these comments and retains the distinction between solar and wind energy grants and leases in this final rule based on location of their issuance. The BLM did not make any change to this definition in the final rule.

This final rule adds the term ''Capacity fee'' to mean the fee based on the amount of electricity produced from solar or wind energy resources on the public lands. This is consistent with the BLM's change implementing a capacity fee that is based on electricity production. There were no substantive

comments on the term, and the BLM did not make changes to this definition in the final rule.

The final rule revises the definition of the term ''Megawatt hour (MWh) rate'' to mean the five-calendar-year average of the annual weighted average wholesale prices per MWh for major trading hubs serving the 11 western states of the continental United States. This revision is consistent with the BLM's change to implement a capacity fee for solar and wind energy development projects.

Some commenters were unclear whether the BLM had revised the definition of ''Megawatt hour (MWh) rate'' in the existing regulations, as § 2801.5(b) currently does not define that term. Commenters presumed that the BLM proposes to revise the existing definition of ''Megawatt rate.'' The BLM understands the confusion raised by these comments. The BLM revises the term ''Megawatt rate'' to ''Megawatt hour (MWh) rate'' in this final rule, consistent with the change to implement a capacity fee for solar and wind energy development projects. The BLM did not make any other changes to this definition in the final rule.

This final rule revises the term ''Reasonable costs'' to be consistent with the rule change replacing the words ''the Act'' with the acronym ''FLPMA.'' There were no substantive comments on the term, and the BLM did not make changes to this definition in the final rule.

''Renewable Energy Coordination Office (RECO)'' is added in this final rule to mean one of the National, State, district, or field offices established by the Secretary under 43 U.S.C. 3002(a) that is responsible for implementing a program to improve Federal permitting coordination with respect to eligible projects on covered land and such other activities as the Secretary determines necessary. There were no substantive comments on the term, and the BLM did not make changes to this definition in the final rule.

This final rule includes the new term ''solar or wind energy development'' to mean the use of public lands to generate electricity from solar or wind energy resources on public lands. This definition clarifies that the term ''energy development'' refers to uses of public lands that directly involve the generation of electricity on public lands. This definition clarifies which right-of-way grants and leases are subject to the conditions in Section 50265(b)(1) of the IRA, which apply to ''a right-of-way for wind or solar energy development on Federal land.''

Commenters suggested revising the definition of ''solar or wind energy development'' to include language from the BLM's recent Instruction Memorandum 2023–036, *Inflation Reduction Act Conditions for Issuing Rights-of-Way for Solar or Wind Energy Development* (April 23, 2023), according to which solar or wind energy development ''does not include site-testing, communication sites, transmission lines, gen-tie lines, pipelines, roads, installation of batteries and other energy storage systems, or other uses that might indirectly support energy production or transmission.'' The BLM does not agree that adding additional language to the definition is necessary for this final rule. This rule and the BLM's policies were written to complement each other in how the BLM administers applications and rights-of-way for such projects. The BLM did not make a change to this definition in the final rule.

This final rule adds ''Solar and wind energy lease'' to mean any right-of-way issued under Title V of FLPMA within an area identified in a BLM land use plan as a DLA. Any right-of-way not issued within an area identified as a DLA would be a grant. The BLM received comments on this term, which are discussed with regard to the definition of ''grant'' in this final rule. The BLM did not make changes to this definition in the final rule.

Section 2801.6 Scope

Section 2801.6 describes the scope of 43 CFR part 2800's applicability. Paragraph (a)(1) of this final rule includes the additional language ''or leases'' describing that this part applies to both authorization types: grants and leases.

A comment requested the following language be added to § 2801.6 Scope: ''Applications for transportation or utility right-of-way crossing conservation system units, national recreation areas, or national conservation areas in Alaska are subject to the provisions of Title XI of the Alaska National Interest Lands Conservation Act and 43 CFR part 36.''

This rule focuses on the BLM's generally applicable process for administering applications and rights-of-way for solar and wind energy development projects on the public lands. It does not modify or amend other applicable statutory or regulatory requirements, and the BLM would comply with all such requirements during the process set forth in this rule. The BLM made no changes to this section in the final rule based upon public comments.

Section 2801.9 When do I need a grant or lease?

Section 2801.9 explains when a grant or lease is required for systems or facilities located on public lands. Paragraph (d) of this final rule extends the term for solar or wind energy development authorizations up to 50 years, and authorizations for other uses that support solar or wind energy development, to up to 50 years, and make other technical changes. Paragraph (d)(3) provides that solar or wind energy development facilities authorized with a grant or lease may be issued for up to 50 years (plus initial partial year of issuance). Paragraph (d)(4) provides that energy storage facilities that are authorized separate from an energy generation facility are authorized with a right-of-way grant for up to 50 years. Paragraph (d)(6) provides that electric transmission lines with a capacity of 100 kV or more are authorized with a right-of-way grant for up to 50 years. The BLM did not make a change to this section of the final rule.

Commenters raised concerns with a 50-year authorization term for large development projects because, they suggested, the longer the public lands are occupied by a wind or solar project the longer it will likely take for those lands to fully recover after removing the project. Commenters also suggested that the longer-term authorization may unreasonably occupy the public lands with a solar or wind energy development when preferable or newer energy technology could be deployed there.

The BLM disagrees with comments that assert the increase of the maximum term of an authorization from 30 years to 50 years is inappropriate because preferable technology may be desired at that location in the future. The BLM acknowledges that recovery of impacts might be greater for a 50-year right-of-way term. However, the BLM will analyze the environmental impacts of each proposed project, including the end of project life activities such as reclamation and restoration of public lands, under NEPA, and will consider the appropriate term for each proposed right-of-way, before deciding whether to approve for deny a proposed right-of-way for energy development. Additionally, BLM notes that most of the ground-disturbing impacts of solar or wind development come during the construction phase, so the environmental effects of a 50-year authorization are therefore likely to be similar to the effects of a 30-year authorization with respect to recovery. Any such impacts, however, will be

considered on a case-by-case basis, in compliance with NEPA, when the BLM evaluates each proposed project. Through this process, the BLM will consider the reasonably foreseeable use of public lands, including the technology proposed by an applicant and the environmental consequences of that use, when deciding whether and for what duration to authorize solar or wind energy development on the public lands.

Some commenters argued against increasing the maximum term length for a right-of-way and expressed concerns about the economic and environmental impacts and the lifespan of energy generation equipment. Commenters suggested that a longer term to an authorization may not be appropriate due to the shorter lifespans of solar panels and wind turbines (30 years for solar and 20–25 years for wind), and that a shorter initial term, like the current 30-year term, instead of 50 years may be more suitable.

The BLM understands the concerns raised by commenters regarding the proposal to increase the maximum term length for solar and wind energy development authorizations. In the BLM's experience, the lifespan of solar and wind energy projects has been increasing over time as the technologies advance. When the BLM last updated its rules for solar and wind energy in 2016, the lifespan of a solar or wind project was approximately 20 years. The 30-year term was appropriate for such a length, considering the amount of time necessary to construct a project and then the expected time to decommission and reclaim and restore the public lands during the authorization term. With increasing lifespans of solar and wind equipment, a longer-term right-of-way is appropriate. See recent Berkeley National Laboratory, *Results from a Survey of U.S. Wind Industry Professionals,*[4] and the Department of Energy's, *Photovoltaics End-of-Life Action Plan,*[5] for a discussion of wind and solar energy project lifespans.

However, the BLM has made changes to other parts of the rule to address the commenters' concerns about dedicating public lands for up to 50 years to certain projects or uses that, over time, may become less efficient, see a significant decrease in production, or become entirely inactive. These changes also address concerns about public lands being used unlawfully for purposes other than those identified in the ROW grant (*e.g.,* a former solar or wind generating site being used for equipment storage). In particular, the changes impose conditions aimed at ensuring diligent operations on the public lands, see § 2805.12(c)(8). These are in addition to the BLM's existing diligent development requirements under § 2805.12(c)(7).

Commenters suggested that the BLM evaluate changes to the environment or technology during the term of an authorization after it has been approved. The BLM did not adopt this suggestion. Once the BLM issues a final decision, the BLM would only re-address technological changes or environmental impacts during the term of an authorization if the BLM undertakes a new decision-making process, such as in response to a ROW holder's proposed change in technology. The BLM's original analysis for a proposed facility considers the environmental effects of the facility and technology proposed by the applicant for the term of the proposed authorization, informing the BLM's decision to deny, approve, or approve with modification the proposed project. Any subsequent changes in equipment used at the site that would result in changes to environmental impacts that may occur after the BLM issues its decision, would be analyzed at the time the BLM considers issuing a new decision, based on the relevant information available at that time. The BLM may complete a new decision-making process to adjust the terms and conditions of the authorization under existing § 2805.15(e) under certain circumstances, such as a change to legislation or regulations, when necessary to protect public safety, an environmental change (*e.g.,* new threatened or endangered species listing), or if proposed changes to technology may result in additional or different environmental impacts.

One comment requested clarification on how § 2801.9 may be modified based on outcomes of the ongoing update to the Western Solar Plan. The analysis of environmental impacts of energy development and decisions made in updating the Western Solar Plan do not affect this final rule, which that provides BLM procedures and requirements when administering applications and authorizations for solar and wind energy development projects.

Some comments suggested that proposed energy storage facilities and proposed energy generation facilities should be reviewed in separate NEPA documents due to differences in fire risk and toxicity concerns. While it is beyond the scope of this rulemaking to speculate as to how the BLM will comply with NEPA when evaluating individual projects, the BLM agrees that energy storage facilities may have environmental impacts that are distinct from those posed by energy generation facilities. Nevertheless, the BLM can prepare a single NEPA document to evaluate impacts from energy generation facilities and energy storage facilities and may find it appropriate to do so in certain circumstances.

Subpart 2802—Lands Available for FLPMA Grants or Leases

The BLM proposed to revise the title of subpart 2802 to include ''or leases'' to clarify for readers that public lands are available for both grants and leases, consistent with other revisions in this rule regarding leases. No comments were received on this, and the BLM did not make changes to the final rule.

Section 2802.11 How does the BLM designate right-of-way corridors and DLAs?

Section 2802.11 explains how the BLM designates right-of-way corridors and DLAs through its land use planning process. This section includes a non-exhaustive list of factors the BLM could consider when designating such areas under its land use planning process described in 43 CFR part 1600. Other technical changes in § 2802.11(b) improve readability and consistency between the BLM's regulatory authority under part 2800 and its statutory authority under FLPMA. The BLM did make changes to this section of the final rule.

Paragraph (b)(1) is unchanged from the proposed rule and includes Tribal land use plans that BLM reviews for consistency when it is developing, amending, or revising a land use plan in accordance with Section 202(c)(9) of FLPMA (43 U.S.C. 1712(c)(9)).

Paragraphs (b)(10) and (b)(11) add criteria that the BLM may consider when designating new leasing areas for solar and wind energy. Paragraph (b)(10) adds ''access to electric transmission,'' and paragraph (b)(11) provides for consideration of relatively large areas where energy development is feasible and there is a low potential for conflict due to environmental, cultural, and other relevant criteria, including assessing the demand for new or expanded areas; applying environmental, cultural, and other screening criteria; and analyzing proposed areas through the land use planning process described in part 1600.

The BLM received comments about whether the BLM's proposal to carry forward three of the four criteria from

[4] *https://emp.lbl.gov/publications/benchmarking-anticipated-wind-project.*

[5] *https://www.energy.gov/sites/default/files/2022-03/Solar-Energy-Technologies-Office-PV-End-of-Life-Action-Plan_0.pdf.*

the 2012 Western Solar Plan is consistent with other BLM planning actions. The BLM carried these three criteria forward from the 2012 Western Solar Plan, which is consistent with other BLM plans identifying solar and wind energy development areas.

Some commenters suggested that the BLM redesignate proposed paragraph (b)(11) as paragraph (b) and redesignate existing paragraphs (b)–(d) as newly designated paragraphs (c)–(e). The BLM did not change the rule due to this comment. Reorganizing the paragraphs as suggested would be confusing to a reader as considerations for solar energy would no longer be located together in one subparagraph. The BLM did revise paragraph (b)(11) to clarify that the factors BLM considers include ''whether there are areas'' consistent with revisions under paragraph (b).

One comment requested that wording be amended to ''clarify that BLM may require sharing a gen-tie right of way subject to reasonable terms.'' The term ''gen-tie'' refers to a generation interconnect transmission line that connects the original source electric generation (for the purposes of this rule, a wind or solar energy development) to the transmission system. These gen-tie lines are typically less than 5 miles long and require a right-of-way grant if they cross public lands. The BLM retains authority under 43 CFR 2805.15(b) to allow or not allow such common use of the right-of-way.

Commenters suggested that the BLM alter the language of proposed § 2802.11(b), which identifies factors or criteria that the BLM may consider when designating an area of public land as a right-of-way corridor or a DLA. Some commenters recommended replacing the proposed term ''may'' with ''must.'' Other commenters suggested expressly incorporating all of the considerations listed in 43 U.S.C. 1712(c), which governs criteria for consideration by BLM when it prepares land use plans, to this section. Other commenters suggested that the BLM add transmission and electric infrastructure to the list of criteria or factors. Finally, some commenters agreed with the language in the proposed rule, which provides a non-exclusive list of factors or criteria that the BLM may consider when designating a corridor or a DLA.

After considering comments on this section, the BLM did make some changes to this paragraph in the final rule. While § 2802.11(b) provides examples of criteria that the BLM may consider, some of the listed criteria might not be relevant in all cases, and the BLM may consider additional factors or criteria as appropriate. Further, the BLM's land use planning regulations, 43 CFR 1600, provide additional direction for complying with the requirements of Section 202 of FLPMA, 43 U.S.C. 1712. The BLM did not add transmission and electric infrastructure to the list of criteria or factors because the proposed rule already included ''access to electric transmission,'' which is retained as a criterion or factor in the final rule. However, the BLM revised paragraph (b) to replace ''factors the BLM may consider include, but are not limited to, the following'' to read as ''the BLM may consider various factors, including'' to clarify what the BLM considers when designating such areas.

Commenters suggested that adding three criteria to a list of other criteria for the BLM to consider may create confusion. Some commenters supported the BLM adding paragraphs (b)(10) and (b)(11) to provide more detail of what and how the BLM considers when designating new leasing areas. Other commenters requested the BLM evaluate criteria for designating exclusion areas in addition to the criteria for designating DLAs and right-of-way corridors. The BLM believes that adding the three additional criteria for consideration when designated corridors and leasing areas is appropriate and provides for transparency when the BLM begins its land use planning processes to designate leasing areas. The BLM does not agree that exclusion criteria are appropriate when identifying DLAs. However, paragraph (d) of the existing regulations provides broad discretion for the BLM to identify areas where the BLM will not allow rights-of-way, which may include criteria to identify exclusion areas during the land use planning process. During the land use planning process, the BLM engages Federal, Tribal, State, and local government partners and the public to inform and clarify the factors analyzed when considering whether to designate exclusion areas. Including these criteria in the final rule will minimize the confusion that may arise in the future.

Some comments requested that the final rule include additional criteria for designating exclusion and avoidance or variance areas. Commenters suggested that including these criteria would encourage the appropriate designation of such areas and thus focus on processing right-of-way applications only in areas where development is best suited. The BLM disagrees with commenters that additional criteria for designating exclusion and avoidance or variance areas should be included in the final rule. Such criteria do not need to be included in the final rule and are better suited for policy (*e.g.,* instruction memoranda), which can be implemented consistent with this rule and other applicable regulatory authority and environmental analysis, while also providing appropriate flexibility in the process. Further, exclusion criteria are based on the environmental impacts of a program on the public lands, which are identified through a NEPA analysis, such as the ongoing Western Solar PEIS that is updating the 2012 Western Solar Plan. Lastly, this final rule updates its prioritization principles under 2804.35, which were not in place in 2012 with the Western Solar Plan. The BLM believes that with the robust public engagement, prioritization principles, and other preliminary application review meetings, holding a variance process is not necessary in administering applications for solar and wind energy development.

Section 2803.10 Who may hold a grant or lease?

Section 2803.10 provides the criteria for who may hold a grant or lease. In this final rule, the BLM clarifies that a holder who is of legal age and authorized to do business in one State must also meet this requirement in each other State in which the right-of-way grant they seek is located. No comments were received on this section, and the BLM did not make changes to this section of the final rule.

Section 2803.12 What happens to my grant if I die?

In the notice of proposed rulemaking for this rule, the BLM proposed to add new paragraph (a) and redesignate existing paragraphs (a) and (b) as paragraphs (b) and (c). This final rule does not carry forward those proposed revisions because another final rule included revisions that addressed those concerns. The BLM's final rule ''Update of the Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of FLPMA for Rights-of-Way,'' (89 FR 25922) [April 12, 2024] updated § 2803.12 to remove reference to applications in the section title and paragraph (a).

This final rule retitles this section and revises paragraphs (a) and (b) to include ''or lease'' clarifying that this section applies to both grants and leases.

Paragraph (b) of this final rule replaces the word ''distributee'' with ''receiver'' to improve clarity to readers that when the BLM distributes a grant or lease, the instrument would be received by the holder. This final rule also includes the provision that unqualified receivers of a right-of-way

must comply with all terms, conditions, and stipulations.

One comment suggested that the BLM clarify paragraph (b) to state that distribution will take place under state law in the state where the grant or lease is located. Including this suggested change could be inaccurate and potentially unenforceable. The BLM's rules should not dictate distribution of a lease as an inheritable interest in all instances.

Section 2804.12 What must I do when submitting my application?

Section 2804.12 explains what an applicant must do when submitting a right-of-way application. The BLM proposed changes to paragraphs (c) and proposed to add paragraphs (f) and (j). The BLM did make a change to this section of the final rule.

Paragraph (c) provides for additional requirements for solar and wind energy development or short-term rights-of-way. Paragraph (c)(1) requires payment of an application filing fee for solar and wind energy development and short-term applications as an initial payment toward cost recovery payments. The BLM will refund the balance of the application filing fee if it exceeds the processing costs. Paragraph (c)(1) is revised for readability and now reads ''payment toward cost recovery'' instead of ''payment towards cost recovery.'' Paragraph (c)(2) requires payment of additional reasonable costs in addition to application filing fees. See existing § 2804.14 of this part for further information on reasonable costs in processing an application. Payment of category 6 cost recovery fees—which are based on full costs and are collected if the BLM has determined that processing efforts will take more than 64 hours to complete—may be reduced by the application filing fee that is paid when submitting an application.

Some comments requested lower fees for application submittal. Another comment suggested that the BLM keep the application fee until all ''reasonable costs'' are paid before any refund is given. Under the existing regulations, application filing fees are a payment of reasonable costs for the United States to process an application and are intended to discourage applicants from unnecessarily applying for more land than is reasonable for a solar or wind energy development. As updated by this final rule, these application filing fees continue to be a payment of reasonable costs and may now clearly be applied to the processing fees, such as through a cost recovery agreement. Any overpayment of these costs may be reimbursed to the applicant or carried to cover the inspection and monitoring of the right-of-way, if authorized. Entering into a cost recovery agreement requires action by the BLM and applicant to complete, including the prioritization of an application under § 2804.35 by the BLM and payment of reasonable costs identified by the BLM in a cost recovery agreement.

Multiple comments suggested the BLM issue a cost recovery agreement within a certain timeframe, such as 30 days of receiving the required information. The BLM agrees that it is important for the BLM to be responsive to applicants who have provided the required information under this section. The proposed rule added paragraph (j) providing that an application is complete when an applicant submits the required information under this section. Upon receiving a complete application, the BLM would determine what cost recovery amounts would be necessary, and whether that should be under a cost recovery agreement. See § 2804.14 for further information. The BLM would notify an applicant within 30 days pursuant to § 2804.25(d) whether processing their application will take longer than 60 calendar days and what the expected processing timeframe is for the application. Section 2804.19 of the BLM's right-of-way regulations provides that the BLM and applicant work together to establish and issue the cost recovery agreement; the length of that process can vary widely based on a number of variables including project complexity, analysis of the needs from a cost recovery agreement, and needed inputs from the developer. As noted under the previous comment response, entering into a cost recovery agreement requires action by the BLM and applicant to complete, including prioritization under § 2804.35 by the BLM and payment of reasonable costs identified by the BLM in a cost recovery agreement.

Section 2804.12(f) of this final rule clarifies that the BLM may require additional information at any time while processing an application. Additional information may be necessary, such as environmental resource data. The BLM will issue a deficiency notice pursuant to existing § 2804.25(c) to inform applicants of additional information requirements.

Comments requested that the BLM provide clear application requirements and limit the BLM's ability to request additional information beyond those requirements. The BLM believes that the existing rules clearly state what is required for applications under 2804.10, *What Should I do before I file my application?*; in § 2804.11, *Where do I file my grant application?*; and as updated by this final rule, § 2804.12, *What must I do when submitting my application?* Paragraph (f) of this final rule provides that BLM may request additional information while processing an application. Additional information may be requested under 2804.25(c) after an application is determined to be complete pursuant to added paragraph (j) of this final rule.

Paragraph (j) describes that a complete application meets or addresses the requirements of § 2804.12, as appropriate for the application submitted. Some comments asked the BLM to clarify the definition of ''complete application'' in paragraph (j). The BLM believes that new paragraph (j) clearly describes what a complete application is. Upon satisfying the requirements of this section, the BLM will provide the applicant notice in writing that the application is complete.

Some commenters suggested that the BLM provide a determination of application completeness within specified timeframes to promote a timelier application process. The BLM agrees that it is important to remain diligent in processing an application. However, the BLM did not propose to implement any timeframes for determining an application is complete as this section of the rules applies to applications for all rights-of-way, not just solar or wind energy applications. Reasonable expectations for timely and diligent application requirements will vary depending on the complexity of processing a certain type of system or use on the public lands.

Section 2804.14 What is the processing fee for a grant application?

The BLM recently published its final rule ''Update of the Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of FLPMA for Rights-of-Way'' (89 FR 25922) [April 12, 2024]. In that final rule, the BLM updated its address within this section. The proposed updates that the BLM included in this rulemaking are no longer necessary. No comments were received, and the BLM did not make a change to this section in this final rule.

Section 2804.22 How will the availability of funds affect the timing of the BLM's processing?

Section 2804.22 of this final rule clarifies how the availability of funds may affect the BLM's schedule for processing an application. Paragraph (a) clarifies that when the BLM is processing an application, it will not continue to process the application until funds become available or the applicant

elects to pay full actual costs under § 2804.14(f). Paragraph (b) provides that the BLM may deny an application after 90 days if it has requested reasonable costs for processing an application and the proponent has failed to provide funds for reimbursement. The BLM did not change this section of the final rule.

One commenter supported denying applications for which fees had not been paid. Such a procedure, the commenter suggested, would disincentivize applicants from submitting applications that they do not intend to diligently process. While the BLM will not deny an application without cause, as described in more detail under § 2804.26, the BLM agrees that failure to diligently pursue an application, including unfunded application cost recovery agreements, and incomplete applications, among other reasons are good cause for denying an application. Denying applications for these reasons would deter applicants from submitting applications for projects that they do not intend to diligently pursue. Paragraph (c) of this final rule provides that funds paid towards the cost recovery agreement for a project may not be refundable. Such funds would be those identified in the cost recovery agreement for hiring additional staff or contractors and agreed to by the applicant or right-of-way holder.

Some comments supported the idea of cost recovery agreements that would allow the BLM to hire additional staff or contractors to aid in application processing and reduce processing times. This requirement helps ensure that there is available funding to the United States for reasonable costs of the government, including those BLM hiring and contracting decisions made to support processing applications.

Section 2804.23 What costs am I responsible for when the BLM decides to use a competitive process for my application?

Section 2804.23 of the final rule describes what costs an applicant is responsible for when the BLM decides to use a competitive process. Paragraph (b) requires, for cost recovery processing categories one through four, payment of cost recovery processing fees as if the other applications had not been filed. Paragraph (c) clarifies who is responsible for processing costs within processing category six.

The BLM did not make a change to this section of the final rule.

One comment suggested the language be changed to read, ''What costs am I responsible for *if* the BLM decides to use a competitive process for my application?'' The BLM considered this change in title to the section and believes that the proposed naming of this section is clear with respect to what costs the applicant will be responsible for when the BLM determines it will use a competitive process.

Section 2804.25 How will the BLM process my application?

In the final rule, the BLM revised § 2804.25(c) to add that, if an applicant fails to comply with a deficiency notice under this section, the BLM may deny the application. To ensure that developers proceed diligently after entering into a cost recovery agreement, § 2804.25(c)(1) requires applicants to ''commence any required resource surveys or inventories within one year of the request date, unless otherwise specified by the BLM.'' If the applicant fails to comply with a deficiency notice under that provision, the BLM may deny the application. See § 2804.26(a)(9). To clarify that the BLM retains the discretion to deny an application where the applicant does not proceed diligently, the final rule adds to § 2804.25(c): ''Failure to meet requirements under this section may result in the BLM denying your application pursuant to § 2804.26.''

This added provision clarifies that the BLM retains the discretion to deny an application where the applicant does not proceed diligently. This change is consistent with changes made to § 2809.10(e) regarding when the BLM will no longer hold a competitive process. Together these amendments give the industry the certainty it needs to proceed with projects while retaining the BLM's discretion to deny an application or offer lands competitively if the applicant does not proceed diligently. In that way, these amendments balance the BLM's obligations to incentivize renewable energy development on public lands and to recover a fair return for U.S. taxpayers.

In this section, the BLM proposed removing a mandatory public meeting that is unique to solar and wind energy rights-of-way applications and is in addition to other public participation that would occur as part of the BLM's environmental review process. Paragraph (e)(2) describes public meeting requirements for solar or wind energy right-of-way applications. In the final rule, paragraph (e)(2) provides that the BLM may hold a local public meeting if there is no other public meeting or opportunity for early engagement. In other words, the final rule would require the BLM to hold a public meeting, offering the public opportunity to engage early, though the BLM could satisfy this requirement by holding a public scoping meeting or other public meeting that facilitates early engagement by the public.

Commenters suggested that the BLM provide a website of applications and authorizations for interested parties so that they could receive up-to-date information on the applications and authorized projects. The BLM agrees with comments about maintaining a site that is accessible to the public on existing and proposed (*i.e.,* applications for) projects on public lands. The BLM currently maintains an active web page at *https://www.blm.gov/programs/energy-and-minerals/renewable-energy/active-renewable-projects* where the public may access the most recent information on applications for solar, wind, and geothermal development projects, gen-tie-lines, upcoming lease sales, and other relevant application and development information about these sites.

Some comments supported the removal of the requirement that BLM hold pre-processing public meetings, noting that solar and wind energy technologies are better known now than they have been previously and that these meetings are unnecessary. The BLM also received comments that did not support removing that requirement. These comments expressed concerns that by removing this public meeting the BLM would be excluding the public and should instead increase outreach to the public in the area affected by these proposed development projects. To address these concerns, the BLM has changed the regulatory text in paragraph (e)(2)(i) to ensure that a public meeting is held if there is no other opportunity for the public's early engagement. The BLM also would retain discretion to hold additional public meetings under § 2804.25(e).

Paragraph (e)(4) is updated to replace ''the National Environmental Policy Act (NEPA)'' with ''NEPA,'' consistent with the changes in paragraph (e)(2) of this section. The BLM updates the reference in this final rule, consistent with changes that CEQ has made to its regulations, such that 40 CFR parts 1501 through 1508 are now referred to as 40 CFR Chapter V, Subchapter A.

Paragraph (e)(5) provides that the BLM will determine whether the proposed use complies with applicable Federal laws.

Paragraph (f) addresses the segregation of lands within a right-of-way application. Paragraph (f)(3) now provides that a segregation may be extended when an application is complete and cost recovery has been received.

Some comments suggested that the 2-year segregation limit is appropriate, that the BLM should begin NEPA within 2 years of segregating the lands, and that such limitations should be consistent with the NEPA timeline requirements within the Fiscal Responsibility Act. The BLM agrees that the agency should be diligent in processing applications, including initiating NEPA. Because separate legal authority and policy guidance applies to NEPA compliance procedures, including applicable timelines to complete the NEPA process, the BLM did not make a change to this paragraph of the final rule in response to these comments.

Some comments suggested additional language should be added to establish timelines and deadlines supporting quick action in processing applications. Section 2804.25(c) in the existing regulations provides specific due diligence requirements for applications. Unless another timeline is specified by the BLM, applicants have one year to complete certain actions, and the BLM may deny an application for failure to comply with the one-year requirement or other specified timeframe for submitting necessary information to the BLM. The BLM believes this timeline is generally adequate to promote the timely processing of applications and permitting of solar and wind development projects and to ensure that developers cannot hold public lands by submitting, but not diligently pursuing, an application, thus precluding other uses of such lands. The BLM did not change the final rule in response to these comments.

The BLM received requests to revise the rule to require automatic segregation once an applicant has filed a complete application and has paid the required application fees and grant extensions past the four-year mark. Changing the method to segregate lands and the timeframes of those segregations is outside the scope of this rule. The BLM did not propose to change the method and timing of segregation, but only to make this paragraph consistent with new provisions in the final rule for complete applications and cost recovery.

Section 2804.26 Under what circumstances may the BLM deny my application?

Section 2804.26 of this final rule explains the circumstances under which the BLM may deny an application.

Paragraph (a)(4), consistent with this final rule replacing the term ''the Act'' with ''FLPMA'' discussed under § 2801.5, provides that the BLM may deny your application if issuing the grant would be inconsistent with applicable law or regulation.

The BLM did not carry forward paragraph (a)(9) of the proposed rule because the BLM's final rule, ''Update of the Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of FLPMA for Rights-of-Way,'' 89 FR 25922 (April 12, 2024) revised the BLM regulations at § 2804.26(a) to add the same provision allowing the BLM to deny applications that fail to comply with a deficiency notice . Thus, the revision in the proposed rule that would have added this provision is no longer necessary.

Paragraph (10) incorporate requirements of this final rule that are discussed elsewhere. Paragraph (a)(10) provides that an application may be denied for failing to pay costs, as noted in § 2804.22(b).

As proposed, paragraph (c) is removed in this final rule. Any request for an alternative requirement received after an application has been denied is not a timely request. Requests for an alternative requirement must be timely. See § 2804.40(c) for further information on timely requests.

The BLM received a comment recommending that the BLM add another provision following section (a)(4), suggesting that this new provision address protection of special conservation areas managed by the BLM or other federal or state agencies. The BLM believes that including the suggested change to this section is unnecessary. The BLM's process to deny an application under this section is addressed in the existing regulations at § 2804.26. The BLM's management of special conservation and other sensitive areas is generally determined through the BLM's resource management planning and NEPA processes. The BLM retains broad authority to deny an application on the basis that it would not be in the public interest, which may also address this concern to deny certain applications.

Section 2804.30 [Removed and Reserved]

Section 2804.30 is removed and reserved in this final rule. No comments were received on this section and the BLM did not make any changes to this section in the final rule. Prior § 2804.30 addressed competitive leasing inside of designated areas. The content of the prior § 2804.30 is now duplicative of this final rule in §§ 2809.13, 2809.14, and 2809.17.

Section 2804.31 [Removed and Reserved]

Section 2804.31 is removed and reserved in this final rule. Prior § 2804.31 addressed competitive process for site testing. This portion of the rule was not used since first put in place in 2016 and is removed. The BLM may still hold competitive processes for site testing if there is a competitive interest or other reasons as identified in § 2809.10 of this final rule.

Some comments supported the removal of competitive processes for site testing grants, and other commenters suggested that the section may be useful in local field office decision making in the future. The BLM agrees that retaining requirements for competitive processes related to solar and wind energy is important. Subpart 2809 of this final rule provides the requirements for solar and wind energy competitive processes, which includes the requirements of this section.

Section 2804.35 Application Prioritization for Solar and Wind Energy Development Rights-of-Way

Section 2804.35 is retitled to ''Application prioritization for solar and wind energy development rights-of-way.'' This section provides for the relative importance of different criteria that vary from location to location, giving weight to local resource issues and circumstances that are not equally relevant for every application. Additionally, there are practical concerns for the BLM when processing solar and wind energy applications. This section provides that the relevant criteria are to be applied holistically to prioritize applications in a manner that would facilitate environmentally responsible projects and ensure that agency workloads are allocated appropriately. The revised section would also explicitly recognize that the BLM may identify additional criteria in guidance, which may be national in scope or specific to an area.

Paragraph (a) clarifies that the purpose of prioritizing applications is to allocate agency resources to processing applications that have the greatest potential for approval and implementation. The BLM revised this section from the proposed rule to clarify that the BLM's prioritization of an application is not a decision and is not subject to appeal under 43 CFR part 4.

One commenter asked whether the BLM's prioritization process might hinder development of renewable energy and potentially conflict with national priorities for renewable energy deployment. The BLM is endeavoring to

increase the responsible deployment of renewable energy on the public lands consistent with congressional and presidential direction. In addition, the BLM must continue to manage public lands under the principles of multiple use and sustained yield unless otherwise provided by law (43 U.S.C. 1732(a)). The prioritization criteria support national renewable energy goals by helping the BLM to consider applications for the projects that are most likely to succeed and ensure the BLM's continued stewardship of the public lands.

Paragraph (b) identifies criteria that the BLM may consider when prioritizing applications. This section provides discretion to the BLM as to how best to apply the criteria to prioritize processing solar or wind energy generation applications.

Some comments suggested prioritizing applications for projects inside DLAs. Other comments suggested other criteria that should be considered when prioritizing applications, such as the presence of existing leasing agreements and rights-of-way, whether the application complies with all state and federal regulations, the size or location of the project, project features, proximity to transmission, and protection of natural resources.

The BLM believes that these considerations are important, but no changes to the regulatory text are warranted since these considerations were already included in the proposed rule. The six listed criteria in the rule provide flexibility in how the BLM may apply the criteria for applications in the BLM's varied landscapes on which a resource may have different sensitivities in one location as compared to another location. Prioritizing projects based on siting in designated or preferred areas is addressed in paragraph (b)(1). The BLM addressed comments concerning existing leasing agreements or rights-of-way in the BLM's application processing steps in subpart 2804 of these rules. Paragraph (b)(4) addresses commenter suggestions regarding prioritizing applications based on compliance with federal regulation. Paragraphs (b)(2) and (b)(5) address the size or location, project features, proximity to electric transmission, and the protection of natural resources.

Several comments requested clarity on the application of the prioritization criteria, including a description of the relative importance of each criterion. Other commenters also suggested that they believe the BLM should be prohibited from prioritizing applications based on additional criteria that are not expressly listed in this section of the rule. In the BLM's experience, the relative importance of different criteria may vary from location to location due to resource considerations. Likewise, not all prioritization criteria are equally relevant for every application. The BLM has intentionally not set specific preferences or weights for the criteria it will apply when prioritizing applications. This final rule confirms that the BLM will consider the prioritization criteria holistically when considering applications, and that the BLM may establish additional criteria through local or national policy guidance.

In the final rule, the BLM changed paragraph (b) to refer to ''criteria'' instead of ''factors'' as proposed. This change is consistent with the BLM's use of the term ''criteria'' in paragraph (b)(6).

The first criterion is whether the proposed project is located within an area preferred for such development, such as a DLA. The BLM may reasonably presume that development projects proposed within these areas are more likely to proceed to approval as they pose less severe resource conflicts than other lands.

Some comments suggested that wind energy is disadvantaged since there are no wind energy designated leasing areas or equivalents. The BLM disagrees with these comments. First, the 2016 Desert Renewable Energy Conservation Plan (*https://blmsolar.anl.gov/documents/drecp/*) designated more than 192,000 acres of preferred development locations for solar, wind, and geothermal energy. Additionally, the criteria are not given specific preferences or weights when compared with one another, and, as such, the BLM would take into account the lack of wind DLAs when prioritizing wind energy development applications.

The second criterion is whether the proposed development avoids adverse impacts to or conflicts with known resources or uses on or adjacent to public lands and includes specific measures designed to further mitigate impacts or conflicts. When submitting an application to the BLM, the applicant must address known potential adverse resource conflicts, including those for sensitive resources and values that are the basis for special designations and protections, as well as potential conflicts with existing uses on or adjacent to the proposed energy generation facility. Under section 2804.12(b)(2), the applicant must also include specific measures to mitigate impacts or conflicts with resources and uses. Including this information is necessary for the BLM to determine that an application is complete. While subsequent consultation, public comment, and environmental review processes may reveal unknown resource or use conflicts, based on previous experience permitting wind and solar projects on public land, the BLM understands that projects with fewer known conflicts are more likely to proceed to approval and successful implementation.

The third criterion is whether the proposed project is in conformance with the governing BLM land use plans. Applications identify whether the proposed project is in conformance with the governing land use plan or would require an amendment or revision to the plan. The BLM may, in its discretion, consider applications for solar or wind energy generation facilities that would require an amendment or a revision to the governing land use plan under part 1600 of these regulations. However, such application could require greater resources to process and could present resource conflicts, which would result in a lower priority.

The fourth criterion is whether the proposed project is consistent with relevant State, local, and Tribal government laws, plans, or priorities. The purpose of this determination is not to enforce these State, local, or Tribal laws, plans, or priorities, but rather to promote comity and identify projects that are more likely to be successfully approved. In addition, applying this principle helps to ensure that the BLM takes into account the existing resource knowledge and expertise that may be available through State, local, and Tribal plans and priorities. To carry out this prioritization, the BLM may enter into or rely on existing agreements with State, local, or Tribal governments.

Some comments suggested that prioritization of an application should be subject to Tribal consultation. The BLM engages Federally recognized Tribes early in the application process under § 2804.12(b)(4), which allows Tribes to participate in preliminary application review meetings with the BLM and provide early information to the BLM about an application. Additionally, under paragraph (b)(4), the BLM will consider ''whether the proposed project is consistent with relevant State, Tribal, and local government laws, plans, or priorities,'' which may also include consultation with Tribes. Finally, the BLM acknowledges that E.O. 13175 sets forth criteria for when the BLM is required to consult with Tribes, and the BLM is committed to consulting with Tribes whenever such consultation is required

under the E.O., without regard to whether that requirement is specifically articulated in this rule.

The fifth criterion is whether the proposed project incorporates the best management practices set forth in the applicable BLM land use plans and other BLM plans and policies. This principle ensures that the BLM takes into account the knowledge and expertise that has gone into formulating these existing plans and policies. Should an application require amending a BLM land use or other plan, it is likely to require more time and effort to process.

The sixth criterion considers any other circumstances or prioritization criteria identified by the BLM in subsequent policy guidance or land use planning for an area.

Paragraph (c) provides that the BLM will prioritize applications, once complete (as described in § 2804.12(j) of this part). The BLM's prioritization may use any available information provided in the application or its Plan of Development, applicant responses to deficiency notices, and information provided to the BLM in public meetings or by other Federal agencies and State, local, or Tribal governments.

Paragraph (d) clarifies the BLM discretion to re-categorize an application's priority at any time. Re-categorizing an application may be based on new information that the BLM has received or on changes the applicant has made to the application. Re-categorizing an application may also be based on the BLM's need to adjust its workload, if circumstances warrant such re-prioritization.

Some comments expressed concern that denying or de-prioritizing an application prior to any final land use designation, such as those which may be made in the ongoing update to the 2012 Western Solar Plan, is inappropriate or pre-decisional. Comments further expressed that pending applications should not be denied before land use designations are made. The BLM is not constrained by ongoing or potential future land use planning processes, but it must manage public lands in conformance with the land use plans currently in effect. Accordingly, the BLM generally will not deny or deprioritize an application based on non-conformance with a future or ongoing land use planning effort. The criteria in the rule refer to consideration of governing land use plans. The BLM would deny or de-prioritize an application pursuant to its broad discretion in considering right-of-way applications based on existing information and existing land use plans. At the same time, the BLM retains authority to deny an application based on appropriate information even if the project would conform to the applicable land use plan, including, for example, where an application conflicts with current management policies that have not yet been incorporated into a land use plan.

Some comments suggested that the BLM should adopt a first-come, first-served system when processing applications or self-prioritization by an applicant for multiple applications within a single BLM field office. While in practice the BLM often processes applications on a first-come, first-served basis, it retains discretion to prioritize applications according to other considerations including input from an applicant about their applications. In practice, the BLM has observed that the prioritization of projects, particularly in Field and District Offices with high workloads, provides a number of benefits for the BLM and applicants. In coordinating with applicants, the BLM discusses workload capacities and will receive input from developers on the priority of their applications and whether there is a specific preferred order. Due to the many factors the BLM considers in this decision, however, the BLM's determination on a project's priority for processing may be different than that requested by a particular developer. Targeting workloads for BLM staff and management facilitates accelerated decision-making for those solar and wind energy development proposals with the greatest technical and financial feasibility and the least anticipated natural and cultural resource conflicts and increases consistency in processing project applications for the BLM and applicant. As detailed in the discussion of subpart 2809 in this rule, the BLM may also determine that there is a competitive interest for a right-of-way or system and hold a competitive process.

Section 2804.40 Alternative Requirements

Section 2804.40 of this final rule provides for situations when an applicant requests alternative requirements from the BLM if the requestor is unable to meet the requirements of this subpart. The final rule clarifies that this section applies specifically to the BLM's consideration of alternatives to the application requirements set forth in subpart 2804. Other requirements related to rights-of-way, such as the requirement to pay rent as set forth in subpart 2806, cannot be adjusted under this section. The BLM did not make a change to this section of the final rule.

Some commenters suggested that state and local governments should be brought into the decision-making process if an applicant is unable to meet the application requirements and they request an alternative to one or more application requirements. It is the BLM's responsibility to determine whether an alternative requirement for the application process should be allowed. Through agreements, including with cooperating agencies, the BLM engages with Tribal, Federal, State, and local government offices when it considers solar and wind energy development projects. The BLM would inform such partners of any changes to its requirements. Additionally, the BLM will consider under this section only requests for alternatives to modify the alternative requirements found in part 2804—*Applying for FLPMA Grants.* Requests to modify other requirements, including those identified in a decision authorizing a right-of-way, such as terms and conditions, cannot be approved under this section. This would include requests for alternative access.

Section 2805.10 How will I know whether the BLM has approved or denied my application or if my bid for a solar or wind energy development grant or lease is successful or unsuccessful?

Section 2805.10 of this final rule clarifies that agency decisions about whether to approve rights-of-way are generally administratively appealable while the issuance of a right-of-way grant or lease itself is not an opportunity for appeal.

Paragraph (c) of this final rule clarifies that ''The BLM will issue the right-of-way by signing the grant or lease and transmitting it to you.'' The BLM's act of returning the signed instrument to the holder constitutes the ''issuance'' of the right-of-way. Identifying the point in time at which the right-of-way is ''issued'' is important for calculating when the term of a right-of-way begins to run (see § 2805.11) and when the holder's obligation to pay rent begins (see § 2806.12). Identifying the point at which the right-of-way is ''issued'' is also important for clarifying which actions are subject to the conditions in Section 50265(b)(1) of the IRA, which imposes conditions on when the Secretary may ''issue a right-of-way for wind or solar energy development on Federal land.'' The BLM did not make a change to this section of the final rule.

Section 2805.11 What does a grant or lease contain?

Section 2805.11 of this final rule revises the right-of-way authorization term length for certain facilities, and the final rule includes minor updates to the proposed rule to improve technical clarity. No change was made in this section of the final rule due to public comment.

The BLM's final rule ''Update of the Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of FLPMA for Rights-of-Way,'' 89 FR 25922 (April 12, 2024), updated § 2805.11 to redesignate paragraph (b) to paragraph (c). Proposed revisions from this rule under § 2805.11(b) are now finalized under 2805.11(c) consistent with the redesignation of this paragraph.

Redesignated § 2805.11(c) addresses the duration of rights-of-way. Section 2805.11(c)(2) provides specific terms for solar and wind energy grants and leases. Paragraphs (c)(2)(iv), (c)(2)(v), and (c)(4) now show the maximum terms for solar and wind energy generation facilities, energy storage facilities that are separate from energy generation facilities, and electric transmission lines with a capacity of 100 kV or more. The term for a grant or lease for these types of authorizations may be up to 50 years. Revisions under this section are consistent with those made under § 2801.9(d).

Paragraph (c)(2)(iv) is updated for the maximum term for both grants and leases, for up to 50 years (plus initial partial year of issuance).

Paragraph (c)(2)(v) is updated for the maximum term for rights-of-way for energy storage facilities that are separate from energy generation facilities. Although the BLM generally treats energy storage facilities as linear rights-of-way, rather than solar or wind energy development rights-of-way, for purposes such as rent calculation, the BLM believes that the longer term of ''up to 50 years,'' commensurate with the maximum term for solar or wind energy development rights-of-way, will facilitate the transition to cleaner sources of energy in the United States.

Paragraph (c)(4) would be added to update the term for electric transmission lines with a capacity of 100 kV or more, for up to 50 years, commensurate with the term for solar and wind energy development projects and energy storage facilities that are separate from energy generation facilities.

Some comments sought clarification on whether a presumptive leaseholder's (which is defined at § 2809.15(b)(1)) control of the property would preclude other uses, such as grazing or recreation, or during any period when use is not immediately initiated. Prior to the competitive process, a prospective bidder would be informed as to whether they were bidding on a location with existing authorized uses, such as recreation or grazing or other known casual uses. The BLM's identification of a presumptive leaseholder or issuance of a lease would not automatically exclude authorized uses. Rather, the BLM must follow its existing processes prior to ending existing uses; for example, in the context of livestock grazing, notice and cancellation is provided, subject to any required public comment periods.

The BLM understands from comments it has received that there is some confusion whether solar and wind energy developments may also be projects. In the final rule, the BLM revised paragraph (b)(2) to add ''projects'' to clarify that solar and wind energy developments may be projects.

Section 2805.12 What terms and conditions must I comply with?

Section 2805.12 of this final rule lists certain terms and conditions that apply to all right-of-way grants and leases. The BLM revised this section to address public comments regarding the term length authorized for certain facilities. The BLM also included revisions to prevent a holder's non-use of the public lands for the authorized energy generation facilities.

Paragraph (c)(8) is added to this final rule addressing concerns raised in relation to § 2801.9(d) regarding the longer term for grants and leases. This rule provides diligent operation requirements wherein the holder of a solar or wind energy development grant or lease must maintain at least 75 percent of energy generation capacity for the authorized facility for the grant or lease term. A failure to meet this operational capacity for two consecutive years may support the suspension or termination of the grant or lease under §§ 2807.17 through 2807.19. The BLM would send notice to the grant or leaseholder with a reasonable opportunity to correct any noncompliance with the diligent operation requirement, including resuming use of the right-of-way.

The BLM believes it is reasonable to establish a requirement that solar and wind energy generation developments must operate within 75 percent of their generation capacity, allowing a 25 percent operational change for each year. [6] This allows a solar or wind operator to safely accommodate operational changes related to unforeseen circumstances and maximize their energy production without the need to coordinate with the BLM for normal operations. A sustained reduction in output, such as for anomalous storm years or changes to a development's technology, that reduce the energy generation below 75 percent of the project's capacity would require coordination with the BLM to update project information. The energy generation capacity is first established by the right-of-way holder under section 2806.52(b)(5) in the first annual certified statement, and then informed by subsequent years' operational capacities in the annual statement. Since the BLM bills in advance for a calendar year (see part 2806 for further information on solar and wind energy capacity fee), the BLM believes that this operational standard is appropriate for the orderly administration of the public lands and to ensure appropriate use of its resources.

In response to the BLM's notice, a holder must provide reasonable justification for the reductions in energy generation, such as delays in equipment delivery, legal challenges, or Acts of God. Holders must also provide the anticipated date when energy generation will resume and a request for extension under paragraph (e) for an extension of operations period to satisfy the two-year diligent operation requirements of paragraph (c)(8). The BLM may deny a request for extension for failure to comply with this section.

The BLM will use the annual certified statement required under § 2806.52(b)(5) to determine whether a holder has been meeting the minimum energy generation capacity for the diligent operation requirement. Under paragraph 2806.52(b)(5)(vi), the holder must notify the BLM if they will reduce the amount of energy generated by 25 percent or more for that year. Two consecutive years with reduced energy generation would support the BLM's notice to the grant or leaseholder of noncompliance with the diligent operation requirement.

Paragraph (e)(2) of this final rule clarifies that the option of requesting alternative stipulations, terms, or conditions does not apply to terms or conditions related to rents or fees. As with requests for alternative application requirements under § 2804.40, requests

[6] As demonstrated in a 2018 NREL study, forecast modeling for solar photovoltaic and wind energy developments is generally within 10 percent of expected capacities over a one-year period. *https://www.nrel.gov/docs/fy23osti/79498.pdf,* Solar PV, Wind Generation, and Load Forecasting Dataset for ERCOT 2018: Performance-Based Energy Resource Feedback, Optimization, and Risk Management (P.E.R.F.O.R.M.)

for alternative stipulations, terms, or conditions under § 2805.12 are limited to technical obligations of the applicant or holder and not to the holder's obligation to compensate the United States for the use of the public lands and their resources. Requests for exemptions or deviations from the general rent provisions of subpart 2806 should be made under provisions of that subpart that specifically address such exemptions or deviations, such as existing § 2806.15(c) (not revised in this rulemaking), which sets forth a procedure for asking the BLM State Director to waive or reduce a holder's rent payment, or § 2806.52(b)(1)(i), which describes certain circumstances under which the BLM may calculate the capacity fee based on an alternative MWh rate.

A comment suggested that the fees could be based on third-party evaluations, such as an appraisal. The BLM considered whether an appraisal specific to each authorization would be appropriate and determined that using such a process would be costly and add considerable time to the processing of an application. The BLM chose not to use an appraisal, except when it determines under § 2806.70 that its rent schedules do not apply to the underlying right-of-way use. For example, if the BLM receives a right-of-way application requesting a permit for a long-term landscape art installation, the schedules for transmission, solar or wind energy development, or communications sites would not apply, and the BLM may elect to use an appraisal to determine the appropriate rent. This final rule also provides for a specific alternative MWh rate for determining the capacity fee under § 2805.62(b)(1)(i) for development projects that use a Power Purchase Agreement (PPA). Such agreements must be provided to the BLM for review. If the BLM determines the lower rate is appropriate, it will use such agreements in place of the calculated MWh rate. The BLM did not make a change in response to this comment.

A comment requested that the BLM require applicants to include PLAs and add union labor protections as a term and condition of solar and wind energy rights-of-way. In this final rule, the BLM has elected to provide an opportunity for holders to receive capacity fee reductions under certain conditions, including where the holder can show it is using PLAs for the construction of the planned facility (see § 2806.52(b)), consistent with the reduction authority under the Energy Act of 2020. However, in administering the public lands, the BLM is making such compliance voluntary, offering the capacity fee reduction to incentivize the use of PLAs for solar and wind energy development projects instead of mandating compliance with such a term. The BLM believes this voluntary option provides opportunities to a wide variety of potential holders and recognizes the effort of those who qualify for such reductions consistent with criteria in § 2806.52(b). No change was made in the final rule due to this comment.

Section 2805.13 When is a grant or lease effective?

Section 2805.13 of this final rule includes a minor technical clarification to the title and section, adding ''or lease,'' to build consistency for authorization term lengths inside and outside of DLAs.

The BLM received comments opposing this section regarding term length of authorizations. One comment recommended the BLM extend the maximum term from 30 years to 50 years only for leases inside DLAs. Another comment opposed extending the maximum term to 50 years for any authorization. The BLM addressed this and other similar comments under § 2801.9 of this preamble.

Section 2805.14 What rights does a right-of-way grant or lease convey?

Section 2805.14 of this final rule clarifies that the term ''right-of-way'' is the category of authorizations that generally are issued as a grant or a lease under Title V of FLPMA. This clarity has become increasingly important for the internal and external understanding of right-of-way authorizations with the passage of new legislation. The BLM did not receive comments on this section.

The title is revised to ''What rights does a right-of-way grant or lease convey?'' The title clarifies that this section applies to both grants and leases.

Paragraph (g) removes the text ''solar or wind energy development'' and adds ''right-of-way'' to now read as ''right-of-way grant or lease.'' This section provides for when an applicant applies to renew any right-of-way grant or lease under § 2807.22.

Section 2805.16 If I hold a grant or lease, what monitoring fees must I pay?

The BLM's final rule ''Update of the Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of FLPMA for Rights-of-Way'' 89 FR 25922 (April 12, 2024) updated the BLM Headquarters address in § 2805.16. Thus, the proposed rule's update to the BLM Headquarters address is no longer necessary. The BLM did not receive comments on this section and did not include it in the final rule.

Subpart 2806 Annual Rents and Payments

Subpart 2806 of this final rule clarifies that the term ''right-of-way'' is the category of authorizations that are generally issued as a grant or a lease under Title V of FLPMA. This clarity has become increasingly important for the internal and external understanding of right-of-way authorizations with the passage of new legislation.

In subpart 2806, the BLM sets the acreage rent and capacity fee calculation methodologies for solar and wind energy development rights-of-way. Section 504(g) of FLPMA, 43 U.S.C. 1764(g), requires right-of-way holders, subject to several narrow exceptions, ''to pay in advance the fair market value'' for the use of the public lands. Section 102(a) of FLPMA, 43 U.S.C. 1701(a), clarifies that ''it is the policy of the United States that . . . the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute.'' The BLM has consistently taken the position that this statutory mandate includes the authority to charge acreage rent and capacity fees that reflect the fair market value of the public lands and their resources. For example, the preamble to the BLM's 2016 Final Rule, *Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development and Technical Changes and Corrections,* explained that ''(t)he BLM has determined that the most appropriate way to obtain fair market value is through the collection of multicomponent fee [sic] that comprises an acreage rent, a MW capacity fee, and, where applicable, a minimum and a bonus bid for lands offered competitively . . . . [T]he collection of this multicomponent fee will ensure that the BLM obtains fair market value for the BLM authorized uses of the public lands, including for solar and wind energy generation.'' 81 FR 92122, 92134 (Dec. 19, 2016). In that final rule, the BLM further explained that the use of a multicomponent rent and fee structure that comprises an acreage rent, a MW capacity fee, and in some cases also a minimum and a bonus bid assists the BLM in achieving important objectives, including identifying and capturing fair market value for the use of public land, providing a consistent approach with other categories of public land uses, encouraging efficient use of the public lands by reducing relative costs for comparable projects using fewer acres, and employing an approach

consistent with existing policies and regulations governing the BLM's renewable energy program. *See id.* The multicomponent fee of this final rule will continue to advance important objectives that serve the public interest, including allowing the BLM to capture fair market value for use of the land (subject to reductions pursuant to Energy Act of 2020 authority).

In the Energy Act of 2020, 43 U.S.C. 3003, Congress amended the fair market value requirement of Section 504(g) of FLPMA by providing the Secretary with discretion to ''consider acreage rental rates, capacity fees, and other recurring annual fees in total when evaluating existing rates paid for the use of Federal land'' for solar and wind energy projects and reduce acreage rental rates and capacity fees if the Secretary makes certain findings, including ''that a reduced rental rate or capacity fee is necessary to promote the greatest use of wind and solar energy resources.'' Consistent with FLPMA and the Energy Act of 2020, the BLM will continue to charge solar and wind energy rights-of-way acreage rent and capacity fees. The final rule implements a methodology that bases rent and fee rates on local land values and wholesale energy market prices. This methodology also supports the direction in the Energy Act of 2020, 43 U.S.C. 3004, of meeting national clean energy objectives, including the congressional goal of permitting 25 GW of renewable energy by 2025 on Federal lands through reductions in rental rates and capacity fees. As described in the section-by-section discussion for subpart 2806, this final rule is utilizing the authority in 43 U.S.C. 3003 to adjust the fair market value requirement through reductions in rental rates and capacity fees for solar and wind energy projects on public lands.

Under the final rule, acreage rent rates for solar and wind energy rights-of-way are determined using the NASS Cash Rents Survey, which reflects a nominal value of the land at the time the right-of-way is issued and prior to commercial use. This per-acre land rental value will be multiplied by an encumbrance factor (which differentiates between solar and wind energy facilities) and an annual adjustment factor that accounts for changes in the value of the land over the lifetime of the right-of-way due to inflation and similar factors. Because the NASS Cash Rents Survey used for solar and wind acreage rents reflects a valuation of annual rent, no rate of return is applied when determining solar and wind energy acreage rents. The acreage rent rate reflects a nominal value of the land to continue to maintain site control after the right-of-way is issued.

Once a solar or wind energy generation facility is utilizing the solar or wind resources on public land to produce electricity, the BLM may charge the capacity fee for the right-of-way unless the acreage rent remains higher than the fee. The capacity fee is determined in part using the annual MWh production multiplied by either wholesale power pricing information or pricing figures specific to a project's PPA to determine the market value of the electricity generated from the project. The wholesale power pricing information or other pricing basis variables in the BLM's calculation, like the pastureland rental value based on the NASS Cash Rents Survey used for calculating acreage rents, will be fixed at the time the right-of-way is issued and will be updated using a fixed annual adjustment factor. This market value of the electricity generated will then be multiplied by a rate of return based on a percentage of wholesale pricing and by certain qualifying fee reductions to arrive at a capacity fee for the authorized project.

Some comments suggested that fees should be compared with the fees associated with other energy sources instead of being based on the per-acre values for pastureland. Other comments expressed support for the BLM using the NASS Cash Rents Survey to calculate acreage rent rates. The BLM manages different energy sources, *e.g.,* oil and gas and geothermal, consistent with the applicable laws for each. As such, rent and fee values promulgated in regulations consider differences under law. Solar and wind energy generation facilities on public lands are authorized under Title V of the FLPMA (43 U.S.C. 1761–1771) and its implementing regulations at 43 CFR part 2800. Section 504(g) of FLPMA generally sets the requirements for how the BLM will collect rents and fees for use of the public lands and their resources through a right-of-way. These requirements differ from those in the MLA (30 U.S.C. 181 *et seq.*) and the Geothermal Steam Act (30 U.S.C. 1001 *et seq.*), and thus a comparison of fees for production of these different energy sources on public lands would be inappropriate and irrelevant. In this final rule, the BLM updates rents and fees for solar and wind energy development rights-of-way under the authority provided by FLPMA to reflect the fair market value for use of the public lands and their resources by using acreage rental rates that reflect local land values prior to commercial electricity production through using pastureland cash rent survey values by NASS. The BLM then applies its authority under the Energy Act of 2020 to provide reductions that are necessary to promote the greatest use of wind and solar energy resources.

One comment suggested that the proposed rule should not offer acreage rent and capacity fee reductions to projects outside DLAs and instead should implement project-specific reductions and other incentives to promote responsible development inside DLAs. DLAs are locations on public lands that the BLM has designated through the land use planning process as priority areas for solar and/or wind energy development. Limiting acreage rent and capacity fee reductions to DLAs would not, however, meet the Energy Act of 2020's direction to promote the greatest use of wind and solar resources. To date, the BLM has only allocated DLAs for solar facilities on public lands within six southwestern states for locations that are predominately favorable for thermal solar projects (*i.e.,* concentrated solar). The BLM currently has no DLAs allocated for solar in other states. Furthermore, the BLM has no DLAs allocated for wind energy development on public lands in any state. The BLM determined that limiting rent and fee reductions to only DLAs would be sub-optimal in supporting clean energy goals. As such, the final rule will provide for rent and fee reductions on public lands both inside and outside DLAs, which will serve the BLM's purpose of promoting the greatest use of wind and solar energy resources on public lands.

One comment suggested that subpart 2806 should not eliminate fair market value for rental and leases on public lands or the competitive bid process. The commenter did not support incentivizing renewable development for a specific project by eliminating the competitive leasing process. Contrary to the commenter's suggestion, this final rule does not eliminate the BLM's ability to utilize a competitive bid process for solar and wind energy development. The final rule adjusts the competitive process requirements for wind and solar energy development proposals within DLAs by aligning it to be consistent with agency discretion for utilizing a competitive process outside DLAs when the BLM's authorized officer decides to use a competitive process.

Some comments suggested that this rule should generally raise fees for developers and require more upfront mitigation money to address long term environmental issues. Related

comments suggested that the BLM should establish an environmental mitigation fund in addition to rents and fees to accommodate the high probability of direct and cumulative impacts. The BLM considered these comments and is not making these suggested changes. The BLM believes such changes are unnecessary because the final rule does not limit the BLM's existing authority and ability to appropriately impose mitigation requirements as a component of the terms, conditions, and stipulations for a solar or wind energy development. The BLM will continue to require appropriate mitigation and conditions of approval to address environmental impacts for right-of-way grants and leases without further requirements promulgated under this final rule.

Other commenters stated that the BLM should implement a minimum efficiency criterion to ensure that consumers receive the necessary amount of power to keep up with demand. The BLM disagrees with comments suggesting that the BLM should regulate how efficiently a project must operate. Developing a project is a complex process that depends on several factors, including the availability and cost of appropriate technology. The BLM has included a provision in this final rule that sets an operational standard requiring a development project to annually maintain at least 75 percent of its energy generation capacity. See § 2805.12(c)(8) for further information on the operational standards for solar and wind energy development projects on public lands.

Section 2806.10 What rent must I pay for my grant or lease?

Section 2806.10 of this final rule provides a minor technical clarification described below. The BLM did not receive comments on this section and has made no changes to it in the final rule.

Section 2806.10 provides rent requirements that apply to all grants and leases, requiring payment in advance, consistent with Section 504(g) of FLPMA, as amended. New § 2806.10(c) would clarify to a reader that the per acre rent schedule for linear right-of-way grants must be used unless a separate rent schedule is established for your use—such as with communication sites under § 2806.30 or solar and wind energy development facilities per § 2806.50—or the BLM determines under § 2806.70 that its rent schedules do not apply to the underlying right-of-way use.

Section 2806.12 When and where do I pay rent?

Section 2806.12 of this final rule provides a minor technical clarification as described below. The BLM did not receive comments on this section and has made no changes to it in the final rule.

Paragraphs 2806.12(a) and (b) describe the proration of rent for the first year of a grant and the schedule for payment of rents. Paragraphs 2806.12(a) and (b) would be revised by deleting the term ''non-linear,'' which is not defined in the regulations, to clarify that these provisions apply to all right-of-way grants or leases.

Section 2806.20 What is the rent for a linear right-of-way grant?

Section 2806.20 of this final rule clarifies the BLM's mailing address. Section 2806.20(c) addresses how to obtain a current rent schedule for linear rights-of-way. This paragraph provides the BLM's mailing address of record by reference to § 2804.14(c).

Solar and Wind Energy Development Rights-of-Way

The existing regulations contain two undesignated center headings to organize and differentiate sections pertaining to solar (see existing §§ 2806.50 through 58) and wind (see existing §§ 2806.60 through 68) energy rights-of-way. The final rule revises those sections and undesignated headings to provide a single set of provisions for all solar and wind energy development rights-of-way. The rent, fee, and payment requirements under the final rule are discussed in the following sections and are identical for solar and wind except for the difference in the encumbrance factor used in calculating the acreage rent that is discussed under § 2806.52(a). Sections 2806.50 through 2806.58 address solar and wind energy rents and capacity fees.

The final rule updates the acreage rent and capacity fee calculation methods to improve predictability of rates for solar and wind energy development projects on public land. The combined rent and fee calculation methodologies have the flexibility to meet FLPMA's fair market value requirement while also applying calculation factors to reduce rates to promote the greatest use of wind and solar energy resources on the public lands consistent with the Energy Act of 2020.

The final rule retains flexibility to utilize different data sources for electricity market values over time. Developers of solar and wind energy on public lands will have improved rate predictability over the term of an authorization. This is accomplished by establishing an acreage rate and capacity fee rate at the beginning of a grant or lease term with upfront built-in rate adjustments and by indexing the capacity fee to the annual energy production.

The BLM's acreage rent is the average of the state-wide pastureland rent from the NASS Cash Rent Survey. The acreage rent is the minimum payment made to the BLM each year by the developer. See § 2806.52(a) for further information on the acreage rent.

The capacity fee, based on wholesale power prices, serves to compensate the United States for long-term site control and the production value of the electricity generated by solar and wind energy projects on public lands. The capacity fee will be collected annually, but only when the capacity fee exceeds the acreage rent for the year. See § 2806.52(b) for further information on the capacity fee.

The final rule includes certain reductions that may be applied under the authority granted to the Secretary in the Energy Act of 2020, which provides that annual acreage rent and capacity fees may be reduced if the Secretary determines that a reduced rental rate or capacity fee is necessary to promote the greatest use of wind and solar energy resources, among other reasons. Adjustments to the capacity fee from the MWh rate reduction, The Domestic Content reduction, and PLA reduction are discussed in greater detail in § 2806.52(b)(1)(ii) through (iv). The BLM has determined that the rate reductions in this final rule would help to promote the greatest use of wind and solar energy resources on public lands.

Section 2806.50 Rents and Fees for Solar and Wind Energy Development

Section 2806.50 of the final rule requires the holder of a solar or wind energy right-of-way to pay in advance the greater of either an annual acreage rent or a capacity fee, consistent with Section 504(g) of FLPMA (43 U.S.C. 1764(g)). There are no provisions in this rule for a phased-in rent or fee.

The acreage rent or capacity fee, as applicable, is calculated based on the requirements found in §§ 2806.11 and 2806.12. The acreage rent is calculated according to the formula set forth in § 2806.52(a), while the capacity fee is calculated according to the formula set forth in § 2806.52(b).

Some comments expressed concern that this rule creates negative market incentives by keeping acreage rents and capacity fees artificially low. These

commenters suggest that the BLM should implement a consistent yearly increase in acreage rent and capacity fees based on initial rates, with reductions provided only for projects in specific circumstances, such as siting within solar zones or on disturbed lands, and with strong commitments to domestic content. The BLM is cognizant that the rent and fee rate structure is important for promoting the greatest use of wind and solar energy resources and is a critical component to providing short- to medium-term stability for emerging energy markets. There is a strong public interest in maintaining rate predictability for electricity generating entities that are subject to long-term interconnect and PPAs. This final rule sets rates that are also increased annually, through the annual adjustment factor (see § 2806.52(b)(2)). The annual adjustment continues through the term of the authorization. Additionally, this final rule provides an opportunity for rate reductions for all solar and wind energy development projects that further the goals of the Energy Act of 2020, which is to authorize 25 gigawatts of renewable energy on Federal lands by 2025 and further national clean energy priorities. The BLM did not make a change to this section of the final rule.

Section 2806.51 Grant and Lease Rate Adjustments

Section 2806.51's title is changed from the proposed rule to clarify that this section applies to all grants and leases. This section provides for right-of-way grant and leaseholders to transition to the new rate making under this final rule through an affirmative request to the BLM. Absent a request, they would retain the rate setting method in effect prior to this final rule.

Paragraph (c) informs holders of existing solar or wind energy development rights-of-way that they may request the new rate methodology in this final rule be applied to their existing grant or lease. Existing holders have two years from the date this final rule becomes effective to request a change to the new rate making method. The BLM will continue to apply the grant holder's or lessee's current rate methodology if a timely request is not received.

The BLM received a comment that does not support any rate reduction based on an estimation of energy generated because all rates should be assessed on actual production. The BLM has the administrative flexibility to collect payment in advance based on estimated energy. The amount the BLM may collect for the right-of-way may change once the BLM determines the actual energy production on the right-of-way. The BLM will reconcile any difference in the amount due and credit any overpayment, and right-of-way grant holders and lessees are liable for any underpayment. See § 2806.52(b)(5) of this rule for the BLM's annual certified statement that provides more information about the estimated and actual energy generation. The BLM did not change this section of the final rule in response to this comment.

Some comments recommended that the final rule cap the total amount of reduction in acreage rents and capacity fees that an individual leaseholder can claim for a right-of-way. The final rule does not cap the number or level of reductions an applicant or holder may qualify for; however, the final rule does require that the BLM collect no less than the acreage rent for the right-of-way each year, notwithstanding the number of reductions that apply to the grant per § 2806.52(b). The BLM did not change this section of the final rule in response to this comment.

Some comments suggested that rate reductions may be achieved without any changes to where the BLM sources its market pricing data. In the final rule, the BLM preserves its discretion to change the source of market data. In the BLM's experience, access to such information may change over time. For this final rule, the BLM is using the Energy Information Administration pricing data that may be found at *https://www.eia.gov/electricity/wholesale/*. Energy Information Administration data is free and open to the public, increasing transparency into the BLM's rate schedule. The BLM did not change to this section of the final rule in response to this comment.

Some comments recommended that the BLM seek to increase domestically sourced products and materials and that the BLM should use this rule to mandate robust domestic content thresholds for projects permitted on Federal land. The BLM agrees with these commenters' interest in increased use of domestic content for solar and wind energy development projects. This final rule includes a financial incentive in the form of a ''Domestic Content reduction'' under § 2806.52(b)(1)(iii) to encourage holders to use components made or manufactured in the United States in the construction of the solar or wind energy project. This capacity fee reduction is intended to offset costs associated with using only iron, steel, manufactured products, and construction materials incorporated into the project that are produced in the United States consistent with the direction in the Energy Act of 2020. The BLM anticipates that this proposed capacity fee reduction would increase economic certainty for renewable energy projects on BLM-managed public lands. By incentivizing the use of domestically made parts and materials in exchange for a reduced capacity fee, the BLM expects to reduce costs for developers that choose to incorporate domestically produced materials into their projects. The BLM believes that this reduction will help increase demand for domestically produced renewable energy parts and materials. These intended outcomes would serve to promote the greatest use of wind and solar energy resources on public lands. Currently, wind and solar energy developers face a choice between relying on foreign-sourced parts and materials or paying higher prices for domestically sourced parts and materials, if available. (See for example the Department of Energy's Solar Photovoltaics—Supply Chain Deep Dive Assessment, available at *https://www.energy.gov/sites/default/files/2022-02/Solar%20Energy%20Supply%20Chain%20Report%20-%20Final.pdf*). As seen in recent years, uncertainty in global supply chain dynamics has the potential to delay deployment of solar and wind energy development projects on public lands. Using incentives to create demand for American-made renewable energy parts and materials will help develop domestic supply chains and reduce impacts on renewable energy deployment on public lands from potential supply chain delays. The BLM believes that incentivizing the use of parts and materials that qualify for the Domestic Content reduction will increase the responsible deployment of renewable energy and will increase commercial interest in the use of public lands, promoting the development of solar and wind energy resources on public lands. This final rule changes the definition used for domestic content to align with the BABA Act and implementing guidance at 2 CFR 184. See § 2806.52(b) for further information on the domestic content reduction.

Some comments suggested that a broad approach to rate reductions may have revenue implications and fail to guarantee that taxpayers obtain a fair return for the utilization of our public lands. Consistent with congressional and presidential direction, the BLM is endeavoring to increase the responsible deployment of renewable energy on the public lands and as part of that direction has been authorized to reduce rents and fees to promote the greatest

use of wind and solar resources on public lands. As part of this rulemaking process, the BLM carefully deliberated on how to implement the directives and new authorities while maintaining a reasonable return for the use of the public lands and their resources. Following the BLM's implementation of previous rate reductions in calendar year 2022 for solar and wind energy development projects, the agency received feedback which generally indicated that overall costs for permitting, development, and operations on Federal public lands were still perceived as a barrier to entry and a disincentive to the BLM's ability to promote solar and wind deployment on public lands. The BLM believes the fee reductions will assist in removing barriers inhibiting deployment of solar and wind development on public lands.

Section 2806.52 Annual Rents and Fees for Solar and Wind Energy Development

Section 2806.52 of this final rule describes the BLM's methodology to determine the acreage rent and capacity fee for solar and wind development rights-of-way. Payment is required of the greater of either an acreage rent, which is calculated in advance of authorization, or a capacity fee, which is calculated upon the start of energy generation. This section was revised based on public comments.

Section 2806.52(a) provides that acreage rent would be determined by multiplying the number of acres authorized for a project (rounded up to the nearest tenth) by the state-specific per-acre rate from the solar and wind energy acreage rent schedule in effect at the time a grant or lease is issued. The acreage rent would be the minimum yearly payment for a grant or lease and would not be required if the capacity fee under paragraph (b) of this section exceeds the acreage rent.

Paragraph (a)(1) explains that the per-acre rate is calculated by multiplying the state-specific per-acre value by the encumbrance factor and a factor that reflects the compound annual adjustment since the start of the grant or lease term, according to the formula A $\times$ B $\times$ ((1 + C) ^ D)).

Paragraph (a)(1)(i) identifies ''A'' as the per-acre rate, using the state-specific per-acre value from the solar or wind energy acreage rent schedule for the state where a project is located for the year when the grant or lease is issued. The average per acre value will be determined using the NASS pastureland rents reported within the previous 5-year period. The BLM will update the acreage rent schedule and its per-acre rate every 5 years consistent with the timing of rent adjustments under § 2806.22 for the linear rents schedule. Based on the pastureland rent value in the NASS Cash Rents Survey through 2021, the most recent 5-year average ranges from $2.10 per acre in Arizona to $12.60 per acre in California with a median value of $6.62 per acre in the Western States. The next year the BLM will update its rent schedule will be for calendar year 2026.

Using Nevada as an example for how the BLM will average NASS pastureland rents, assume that NASS reported values of $10.00, $13.00, and $10.00 per acre respectively for 2019, 2020, and 2021. NASS reported values during the 5-year period only for those 3 years and did not report values for 2017 and 2018. In that case, the BLM would average the reported values using three years for that 5-year period, which would equate to $11.00 per acre.

The per-acre rate charged to the right-of-way holder for a grant or lease will not change once calculated and the authorization is issued. Rates for an existing authorization will not change with updates to the acreage rent schedule; instead, the acreage rent will be adjusted by the annual adjustment factor, ''C'' in the formula above, under 2806.52(a)(1)(iii).

Paragraph (a)(1)(ii) identifies ''B'' in the formula above as the encumbrance factor. The encumbrance factor is applied to account for the intensity of the solar or wind development's surface use of the public lands. In the final rule, solar energy generation facilities are subject to a 100 percent encumbrance factor and wind energy generation facilities are subject to a five percent encumbrance factor. The 100 percent encumbrance factor for solar facilities reflects a greater intensity of development on the surface of public lands and a virtual exclusion of other uses on the right-of-way. The five percent encumbrance factor for wind facilities recognizes that a wind energy facility only partially encumbers the land, allowing other uses to co-exist.

Some comments suggest that a lower encumbrance value for solar is appropriate, noting that facilities may incorporate design elements or construction methods that reduce impacts to resources, such as raised fences for wildlife passage or vegetation disturbance caps. The BLM appreciates that projects incorporating such improvements may cause fewer impacts to public land resources. However, the BLM disagrees that such improvements reduce the encumbrance factor, which is based on the occupancy of the land and impact to other uses of the land. Solar energy developments have a greater occupancy of the land and impact to other uses because they preclude the majority and sometimes all other uses. This encumbrance factor for solar energy developments is appropriate for public lands, and the BLM retains its 100 percent encumbrance factor for this rule.

One comment asserted that the proposed encumbrance value of five percent for wind energy is too low and should be set around 50 percent and that if the BLM decreases the encumbrance factor from 10 percent, the BLM should a explain its rationale in this rule. Others believed the encumbrance factor should be lower, asserting that a mid-point encumbrance factor of 3 percent is appropriate based on the Department of Energy's Wind Vision analysis. The BLM considered the intensity of the surface use and exclusion of other uses when setting the encumbrance factor in this final rule. While the commenters that advocated for a 50 percent encumbrance factor did not provide data supporting that figure, the National Renewable Energy Laboratory has found that generally ''only a small fraction of that area (<1%–4%) is estimated to be directly impacted or permanently occupied by physical wind energy infrastructure.'' [7] In practice, the BLM has found that, based on geography or project design, and effect on other uses, the encumbrance may be more or less than that reported by NREL occupied land percentages and therefore set a five percent encumbrance factor for wind energy.

Paragraph (a)(1)(iii) clarifies that ''C'' in the formula above is the annual adjustment factor, which is three percent, and Paragraph (a)(1)(iv) clarifies that ''D'' is the year of the grant or lease term, where the first year (whether partial or a full year) would be 0 (that is, there is no inflation for the first year of the term). Under the final rule, the annual adjustment factor would be fixed at three percent and compounded annually for the term of the authorization.

Paragraph (a)(2) describes where you may obtain a copy of the current per-acre rates for the solar and wind energy rent schedule.

Paragraph (b) describes that the capacity fee is calculated by multiplying the MWh rate or the alternative MWh rate (which is described below), the MWh rate reduction, the Domestic Content reduction, PLA reduction, the

[7] *https://www.nrel.gov/news/program/2022/nrel-explores-the-dynamic-nature-of-wind-deployment-and-land-use.html.*

rate of return, and the annual power generated on public lands for the grant or lease in question (measured in MWh) by a factor that reflects the compound annual adjustment. The capacity fee is required to be paid annually beginning in the first year that generation begins for the energy generation facility. There will be no capacity fee levied for the first year or any other year if the acreage rent exceeds the capacity fee. The formula for calculating the annual capacity fee is A × B × C × D × [(1 + E) ^F] × G × H.

Paragraph (b)(1)(i) describes that ''A'' is either the MWh rate, an amount determined based on the average of the annual weighted average wholesale price per MWh for the major trading hubs serving the 11 Western States of the continental United States, or the alternative MWh rate. The MWh rate is calculated based on the wholesale prices from the full five calendar-year period preceding the most recent MWh rate adjustment before the right-of-way was issued, rounded to the nearest dollar. There is no MWh rate phase-in for energy generation facilities except for existing holders that elect to continue paying under their current rate adjustment method per § 2806.51(c).

The BLM may use an alternative MWh rate when a grant or leaseholder enters into a PPA with a utility for a price per MWh that is lower than the average of the annual weighted average wholesale price. In those instances, the BLM will determine if the rate in the PPA is appropriate to use instead of the MWh rate. For example, an alternative MWh rate may not be appropriate if a utility issues itself a PPA for its solar or wind energy development. If the rate in the PPA is appropriate, then the BLM would set an alternative MWh rate for the grant or lease at the rate in the PPA.

The BLM received a request to remove the BLM's discretion to use an alternative MWh rate rather than a MWh rate calculated on the average wholesale pricing as described under § 2806.52(b)(1)(i). The BLM provides an opportunity for an alternative MWh rate in this rule in the event that there is a difference between wholesale pricing (energy pricing at market) compared to the negotiated pricing that may be achieved in a PPA. The BLM understands from a recent report from Lawrence Berkeley National Lab (available at *https://emp.lbl.gov/utility-scale-solar/)* that PPA pricing may be less than wholesale market pricing. The BLM does not want to disincentivize reasonable development on public lands or more favorable power purchase rates, which would be contrary to national goals set by law and directed by executive order, by disincentivizing such actions. However, the BLM also wishes to ensure it retains the discretion necessary to ensure that an alternative MWh rate is appropriate. The BLM did not make changes in the final rule due to these comments.

In paragraph (b)(1)(ii), ''B'' is the *MWh rate reduction.* The final rule sets the capacity fee at 20 percent of the wholesale price per MWh or alternative MWh rate through calendar year 2035. This reduction is consistent with the authority provided in the Energy Act of 2020 allowing the Secretary to reduce acreage rental rates and capacity fees if, among other things, the Secretary determines ''that a reduced rental rate or capacity fee is necessary to promote the greatest use of wind and solar energy resources.'' Further, this reduction would help BLM meet the goal under the Energy Act of 2020 of ''authoriz[ing] production of not less than 25 gigawatts of electricity from wind, solar, and geothermal projects by not later than 2025.'' Implementing this reduction is necessary to promote the greatest use of wind and solar energy resources and maximize commercial interest in lease sales by lowering the entry cost of prospective energy generating facilities. Additionally, implementing this reduction puts the rates the BLM charges closer to what the BLM charged developers in 2007 and 2008 when interest in solar and wind energy development on public lands began to increase. The reduced rates and new rate setting methodology lower the potential that existing right-of-way holders who agreed to terms and conditions for using public lands that were later updated based on market changes will experience economic hardship as a result of those adjustments. This final rule uses predetermined adjustments instead.

For example, the MWh rate reduction for a newly authorized solar or wind energy grant or lease in 2035 will be set at 20 percent of the wholesale price per MWh or alternative MWh rate. This will yield a continued 80 percent reduction through the end of that authorization's term consistent with the Energy Act of 2020 authority.

Starting in 2036, the BLM will begin to transition the MWh rate reduction to 20 percent by 2038. The MWh rate reduction will be reduced to 60 percent for new projects authorized in 2036, 40 percent for new projects authorized in 2037, and 20 percent for new projects authorized in 2038 and beyond. The rates for existing authorizations will not change with this transition to a 20 percent reduction. For example, an authorization for solar or wind energy development in 2037 would receive a 40 percent reduction through the end of the authorization's term. The BLM would similarly apply this reduction to authorizations it issues based on the year of issuance.

Some comments suggested the transition from an 80 percent MWh rate reduction to a 20 percent MWh rate reduction appears arbitrary and without grounding in economic analysis of market conditions and suggested instead allowing the 80 percent reduction to continue until a future rulemaking. The BLM understands the concerns raised by the commenters regarding the change to the reduction in the proposed rule. However, the BLM disagrees that the 80 percent MWh rate reduction should continue until a future rulemaking. Instituting a phased sunset period to the 80 percent reduction in the capacity fee is appropriate as the renewable energy industry may no longer need this reduction to achieve the greatest use of wind and solar on public lands, and progress toward our national goal of a carbon-pollution free electricity sector may indicate that a reduction is no longer warranted. In this final rule, the BLM is revising the transition from MWh rate reduction from 80 percent to 20 percent over several years. This transition would lessen the year-over-year rate change until 2038, when the MWh rate reduction would remain at 20 percent. The BLM will evaluate progress towards reaching national goals before 2036 and could reinitiate rulemaking to adjust incentives, including extending them beyond 2036, if appropriate under the authority in the Energy Act of 2020 or other applicable authority.

In paragraph (b)(1)(iii), ''C'' is the *Domestic Content reduction.* This paragraph is revised consistent with the changes discussed under § 2801.5. As explained previously, the BLM is promoting the development of solar and wind energy resources on public lands by offsetting some of the costs of using items and materials produced in the United States in the construction of solar and wind energy development facilities. The BABA Act, Public Law 117–58, 135 Stat. 429, §§ 70901 through 70927 (Nov. 15, 2021) and the implementing regulations at 2 CFR part 184, describe certain categories of items or products that are eligible for the domestic content preference. As noted in § 2801.5, the BLM adopts the term ''domestic content'' to refer to the items and materials associated with the construction of a solar or wind energy facility on public lands that are eligible for the domestic content preference. Paragraph (b)(1)(iii) of § 2806.52 of the BLM's regulation would reduce the

capacity fee for solar or wind energy generation facilities if the holder can demonstrate that the construction of the facilities for the right-of-way—excluding labor costs—qualify as produced in the United States as described in 2 CFR 184.4. The Domestic Content reduction is 20 percent for facilities qualifying for the domestic content preference defined in 2 CFR part 184. To qualify for this capacity fee reduction, the percent of the energy generation facility's total cost that consists of items qualifying for the domestic content preference would have to meet or exceed the ''Produced in the United States'' requirements in 2 CFR 184.3. Generally, this would mean that: (1) all manufacturing processes for iron or steel products used as a component of the project occurred in the United States; (2) manufactured products (a) were manufactured in the United States, and (b) the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of the manufactured product, as determined in 2 CFR 184.5; and (3) all manufacturing processes for construction materials occurred in the United States, as defined in 2 CFR 184.6. The holder would have to provide sufficient documentation (*e.g.,* purchase orders for end products, materials, and supplies of the facility; as-built or construction plans) to demonstrate that the products used in the energy generation facility meet the thresholds identified in 2 CFR part 184.

Once an energy generation facility qualifies for a Domestic Content reduction, the facility will continue to benefit from the reduction for the term of the grant or lease. The BLM will only revisit the reduction at the time of an assignment, amendment, or renewal of an energy generation facility grant or lease to determine what reduction, if any, it may qualify for. The BLM will apply the criteria defining the domestic content preference and the components of construction for the version of 2 CFR part 184 in effect at the time the right-of-way is issued unless OMB amends that guidance in the future in such a way that the current definition contemplated in this final rule no longer provides a clear meaning. In that circumstance, the BLM will apply the most recent version of 2 CFR part 184 that provides a workable definition until such time as the BLM is able to amend its rules.

In addition to changing the definition to qualify for a domestic content reduction from a FAR to a BABA-based definition, this final rule only provides for a single 20 percent reduction that interested parties qualify for if they meet the requirements of 2 CFR part 184 instead of the incremental reduction that the BLM had proposed. Under the BABA definition described above, projects qualify for the domestic content preference by meeting or exceeding specific materials requirements. As this is a binary qualification, an incremental reduction would be untenable. Further, using a single reduction based on the BABA threshold will provide for simpler implementation of the regulation and more clarity to applicants.

One comment suggested that the BLM use the Electronic Product Environmental Assessment Tool (EPEAT) product registry for photovoltaic module use in development projects and any Domestic Content reduction. EPEAT is a global label managed by the Global Electronics Council that identifies environmentally sustainable electronic products. Currently, however, EPEAT only covers a narrow set of products and construction material related to solar development facilities (specifically, photovoltaic modules and inverters) and does not cover any materials related to wind energy generation facilities. As a result, requiring applicants to use EPEAT-registered products for renewable energy facilities on public lands could frustrate the goals of the Domestic Content reduction. Further, such a requirement would not serve the purposes Energy Act of 2020 or relevant direction in Executive Orders because it would limit the technology that could be deployed on public lands. The BLM may, however, consider such criteria for the Domestic Content reduction in the future once the EPEAT covers a broader range of solar and wind energy materials. The BLM made no changes to the final rule due to this comment.

Some comments suggested that the BLM should require proof of compliance with the domestic content incentive prior to reducing rates. The BLM agrees with these comments and will require confirmation that the holder seeking to obtain this reduction satisfies the qualifying definitions the BLM is utilizing: the standard in 2 CFR part 184. See § 2806.52(b)(5) regarding conditional approvals where the BLM makes it clear that approval will be granted by the BLM once it has been demonstrated to the satisfaction of the BLM that the facility qualifies for the reduction.

Some comments suggested that rate reductions in the final rule should be consistent with the IRA. The BLM considered a reduction based on the domestic content bonus tax credits in the IRA and its definition of Buy America bonus tax credits. The BLM is aware that the Treasury Department has issued guidance about the domestic content bonus under the IRA for clean energy projects and facilities that meet American manufacturing and sourcing requirements. However, that guidance describes an intent to propose regulations that have not yet been finalized, and this final rule's definition for domestic content aligns with definitions in other Federal programs with oversight over domestic products and content. No changes were made due to these comments.

Paragraph (b)(1)(iv) is ''D'', the *Project Labor Agreement reduction.* The BLM is promoting the development of solar and wind energy resources on public lands by offsetting some of the costs when using a PLA during construction of solar and wind energy development projects consistent with authority under the Energy Act of 2020. The BLM's approach also is consistent with the policy direction in Executive Order 14063 directing Federal agencies to use PLAs in connection with large-scale construction projects to promote economy and efficiency in the context of Federal procurement. A PLA is a pre-hire collective bargaining agreement negotiated between one or more construction unions and one or more construction employers that establishes the terms and conditions of employment for a specific construction project, consistent with 29 U.S.C. 158(f).

The 20 percent reduction of the capacity fee offered in this final rule to incentivize the use of a PLA is necessary to promote the greatest use of solar and wind energy resources on public land, as authorized by the Energy Act of 2020 (43 U.S.C. 3003(b)(2). In particular, PLAs lead to better and more efficient outcomes in the construction of solar and wind energy projects in the following ways, which in turn leads to the greatest use of solar and wind resources. First, PLAs provide better access to and retention of skilled laborers, especially in a limited labor market.[8] Studies and reports demonstrate that skilled labor provided through PLAs offer a higher quality of work, increased labor standards, more timely construction, and fewer

[8] Greg Lacurci, CNBC: *Workers till Quitting At High Rates—And Getting a Big Bump In Pay* (Jan. 4, 2023); Jo Constantz, Bloomberg: *The Great Resignation Worked: Most Job-Swappers Got a Raise* (July 29, 2022); Frank Manzo IV, Larissa Petrucci, & Robert Bruno, Ill. Econ. Policy Inst.: *The Union Advantage During the Construction Labor Shortage* 5 (2022).

deviations from construction plans.[9] Second, PLAs improve workplace safety by offering more apprentice-trained journey workers, which studies have shown lead to fewer injuries.[10] Third, PLAs can ensure construction administration is streamlined, which minimizes undue costs, delays, and inefficiencies in construction projects, particularly complex projects such as wind or solar energy generation facilities.[11] Finally, PLAs contain no-strike, no-lockout clauses that can prevent project construction delays associated with labor disputes.[12]

The benefits associated with PLAs, in turn, would have positive impacts for renewable energy projects on public lands, including ensuring responsible and productive construction, and minimizing the potential duration. These improved construction standards will better meet resource management objectives and ensure authorized uses on public lands are meeting the goal of the Energy Act of 2020 to promote the greatest use of solar and wind energy resources. These improved construction standards also are consistent with the BLM's authority under FLPMA to incorporate right-of-way terms and conditions that, among other things, ''protect Federal property and economic interests,'' ''manage efficiently the lands . . . subject to the right-of-way,'' and ''protect lives and property.'' (43 U.S.C. 1765(b)). Further, as demonstrated by the reports and studies cited above, the use of PLAs leads to higher and more stable wages for workers. These reductions to the rates will further incentivize the use of PLAs by developers and will help to offset higher wages for workers, which, in turn, may help to reduce or eliminate economic hardships for workers who would otherwise not benefit from the higher standards and protections in PLAs.

Some comments argued against the use of the labor union incentives included in the proposed rule and questioned the BLM's authority to offer these incentives. Other comments requested additional provisions be added to ensure responsible use of labor. As described above, the BLM has concluded that, under the authority provided in the Energy Act of 2020 and FLPMA, it has discretion to include reductions for the use of PLAs. These reductions will incentivize the use of PLAs, providing for increased assurances of timely, efficient construction; improved worker safety; and higher and more stable wages for workers. The BLM expects to publish additional policy guidance, such as through instruction memoranda, to clarify how qualifying PLAs will be identified, among other things. In providing this reduction in the final rule, the BLM is promoting responsible use of labor and the greatest use of solar and wind energy resources, as authorized by the Energy Act of 2020, by encouraging solar and wind energy development on public lands.

Some comments suggested that the rule should apply a tiered incentive for developers based on the percentage of local labor they commit to hire, which could be implemented by certified payroll reports that include employee permanent addresses and in consultation with local officials. Several comments supported the inclusion of a reduction for Union Labor or PLAs. In the proposed rule, the BLM described the potential of adding a 20 percent capacity fee reduction for a holder's use of Union Labor or on the contingency of a PLA. In this final rule, the BLM has decided to include a reduction for holders who have entered into, or expect to enter into, a PLA for the construction of a project, based on comments and additional support for the benefits of using PLAs to advance infrastructure projects such as renewable energy projects. This additional reduction parallels the domestic content reduction in this rule in how it is applied in the calculation. This reduction is based on the use of a PLA in project construction and would offset some developer costs. The BLM does not include in this final rule the suggested local labor reduction, but the BLM believes the reduction for a PLA may also support the use of local labor.

Paragraph (b)(1)(v) explains how the BLM applies the alternative MWh rate and the Domestic Content and PLA reductions from paragraphs (b)(1)(ii), (iii), and (iv) of this section. By default, the BLM will apply the ordinary MWh rate under paragraph (b)(1)(i) and the MWh rate reduction under paragraph (b)(1)(ii). A developer who wished to benefit from the alternative MWh rate, the domestic content reduction, or the PLA reduction will need to submit a request for conditional approval prior to the issuance of a grant or lease, along with sufficient documentation to demonstrate that the development qualifies or may later qualify for these rate reductions. In some cases, the BLM will not be able to determine definitively in advance whether the proponent qualifies for these reductions. The BLM may then conditionally approve the requested reductions, but the reductions will not go into effect until the proponent adequately demonstrates that the facility qualifies for the relevant reduction. If energy generation begins before the holder has demonstrated that the facility qualifies, the BLM will charge the holder the capacity fee absent the reduction. The capacity fee could be updated for subsequent calendar years after the holder demonstrates that the facility qualifies, but the BLM will not refund past payments made before the holder demonstrates that they qualify and rate reductions go into effect.

For example, an applicant or presumptive leaseholder (see §§ 2809.13 and 2809.15, below) might request conditional approval of an alternative MWh rate. In that situation, a request for conditional approval for an energy generation facility may be granted if the presumptive leaseholder has entered into or intends to enter into a PPA (see (b)(1)(i) of this section) that has a lower rate than the MWh rate. Documentation submitted to the BLM when requesting conditional approval may include draft or interim PPAs or confirmation in writing from the purchasing party that the parties have entered into negotiations. While the BLM may then conditionally approve the request for an alternative MWh rate, the alternative rate would not go into effect and be used when calculating the payment obligations until the PPA is finalized and the BLM determines, in writing, that the facility qualifies for the alternative rate. The holder's MWh rate would then be updated for the next year's billing. Payments for past years would not be adjusted retroactively.

In another example of a request for conditional approval, an applicant or presumptive leaseholder might request conditional approval of a Domestic Content reduction. In this example, a request for conditional approval may be granted if the proponent demonstrates that it has firm plans to use items

[9] McFadden, Sai Santosh, and Ronit Shetty: *Quantifying the Value of Union Labor in Construction Projects*, Independent Project Analysis, 2 and 8–9 (December 2022): *https://acrobat.adobe.com/link/review?uri=urn%3Aaaid%3Ascds%3AUS%3Ad9e7f15b-9bf9-313f-b4eb-de7a1dc11d9f;* and Fred B. Kotler: Project Labor Agreements in New York State II: *In the Public Interest and of Proven Value,* Cornell University ILR School, 10, 19 and 36 (May 1, 2011), *https://ecommons.cornell.edu/bitstream/handle/1813/74333/LaborAgreementsinNYS_II.pdf?sequence=1.*

[10] Emma Waitzman & Peter Philips, UC Berkeley Labor Ctr: *Project Labor Agreements and Bidding Outcomes: The Case of Community College Construction in California* 10, 16 (2017); Bureau of Labor Statistics, National Census of Occupational Injuries in 2021, USDL–22–2309 (2022) (construction work is second highest for occupational deaths).

[11] Dep't of Labor, *Implementation of Project Labor Agreements in Federal Construction Projects: An Evaluation* 20 (2011).

[12] Dep't of Labor, *Implementation of Project Labor Agreements in Federal Construction Projects: An Evaluation* 30 (2011).

qualifying for the preference. Documentation submitted to the BLM when requesting conditional approval may include procurement contracts or design documents showing that the facility would qualify for this reduction. While the BLM may then conditionally approve the request for a Domestic Content reduction, the reduction would not go into effect and be used to calculate the proponent's payment obligations until the proponent submits documentation of actual costs associated with the construction of the facility, such as fulfilled purchase orders and as-built design documents demonstrating installation of the qualifying domestic content items in that facility and the BLM determines, in writing, that the facility actually qualifies for the reduction. The holder's MWh rate then would be updated for the next year's billing. Payments for past years would not be adjusted retroactively.

Paragraph (b)(2) clarifies that ''E'' is the annual adjustment factor, which is set at three percent. This is the same adjustment factor used for the annual acreage rent under § 2806.52(a)(1)(iii). See § 2806.52(a) of this preamble for further discussion on the annual adjustment factor.

The BLM understands that generally when a solar or wind energy operator begins generating electricity, it has entered into an agreement with a utility or other party to sell its power. It is customary that such agreements include an escalation clause that increases the purchase price of power each year of the agreement. These annual escalations vary by agreement; however, in general, the annual increase is approximately one percent to five percent each year for the contract term to account for gradual decreases in system operational efficiency, operating and maintenance costs, and increases in the retail rate of electricity. There may be some higher annual escalation rates, but that is not common. The BLM determined that a three percent annual adjustment factor is a reasonable escalation for the MWh rate based on a review of the average inflation rate over the previous fifteen years. The BLM considered both an adjustment for inflation that is predictable and an adjustment that changes more precisely with inflation over time. The BLM determined that a set inflationary adjustment that would alter the starting electricity price per MWh by a fixed factor each year was preferrable, because it would increase the predictability of future annual payments. While it is possible that the market price of electricity will deviate from this fixed rate over time, the benefit of rate predictability is important to renewable energy deployment on public lands. Future inflation may be higher than the historically low inflation of the decade or more prior to 2019. To accommodate the more recent inflationary trends, the BLM relied on the IDP–GDP average annual change for the most recent five-year period, 2018–2022 (estimating 2022 with data for three available quarters), which was 3.36 percent, while taking into account that for the ten-year period preceding 2018, the rate was 1.52 percent. The BLM derived the 3 percent rate in the final rule by rounding to the nearest whole percent of the recent inflationary trends.

Some comments requested that the BLM remove the annual adjustment factor or reduce it, possibly using the prior year's IPD–GDP calculation as an adjustment factor. These comments noted that the BLM should be promoting the greatest use of solar and wind energy resources and maximize commercial interest in development on public lands. Other commenters suggested a higher annual adjustment factor, noting that recent inflation amounts are higher than the three percent proposed.

The BLM considered a range of annual adjustment factors, including those based on IPD–GDP calculations. The BLM's use of three percent aims to capture a reasonable annual adjustment based on changes over time. This rule promotes the greatest use of solar and wind energy resources by applying and offering reductions to the capacity fee for qualifying developments. Additionally, the BLM's methodology focuses on rate predictability; making a recurring calculation using the IPD–GDP is a disincentive for solar or wind development because future rates change by uncertain amounts making the BLM rates unpredictable. This final rule does not change the annual adjustment factor due to these comments.

The regular adjustment factor also provides improved predictability of rates over time for renewable energy developers compared to the BLM's previous periodic adjustments of the MWh fee, which were based on a combination of the annual weighted average wholesale price per MWh and the adjusted rate of return for certain U.S. Treasury Bonds, both of which are variable.

Paragraph (b)(3) clarifies that ''F'' is the year of the grant or lease term, which is the same number used for the annual acreage rent under § 2806.52(a)(1)(iv). See § 2806.52(a) of this preamble for further discussion on the year of the grant or lease term.

Paragraph (b)(4) clarifies that ''G'' is the rate of return, which is set at seven percent. By setting the rate of return in this rule, the BLM increases the rate predictability of its capacity fee. This rate of return will not adjust during the term of the authorization. In this final rule, the rate of return is the relationship of income to the total value for a granted use of the public land resource. The rate of return accounts for the value of the authorization each year for use of the resource on public lands that is provided to the BLM through an annual payment.

A comment recommended that the BLM recalculate the rate of return using a 30-year average rate of return for 10-year Treasury Bond rates. The BLM appreciates the suggested recalculation of the rate of return over a 30-year period. The BLM selected the 50-year average of the 10-year Treasury Bond as the reasonable rate to set its rate of return for this rule. See the BLM's Regulatory Impact Analysis accompanying this final rule for further information on how the BLM calculated the rate of return. No changes were made in this final rule due to this comment.

The 50-year simple (*i.e.,* arithmetic) average of the real annual return on 10-year Treasury Bonds is approximately seven percent. This 50-year period includes times when the United States went through periods of stagflation, high inflation, economic boom, and relatively calm market conditions. The BLM's use of the average of the 10-year Treasury Bond rates is a reasonable reflection of a modest return to the government reflective of relatively low risk to the public. The proposed seven percent rate of return is also supported by the Council of Economic Advisors, which estimates a real return to U.S. capital of around seven percent from 1960 to 2014 using data from the National Income Product Accounts and other sources.[13] By setting the rate of return in this final rule, it would not be adjusted in the future, except by further rulemaking.

One comment suggested that the rate of return stay at two percent as currently provided in BLM Manual 2806.60. The comment further suggested that the proposed increase from two to seven percent does not appear to be reasonable and is inconsistent with the Energy Act of 2020. The updated rate setting

[13] Council of Economic Advisers Issue Brief, ''Discounting for Public Policy: Theory and Recent Evidence on the Merits of Updating the Discount Rate'' (January 2017).

methodology in this final rule includes an increased rate of return, consistent with the BLM's authority under FLPMA to collect fair market value. The change in the rate of return is commensurate with other sectors of the energy market that base their return on a percentage of the commodity or energy generation value. It is appropriate that the rate of return change when transitioning from a capacity fee based on nameplate capacities to one based on the value of energy generation at market. The former rate setting methodology (see BLM Manual 2806.60) implemented the authority of the Energy Act of 2020 by reducing the rate of return to two percent. In this final rule, the BLM is applying the authority of the Energy Act of 2020 to the MWh Rate as reductions under § 2806.52(b) instead of reducing the rate of return. In this final rule, the BLM has determined that reductions under § 2806.52(b) for solar and wind energy are more meaningful than the reductions in the Manual 2806.60 and are necessary to promote the greatest use of solar and wind energy resources on the public lands. The BLM did not change this section of the final rule in response to this comment.

Paragraph (b)(5) clarifies that ''H'' is the annual energy generated on public lands for the right-of-way in question. The BLM will issue a bill to coincide with the calendar year based on the annual certified statement provided to the BLM that gives either the amount of estimated or actual electricity generated by the development. The payment for the first year of energy generation will be based on an estimate of energy generation, and then the BLM will determine final payment for that first year based on actual energy generation. The following years of payments made in advance, pursuant to 504(g) of FLPMA, will be based on the most recent calendar year's actual energy generation reported on the certified statement. Exception to using actual energy generation is provided for, in certain circumstances, under paragraph (b)(5)(vi) of this section. Paragraph (vii) addresses late payments specific to underestimating energy generation in certain circumstances.

Paragraph (b)(5) has changed from the proposed rule due to public comments. The BLM proposed to require developers to provide an estimate for each year of energy generation of a development project to calculate the payment in advance. Those estimated energy generation amounts would be updated after that calendar year using actual energy generation amounts and any over or underpayment would be determined at that time. Revisions to this paragraph now provide in the following subparagraphs that:

(i) The holder must submit an annual certified statement to the BLM before the first year of energy generation begins or is scheduled to begin. Thereafter, annual certified statements must be submitted by the end of October.

(ii) Prior to the start of energy generation, the holder must submit the annual certified statement containing an estimate of energy generation on the right-of-way (estimate of first year's energy generation).

(iii) Once energy generation has begun, the holder must submit to the BLM an annual certified statement of the most recent calendar year's actual energy generation on the right-of-way.

(iv) The BLM's calculation for payment of the capacity fee will be based on the certified annual statement. Calculation for payment of the capacity fee for development projects that contain both public and non-public lands will be prorated by multiplying the total energy generated by the percentage of the total development area made up of the right-of-way footprint on public lands.

(v) If the year's actual energy generation exceeds or is less than the amount of energy generation used to bill for the payment in advance, the holder will be billed, credited, or refunded for the underpayment or overpayments pursuant to §§ 2806.13(e) and 2806.16. In no event will the total payment required be less than the annual acreage rent.

(vi) The BLM may approve a request by a holder to provide a new estimate of energy generation in certain circumstances. Circumstances would including those when energy generation is expected to be interrupted, such as with planned maintenance activities, where the amount of energy generated is expected to interrupt energy generation by 25 percent or more, or where the right-of-way holder is aware that the energy generation in the subsequent year will exceed the actual energy generation for the previous year by 25 percent or more such that the BLM's use of the actual generation from the previous year as the basis for a bill would result in an underestimate of more than 25 percent.

(vii) The BLM may assess a late payment fee of 10 percent of actual energy generation for the year in which the underestimation occurs. The holder will pay a late payment fee for each year of underestimation if the right-of-way holder underestimates energy generation by 25 percent or more of the actual energy generation or does not provide the BLM with a new estimate when energy production will exceed the previous year's actual production by more than 25 percent. The BLM may decide not to assess the late payment if the right-of-way holder provides an adequate justification that the underestimation was reasonably unforeseeable prior to payment of the annual bill, consistent with § 2805.12(e).

Some comments asserted that penalties for underestimating generation are inappropriate as factors outside of a developer's control, such as weather or grid related interruptions, may cause unexpected generation shortfalls. Additionally, comments noted that developers have every incentive to maximize production, which may itself cause a developer to underestimate generation. The BLM has revised the rule to reduce the potential that a holder would be subject to a penalty while minimizing the potential for underestimation. Consistent with other comments related to the term length under 2801.9, the BLM has made revisions to § 2806.52(b)(5) that are consistent with revisions made under §§ 2805.12(c)(8) and 2807.17(c). The BLM revised paragraph (vi) and added paragraph (vii) to this final rule due to comments.

Pursuant to § 2805.12(c)(8), a holder may receive a notice from the BLM of their noncompliance with the right-of-way and that they are subject to right-of-way termination. Additionally, the BLM may address a holder's chronic underestimation through existing § 2807.17(a), resulting in suspension or termination of the authorization. The BLM may make such a determination after collecting relevant information, including information provided pursuant to § 2805.12(a)(15).

Some comments requested that the rule preserve sensitive competitive information amongst operators of solar and wind energy development projects. These comments suggested that the BLM could allow developers to submit generation data based on Form 923, which is provided to the Energy Information Administration. The final rule does not carry forward the suggested use of Form 923. The BLM disagrees with waiting the additional time to collect actual energy generation and update or validate prior year bill and payments with rights-of-way holders. As suggested by commenters, using Form 923 would delay billing for actual energy generation amount by an additional year, which is not acceptable for the BLM's responsible stewardship of the public lands. No changes were made due to this comment.

Section 2805.12(c)(8) sets the diligent operation standards for solar and wind

energy development projects and provides steps to follow when a holder expects to fail in meeting diligent operation requirements. Holders may follow the steps outlined in this section to ensure compliance with this final rule.

Paragraph (b)(6) of this section describes where you may obtain a copy of the current MWh rate schedule for solar and wind energy generation.

Paragraph (b)(7) of this section provides for periodic adjustments to the MWh rate. This paragraph applies unless you are an existing holder and elect to continue paying under your current rate adjustment method per § 2806.51(c).

Paragraph (b)(7)(i) of this section clarifies that the rate from the MWh rate schedule for the first year of energy generation will not change once your grant or lease is authorized. The annual adjustment factor under § 2806.52(b)(1)(i) applies to the MWh rate during the term of the grant or lease. Any subsequent MWh rate schedule updates will apply to new grants and leases.

Paragraph (b)(7)(ii) of this section provides that the MWh rate schedule will be updated once every five years consistent with the timing of acreage rent adjustments. The MWh rate schedule will include the annual adjustment factor for the five-year period it covers.

Paragraph (b)(8) of this section provides that the general payment provisions for rents under § 2806.14(a)(4) also apply to the capacity fee.

Paragraph (c) applies unless you are an existing grant or leaseholder and elect to continue with your current MW capacity fee adjustment method. The fee is set at the time of authorization or re-issuance and not adjusted further except by the annual adjustment factor from § 2806.52(b)(2).

Some comments suggested that the BLM should retain discretion under § 2805.12(e) to adjust rent and fee values, including at the request of a right-of-way applicant or holder. While section 2805.12(e)(2) of this final rule does not include a mechanism for applicants or holders to request alternative rent or fee rates in general, the BLM has revised § 2806.52(b)(1)(i) to identify circumstances where the BLM would have discretion to select an alternative MWh rate.

Some comments suggested a wide range of potential fee structures to address environmental and economic factors. Some comments also requested that the BLM clarify how the rents and fee numbers were developed. The BLM's development of the acreage rent and capacity fee was an iterative process that included consideration of the BLM's legal authority; taxpayer concerns for the collection of reasonable rent for the use of public lands and resources; the BLM's prior policies for rents and fees and their impact to solar and wind deployment on public lands; and the national renewable energy goals on public lands set in section 3004 of the Energy Act of 2020. The BLM initially solicited comments in September 2021 after which the BLM published interim guidance in Manual section 2806.60—Rent.

Some comments requested a publication or annual report from the BLM on the payments it has received from solar and wind energy development projects. This information can be found in the BLM's annual publication of Public Land Statistics, which enumerates annual revenues from energy resources including wind and solar rents and fees.

Some comments requested that the BLM provide fee reductions for projects that are sited on previously disturbed lands or outside of sensitive wildlife habitats. The BLM contemplated various methods and models by which to potentially apply rate reductions in this final rule. Additional information on the alternatives considered may be seen in the proposed rule's preamble discussion under subpart 2806. The BLM determined that an across-the-board reduction best meets national energy goals. This methodology provides flexibility and financial incentives without regard to where projects may be sited. Having reduced rent and fee rates that are independent of location complements the BLM's ability to update land use planning, which defines where project applications may be proposed and where projects will not become obsolete if or when technology advances and siting needs shift for economic or environmental reasons.

One comment suggested that a holder should be able to select whether they wish to pay an acreage rent or capacity fee. The BLM disagrees with this comment. This final rule clearly provides for both an acreage rent or a capacity fee for solar and wind energy development projects. Generally, the acreage rent is required for the intensity of use and the occupancy, including site control, of the surface of the public lands. The capacity fee reflects the value of the energy generated from the solar or wind energy resource located on public lands. The BLM will collect the greater of either the acreage rent or the capacity fee for a solar or wind energy development.

One comment suggested rate reductions be made available for existing right-of-way holders who enter into new PPAs for a project during the term of an authorization, such as when they repower. This final rule provides for greatly increased rate predictability for solar and wind energy development rights-of-way. Under § 2806.52(b)(v), the BLM provides an opportunity for conditionally approving a reduction if it receives a request with sufficient documentation demonstrating that the holder may qualify for the reduction before the BLM issues the right-of-way. No other opportunity for later qualifying for a reduction is made available in this rule as the reductions to its rates are available prior to the BLM issuing the ROW. The BLM believes that the adjustments to improve rate predictability, including allowing for a longer term (see § 2801.9) for certain rights-of-way, will provide for the longer economical life of a particular project. An operator or a holder of an existing authorization may elect to keep their current rate methodology, including future adjustments that may be made, if they do not wish to change to the rate-setting methodology of this final rule.

Some comments suggested that the 80 percent reduction of capacity fees without any qualifying stipulations will adversely distort the energy market and land uses. The BLM does not expect this final rule to alter the solar or wind energy markets or uses of public lands adversely. This final rule implements the authority of the Energy Act of 2020 and direction of Executive Order 14008, among others, that set goals to promote the greatest use of solar and wind energy resources on public lands. The rule is intended to incentivize development of wind and solar energy projects on BLM-managed lands. The BLM sees any resulting change that benefits solar or wind in energy markets as a positive development. See *Reductions and Discounts* under 5.1 of the Regulatory Impact Analysis for further information on the 80 percent reduction and the economic impacts of the rule.

Some comments suggested that the BLM should collect fair market value for the use of federal lands under the BLM's rule. While FLPMA generally requires the BLM to collect the fair market value for the use of the public lands, the Energy Act of 2020 provides the Secretary of the Interior with additional authority to reduce acreage rents and capacity fees, including to less than fair market value in certain circumstances. The BLM is implementing this authority to reduce the financial burden to solar

and wind energy developers to promote the national interest of developing a clean energy economy.

Section 2806.54 Energy Storage Facilities That are Not Part of a Solar or Wind Energy Development

Section 2806.54 clarifies that the rent the BLM determines for an energy storage facility that is not part of a solar or wind energy development facility is based on the linear rent schedule. Energy storage facilities may be authorized separately from a solar or wind energy development facility. In these instances, the BLM will apply the linear rent schedule unless the BLM determines that the linear rent schedule does not apply to the underlying right-of-way use under § 2806.70, such as when the BLM may determine that a small site rent schedule applies to an energy storage facility.

The BLM will not charge the rent or fee of a solar or wind energy development right-of-way for an energy storage facility that is separate and independent from a right-of-way for an energy generation facility. Charging a capacity fee would be inappropriate as no energy generation from the facility would be occurring from the use of public lands. Using the pastureland rents for energy storage would also be inappropriate, as use of those acreage rates is intended to be coupled with the capacity fee to determine solar and wind energy generation payments for use of public lands.

Sections 2806.60 through 2806.68 are removed from the final rule. Information formerly contained in these sections is now found in sections 2806.50 through 2806.58.

Subpart 2807—Grant Administration and Operation

Section 2807.17 Under what conditions may BLM suspend or terminate my grant?

Section 2807.17 of this final rule is updated based upon comments on § 2801.9 regarding term length and updates to § 2805.12 regarding new diligent operation requirements for solar and wind energy development. See the respective sections of this preamble for further information on the term length and the terms and conditions of grants and leases for solar and wind energy.

Section 2807.17(c) provides that the BLM may suspend or terminate a right-of-way upon abandonment. The BLM presumes that a right-of-way holder has abandoned its right-of-way by failing to use it for a continuous 5-year period, except for solar and wind energy. Solar and wind energy rights-of-way are presumed to be abandoned after two continuous years of insufficient productivity or upon abandonment. This section is updated consistent with the new provision in § 2805.12(c)(8), which provides for a holder to receive notice of the BLM's presumption and gives a reasonable time to cure the noncompliance with the diligent operations requirement.

Section 2807.20 When must I amend my application, seek an amendment of my grant or lease, or obtain a new grant or lease?

Section 2807.20 describes when a right-of-way applicant must seek to amend its application, grant, or lease.

Paragraph (b) clarifies that ''except for qualifying energy development grants and leases per § 2806.51(c),'' the requirements for amending an application or grant are the same as processing a new application, including payment of processing and monitoring cost recovery fees. Section 2806.51(c) provides a unique exception for existing solar and wind energy rights-of-way authorized before this final rule that may convert to the rent adjustment methodology of this final rule. See § 2806.51(c) of this preamble for further information on qualifying authorizations.

Paragraph (f) describes how the BLM would administer an approved solar and wind energy grant or lease if the holder requests to change the rent adjustment methodology. Any request would have to be received within 2 years of the date this rule becomes effective and would be processed as an amendment by which the BLM would re-issue the grant or lease and update the terms and conditions under § 2805.12 and rent provisions under §§ 2806.50 through 2806.52. The BLM would be able to collect or use processing and monitoring costs under §§ 2804.14 and 2805.16 for handling the request. See § 2806.51(c) for further discussion regarding requests to use the rent adjustment methodology of this rule.

One comment suggested that State and local governments should have a shared decision-making role with the BLM when the BLM considers re-issuing a grant or lease to convert the right-of-way over to the new rate adjustment methodology. The BLM does not agree with the suggestion that State or local government offices should share in a decision-making role when the BLM decides whether to authorize a change to the rent adjustment methodology. Re-issuing an authorization under this final rule is an administrative action that will convert existing authorized projects to the new rate setting methodology for the use of BLM-administered public lands and resources. The BLM will continue to engage with the public, and Tribal, Federal, State and local government partners on the BLM's management of its public lands, as appropriate. The BLM did not change this section of the final rule.

Section 2807.21 May I assign or make other changes to my grant or lease?

Section 2807.21 describes the requirements for a holder seeking to assign or make other changes to a grant or lease.

Paragraph (e) clarifies that when the BLM assigns a right-of-way from one holder to another, it may modify a grant or lease, such as by adding additional terms and conditions. The paragraph exempts solar and wind energy leases from that provision unless modifications are warranted under § 2805.15(e), which provides for changes to terms and conditions as a result of changes in legislation, regulation, or as otherwise necessary to protect the public health or safety or the environment. This final rule removes provisions that distinguished between inside and outside DLAs for solar and wind energy development. The BLM may assign leases inside of DLAs without competition.

One comment suggested that the BLM should retain the authority to impose additional requirements on solar and wind projects. The commenter expressed concern that the BLM may be constrained when it comes to regulating a bad operator especially with regards to excepting a bond requirement and that bond requirements should be mandatory on solar and wind projects, so the BLM does not have to clean up sites after company closure or refusal to perform reclamation. The BLM requires a bond for all solar and wind energy grants and leases. The BLM requires this bonding upfront to cover reclamation costs and to enforce the terms and conditions, such as those for rent and capacity fees. Paragraph (e) provides that the BLM, when assigning a grant or lease to a new holder, may modify the right-of-way and add bonding and other requirements, including additional terms and conditions, except for wind and solar leases which the BLM can only modify when warranted as a result of changes in legislation, regulation, or as otherwise necessary to protect public health or safety or the environment as reflected in § 2805.15(e). The BLM also has diligent development and operation requirements, among other terms and conditions, in § 2805.12 that further ensure a holders' compliance with the

right-of-way authorization and all its requirements. The BLM did not change this section of the final rule.

Subpart 2809—Competitive Process for Solar and Wind Energy Development Applications or Leases

Subpart 2809, ''Competitive Process for Leasing Lands for Solar and Wind Energy Development Inside Designated Leasing Areas'' is dedicated to competitive solar and wind energy processes. In the final rule, Subpart 2809 generally applies the same competitive process both within and outside DLAs.

Section 2809.10 Competitive Process for Energy Development Grants and Leases

Section 2809.10, ''Competitive process for energy development grants and leases,'' applies to public lands located both inside and outside of DLAs. Paragraphs (a) through (d) explain that the BLM may conduct a competitive process to consider solar or wind energy development applications or leases: (1) on its own initiative; (2) based on responses to a call for nominations; (3) based on a request submitted by a member of the public in writing; or (4) when it receives two or more competing applications. These provisions incorporate the BLM's broad discretion under FLPMA to determine under what circumstances it may utilize a competitive process. This section is revised to replace ''offer'' with ''process'' to remain consistent with this section's requirements for solar and wind energy development grant and leases competitive process.

The BLM has determined that it will implement its discretion under FLPMA to potentially utilize a competitive process for lands both inside and outside of DLAs and thus standardize a competitive process where competitive interest exists. More specifically, the BLM will use the most appropriate process given the circumstances of a particular location, spurring more competition for the most desirable areas, while continuing to increase solar and wind energy deployment consistent with the statutory direction in the Energy Act of 2020.

As proposed, prior paragraph (d) is removed consistent with changes made under § 2804.35(b) and elsewhere in subpart 2809. The BLM has discretion to process applications inside DLAs without going through a competitive process. Accepting applications inside DLAs reduces timelines and costs and removes barriers for considering development projects where there is no competitive interest.

Proposed § 2809.10(e) would have precluded the BLM from holding a competitive process when the BLM has accepted a complete application, received a Plan of Development, entered into a cost recovery agreement, and published an EA or Draft EIS. Industry comments suggested that the BLM commit to not holding a competitive process earlier than in the proposed rule. In response to those comments, the final rule establishes that the BLM will not initiate a competitive process for those lands where the BLM has accepted a completed application, received a Plan of Development, and entered into a cost recovery agreement, while removing the requirement that the BLM must have published an EA or a draft EIS.

The final rule also adds to § 2809.10(e) an exception referencing § 2804.25(c). Even where the BLM has accepted a complete application, received a Plan of Development, and entered into a cost recovery agreement, it may nonetheless offer lands in a competitive process if the applicant has not proceeded diligently as required by § 2804.25(c). These amendments give the industry the certainty it needs to proceed with projects while retaining the BLM's discretion to deny an application or offer lands competitively if the applicant does not proceed diligently. In that way, these amendments balance the BLM's obligations to incentivize renewable energy development on public lands and to recover a fair return for U.S. taxpayers.

Some comments suggested that requiring a competitive leasing process in designated leasing areas has helped ensure that only well-thought-out projects are proposed. These commenters raised concerns that eliminating a required competitive process will cause a rush of poorly planned projects and will decrease use of the designated leasing areas. Several comments argued in favor of requiring a competitive process in designated areas, emphasizing that it shifts the burden from taxpayers to those who stand to profit, validates demand, increases financial return for use of public lands, drives innovation, and ensures transparency and fairness in the process. These comments expressed concerns that non-competitive leasing may discourage investment and lead to inefficiencies.

In this final rule, the BLM's change in the use of competitive processes is intended to provide flexibility in addressing interest in the use of public lands for solar and wind energy and will not allow for or authorize poorly planned projects. The BLM retains its discretion to authorize or deny solar or wind energy development projects. As explained in the preamble to the proposed rule, the requirement to undertake competitive processes for all applications in DLA's extends the timeline and increases costs, creating a barrier for authorizing projects in areas where there is no competitive interest. The BLM has broad discretion under FLPMA to determine under what circumstances it may utilize a competitive process for lands both inside and outside of DLAs and to use competitive processes only where competitive interest exists. The BLM anticipates that accepting applications in DLAs without the prerequisite of holding a competitive process will likely generate more applications in the most desirable locations. The final rule also provides the BLM with the flexibility to utilize a competitive process where there are multiple competing applications. The purpose of these changes is to ensure that the BLM can use the most appropriate process given the circumstances of a particular location, which the BLM believes will spur more competition for the most desirable areas, while continuing to increase solar and wind energy deployment consistent with the statutory direction in the Energy Act of 2020.

For the same reasons, the BLM disagrees with the comments that focusing the BLM's competitive process and resources to where there is competitive interest on public lands is a negative impact to taxpayers, demand, financial return, innovation, and transparency. This final rule improves transparency over all processes of the BLM's administration of applications and right-of-way authorizations and achieves the goals set by the Energy Act of 2020 and direction of Executive Order 14008. Moreover, although DLAs represent areas specifically designated for renewable energy development, they are not the only areas where such development may be appropriate, nor are they the only areas where use of a competitive process may be appropriate. These projects are complex and require many different steps and actions to occur to be successful. The BLM believes offering areas outside of DLAs for a competitive process is appropriate and would help to meet the goals of the Energy Act of 2020 and direction of Executive Order 14008.

Some comments suggested leasing should not be competitive, or at least only be considered in specific circumstances, such as when multiple applications for the same area are

submitted or when certain conditions are met, such as when labor agreements are not used. This section of the final rule clarifies when the BLM may conduct a competitive process, including for competing applications under paragraph (d). The BLM disagrees that attaining an agreement to use certain labor should determine whether the BLM holds a competitive process or not. The BLM's discretion to hold a competitive process includes when there is competitive interest for that system or land or upon the BLM's own initiative, among other reasons identified in this section of the rule.

Some comments highlighted the interest in a clear and standardized process and suggested that the potential for competition should be limited to avoid deterring investment. In this final rule, the BLM has provided a clear process that the BLM will follow for solar and wind energy development projects when a competitive process is held. However, the BLM does not agree with comments to limit competition. The BLM will generally hold a competitive process where there is a competitive interest, whether it is inside or outside of designated leasing areas, or on its own initiative.

Other comments recommended adding steps to ensure no competition exists before processing applications without a competitive process. Suggestions given to the BLM include filing a notice in the local newspaper, online, or in the **Federal Register** whenever the BLM receives an application requesting any other applications to be submitted. This final rule does not include provisions to require solicitation of public interest with every application submitted to the BLM for a solar or wind energy development. The Energy Act of 2020 and direction of Executive Order 14008 are clear in seeking expedited deployment of renewable energy projects on public lands. Adding provisions in the BLM's rules that require additional steps to solicit competitive interest where there may not be any may slow the deployment of renewable energy. Historically, the majority of solar and wind rights-of-way authorized on BLM-administered public lands have been authorized after an application process without a competitive process, and there are only six existing competitively issued leases, which is only approximately six percent of authorized development projects on public lands. You may find information on the BLM's authorized and pending solar and wind energy projects on its website at: *https://www.blm.gov/programs/energy-and-minerals/renewable-energy/active-renewable-projects.* More specifically, since the BLM began using competitive processes for permitting solar leases on BLM public lands, the agency has held five competitive processes for 16 parcels. These have resulted in multiple bids for nine parcels, a single bid for three parcels, and no bids for four parcels. In the circumstances that BLM held a competitive process and received no bids, the BLM had previously received several expressions of interest and applications for those public lands. The BLM then held a competitive auction resulting in no bids for three parcels. The BLM did not change this section of the final rule.

A comment requested that the final rule clarify when the BLM will not require an auction. The BLM does not believe additional clarification is necessary, as § 2809.10(e) provides that the BLM would not offer lands through a competitive process when the BLM has accepted a completed application, received a Plan of Development, and entered into a cost recovery agreement.

One comment suggested that the final rule clarify that the BLM should be precluded from using a competitive process to award a solar or wind energy development lease or grant on an area of public lands once an applicant has either submitted a right-of-way application for solar or wind energy development or made substantial investments in potentially developing that area of the public lands. While the proposed rule provided that BLM would not offer lands in a competitive process if four criteria were met, this final rule removes the fourth proposed criterion in section (e): ''on publication of an Environmental Assessment or Draft Environmental Statement.'' The final rule retains the first three, such that the BLM would not offer lands in a competitive process for which it has accepted a complete application (see § 2804.12(j)), received a Plan of Development (see § 2804.12(b)), and entered into a cost recovery agreement (see § 2804.14). This change requires fewer milestones to close the window for holding a competitive process than the proposed rule and improves certainty for interested developers to proceed with applications but it does not move the threshold for prohibiting competitive processes earlier than in the existing regulations as the commenter suggested.

In addition to the changes under 2809.10(e), the BLM revised § 2804.25(c) to clarify that the BLM retains discretion to deny an application where the applicant does not proceed diligently. An applicant's failure to remain diligent in processing an application may result in the BLM denying the application and offering the lands competitively. These amendments balance the BLM's obligations to incentivize renewable energy development on public lands and to recover a fair return for U.S. taxpayers.

A comment suggested that the BLM should not require a competitive process where an applicant's facilities are located on both private and federal lands and the applicant has secured agreements with the adjacent landowners. This final rule governs the BLM's administration of applications and authorizations, including competitive processes. The BLM will consider all relevant and available information when determining whether a competitive process is appropriate, including whether separate agreements had already been met for adjacent lands. However, this rule does not preclude the BLM from holding a competitive process when agreements are held for adjacent lands, which would allow developers and adjacent landholders to effectively monopolize the use of the public lands without first obtaining authorization from the BLM. In instances where the BLM believes it is appropriate, it may determine to hold a competitive process.

Other commenters suggested that the BLM should only have the discretion to move to a competitive process in the initiation phase of a project and not after an application is complete and the cost recovery is funded. This final rule maintains the BLM's discretion to determine whether there is a competitive interest in the public lands. In the BLM's experience, some applications progress more slowly than others once the existing requirements of the BLM rules are met. By requiring a complete application pursuant to § 2804.12(j), a Plan of Development pursuant to § 2804.12(b), and a cost recovery agreement pursuant to § 2804.14, the BLM will help ensure that applicants remain diligent in pursuing their use of the public lands, while preserving discretion to utilize a competitive process. Even after that point, § 2804.25(c) of the final rule clarifies that the BLM retains discretion to deny an application where the applicant does not proceed diligently. These additional conditions will not unreasonably burden diligent applicants and will help identify those applicants who are not working with the BLM to process applications diligently.

Section 2809.11 How will the BLM call for nominations?

Section 2809.11 is retitled to improve consistency with this section of the final rule. No changes were made to this section due to comments. Consistent with the change in terminology of § 2809.10, the BLM changed ''offer'' with ''process'' throughout this section.

Paragraph (a) provides that the BLM may publish a notice in the **Federal Register** calling for nominations of lands to be offered through a competitive process for solar and wind energy development. Other notification methods may also be used, such as a newspaper of general circulation in the affected area or the internet. The section allows for the BLM's discretionary use of a competitive process discussed in § 2809.10. The paragraph would also specify information that will be included in a call for nominations as follows:

(1) The date, time, and location by which nominations must be submitted;

(2) The date by which nominators will be notified of the BLM's decision on timely submissions;

(3) The area or areas for which nominations are being requested; and

(4) The qualification for a nominator, which must include at a minimum the requirements for an applicant, see § 2803.10.

Paragraph (b) provides the requirements for nominating a parcel of land for a competitive process. Paragraph (b)(1) requires payment of $5 per acre for nominated parcels. The nomination fee is collected by the BLM under its cost recovery authority under Sections 304(b) and 504(g) of FLPMA, and the portion not spent in processing the nomination and preparing for a competitive process may be refunded to the nominator if not successful in the competitive process. These fees reimburse the BLM for the expense of preparing and holding a competitive process.

Paragraph (b)(2) requires the nomination to include the nominator's name and address of record. This information is necessary for the BLM to communicate with the nominator about a future competitive process for the parcel.

Paragraph (b)(3) requires that a nomination be accompanied by a legal land description and a map of the parcel of land. This information helps identify nominated parcels for the competitive process.

Paragraph (c) provides that the BLM will not accept nomination submissions that do not comply with this section or from submitters who are not qualified per § 2803.10 to hold a grant or lease.

Paragraph (d) provides that a nomination cannot be withdrawn except by the BLM for cause, in which case the nomination fee would be refunded.

Paragraph (e) provides that the decision whether to hold a competitive process in response to a nomination lies in the BLM's discretion.

Some comments requested that the BLM make the nomination fee non-refundable. One comment further suggested that the BLM require ''skin in the game'' from project proponents and that the BLM should keep the fee to cover at least any reasonable costs it incurred in pursuing the nomination. The BLM agrees with comments suggesting that the fee should be used in recovering its reasonable costs in processing the nomination and preparing for a competitive process. The BLM's authority under Sections 304(b) and 504(g) of FLPMA allows for the use of these funds in processing applications. Per existing rules, the BLM may refund the balance, if any, of collected cost recovery funds when they are no longer needed. Please see existing subpart 2804, starting with § 2804.14, for more information on the BLM's administration of cost recovery fees.

Section 2809.12 How will the BLM select and prepare parcels?

Section 2809.12 describes how the BLM identifies parcels suitable for competitive processes. The BLM did not make changes to this section of the final rule in response to comments received, except that, consistent with the change in terminology of prior sections, the BLM changed ''offer'' to ''process'' throughout this section. The BLM also removed ''on existing'' when describing land use designations to avoid confusion and clarify that only existing land use designations may be considered.

Paragraph (a) clarifies that the BLM may rely on any information it deems relevant in identifying parcels for competitive processes, but also describes more precisely the most common sources of information, which include public nominations and existing land use designations. The BLM is not constrained to consider only these listed sources of information when deciding whether to conduct competitive processes for certain parcels.

Paragraph (b) clarifies that the BLM may conduct necessary studies and site evaluation work, including applicable environmental reviews and public meetings, either before or after offering lands for a competitive process. The BLM has sometimes found that the necessary studies and site evaluation work cannot be completed until the competitive process is held and the successful bidder has submitted an application or Plan of Development. The BLM must complete site-specific NEPA analysis even when the BLM has identified a successful bidder as the presumptive leaseholder. The BLM retains discretion to approve, approve with modification, or deny a proposed energy development.

The BLM revised the language of proposed paragraph (c) to clarify that it is the BLM's choice whether to use a competitive process or not and that such choices do not constitute a decision to approve or deny a grant or lease and are not subject to appeal under 43 CFR part 4.

A comment suggested that under paragraph (c), the final rule should allow for administrative appeals, as it relates to BLM procedures used to make decisions. Paragraph (c) of the final rule clarifies that the BLM's choice about whether to use a competitive process is not a decision to grant or deny a right-of-way or otherwise final agency action; instead it represents only an intermediate step that may or may not lead to a decision. The public's ability to administratively appeal an agency decision to grant or deny a right-of-way is unaffected by this provision. The BLM will continue to provide ample opportunities to the public for engagement throughout both the competitive and non-competitive permitting processes. An appeal may be considered when the BLM issues a decision under 43 CFR part 2800.

A comment suggested that allowing for an administrative appeal process to challenge a BLM choice to use a non-competitive process would assist the BLM in identifying whether there is any competitive interest in the public land, getting a better return for the public. The BLM disagrees with this comment. Administrative appeals may be submitted only for agency decisions (see existing § 2801.10). Additionally, allowing for administrative appeals over interim choices by the BLM about which procedures to follow to reach a decision would likely delay its decision-making process substantially.

Section 2809.13 How will the BLM conduct competitive processes?

Section 2809.13 is retitled from the proposed rule consistent with other changes to replace ''offer'' with ''process.'' The change from the proposed rule to read ''process'' when describing the BLM's competitive process is made throughout this section when appropriate.

This section describes how the BLM conducts competitive processes.

Paragraph (b) provides that the BLM publishes a notice of competitive process in the **Federal Register** and through other notification methods, such as a newspaper of general circulation in the area affected or the internet. Paragraph (b)(7) clarifies that the notice of competitive process would state whether a successful bidder would become a preferred applicant or a presumptive leaseholder. Preferred applicants are required to meet application submission requirements under § 2804.12, and presumptive leaseholders are required to submit a Plan of Development per § 2809.18. The preferred applicants and presumptive leaseholders are discussed further in § 2809.15.

Under paragraph (c) of this final rule, the BLM will notify nominators of its decision to conduct a competitive process at least 30 days in advance of the bidding for the lands that were nominated if the nominator has paid the nomination fees and demonstrated qualifications to hold a grant or lease.

Some comments suggested that under paragraph (b)(7) the BLM should continue to require a successful bidder to submit a Plan of Development. The BLM agrees with these comments. A Plan of Development is required in this final rule by a presumptive leaseholder under paragraph 2809.15(a)(ii) and by a preferred applicant who would follow the application process for solar and wind energy applications, including the submission of a Plan of Development required under § 2804.25(c).

Section 2809.15 How will the BLM select the successful bidder?

Section 2809.15 explains how the successful bidder is selected. In this final rule, the distinction between preferred applicants and presumptive leaseholders reflects the fact that the BLM may conduct competitive processes in a variety of circumstances with different outcomes. The distinction between presumptive leaseholder and preferred applicant is intended to ensure that the BLM can expedite approval of proposed projects in areas where the environmental impacts of solar and wind energy development have been previously analyzed and disclosed through a land use planning process. This will help ensure that the BLM does not commit public land resources before completing the necessary analyses. This section is also revised, consistent with other changes in this rule, to refer to ''process'' where appropriate when describing the BLM's competitive process.

Paragraph (a) of this final rule provides that the highest bidder, prior to any variable offsets, is the successful bidder. Successful bidders may become either the presumptive leaseholder or the preferred applicant.

The term ''presumptive leaseholder'' describes situations in which at least one round of environmental review for solar or wind energy development has been conducted before the competitive process is held, so that the environmental impacts of potential development are relatively well understood before the competitive process is held and the successful bidder has a high likelihood of being able to obtain an authorization to develop its proposed project. As set forth in paragraph (b)(1)(i), a successful bidder would only be designated as a presumptive leaseholder if the lands for which the competitive process is held are located within a DLA and the BLM has indicated in advance that the successful bidder would become a presumptive leaseholder (see also § 2809.13(b)(7)). These requirements would limit the use of the term ''presumptive leaseholder'' to situations in which the BLM has previously completed an environmental analysis for solar or wind energy development in the area through the land use planning process and has specified in advance (through the notice of competitive process) many of the terms, conditions, and mitigation measures that would need to be incorporated into an approved authorization. A presumptive leaseholder does not have to complete the initial application review stage, which is designed to ensure that the site is generally appropriate for solar or wind energy development. A presumptive leaseholder has site control for a solar or wind energy development, precluding other competing solar or wind energy development projects from siting on that land, unless allowed by the presumptive leaseholder. The BLM would also not process other applications for use of that land unless allowed by the presumptive leaseholder.

This final rule also recognizes that even with a presumptive leaseholder, an additional site-specific environmental analysis may be required before the BLM irretrievably commits to allowing a facility to be developed. The BLM retains its full discretion in considering whether to approve a presumptive leaseholder's proposal based on site-specific environmental analysis, which would typically be tiered to the area-wide environmental analysis accompanying the identification of the area as a DLA. Paragraph (b)(1)(ii) therefore notes that the presumptive leaseholder's right to develop a project on the site is contingent upon the BLM's approval of the presumptive leaseholder's Plan of Development. Once the BLM approves the proposed Plan of Development, following a site-specific environmental analysis, a lease could be awarded, conferring a right to develop a project on the site, and the presumptive leaseholder would become a leaseholder.

In other cases, the BLM could conduct a competitive process without having completed an initial environmental analysis for solar or wind energy development for that area. In such cases, as set forth in paragraph (b)(2), the successful bidder would become the ''preferred applicant'' and would obtain only the exclusive right to submit an application for solar or wind energy development on that site without further competition from other applicants for solar or wind energy development. Such an application would be processed under subpart 2804 in the same manner as other, non-competitive applications. The BLM would conduct a full environmental analysis before the preferred applicant may obtain a grant and the right to develop a project on the site. A preferred applicant that fails to meet the requirements of subpart 2804 may lose their status as the preferred applicant, and the BLM may deny their application consistent with § 2804.26.

Paragraph (b) provides that a successful bidder becomes a presumptive leaseholder or preferred applicant only after making payments required in paragraph (d) of this section and satisfying the requirements for holding a grant or lease under § 2803.10. The BLM could move on to the next highest bidder or re-offer the lands under § 2809.17 if the successful bidder does not satisfy these requirements.

Paragraph (b)(1) describes the requirements to become a presumptive leaseholder, which are that the public lands successfully bid upon are located within a DLA and that the notice of competitive process indicated successful bidders would become presumptive leaseholders. This paragraph also provides that the BLM would only award a presumptive leaseholder a lease if the BLM approves the Plan of Development that is submitted in accordance with § 2804.25(c).

Paragraph (b)(2) describes the requirements for a preferred applicant. A successful bidder who does not become a presumptive leaseholder in accordance with paragraph (b)(1) would become a preferred applicant. The BLM would process applications for a grant or lease under § 2809.12. As with presumptive leaseholders, approval of a

preferred applicant's application is not guaranteed. However, the BLM would not process other applications for solar and wind energy development on lands where a preferred applicant has been identified, unless allowed by the preferred applicant.

The BLM may consider issuing authorizations for other uses, such as roadways, testing facilities, recreation permits, or even rights-of-way under MLA authority on the lands for which there is a preferred applicant. Processing authorizations for other uses under Title V of FLPMA would be performed under subpart 2804. Recreation permits and rights-of-way under MLA authority would be processed under parts 2920 and 2880, respectively. In some instances, such as with applications for incompatible uses, the BLM may determine that the proposed uses would be incompatible, and therefore that processing these other applications must wait until it issues a decision on a preferred applicant's application for solar or wind energy development.

Previous paragraphs (b) and (c) are redesignated as (c) and (d) respectively. Redesignated paragraph (c) is not revised; it provides that the BLM will determine variable offsets for the successful bidder in accordance with § 2809.16.

Redesignated paragraph (d) provides for bidder payment terms. Paragraph (d)(1) provides for certain payment methods, such as personal check, cashier's check, certified check, bank draft, or money order, as well as other methods deemed acceptable by the BLM, should be paid to the Department of the Interior—Bureau of Land Management.

Paragraph (d)(2) requires payment of 20 percent of the bonus bid and the minimum bid amount by the close of official business hours on the day on which the BLM conducts the competitive process or other time the BLM has specified in its notice.

Paragraph (d)(3) requires payment of the balance of the bonus bid within 15 days after the day on which the BLM conducts the competitive process. Variable offsets are applied under paragraph (c) of this section. Such payments are made to the BLM office conducting the competitive process.

Paragraph (d)(4) requires payment within 15 days after the day on which the BLM conducts the competitive process to pay: for preferred applicants, the application filing fee under § 2804.12(c) less any application fee already paid under § 2809.11(c)(1); or for presumptive leaseholders, the acreage rent for the first full year of the lease as provided in subpart 2806.

Paragraph (d)(5) clarifies that the BLM may require successful bidders to pay reasonable costs in addition to the application filing fee when processing an application. Additional reasonable costs may include a Category 6 cost recovery for the BLM to complete processing the application. If a Category 6 cost recovery fee is required, it will be reduced by the amount of the application filing fee already paid. See § 2804.19 of existing regulations for further information on Category 6 cost recovery.

Paragraph (e) explains that the successful bidder will not become a preferred applicant or a presumptive leaseholder and the BLM will keep all money that has been submitted with the competitive process if the successful bidder does not satisfy the payment terms under paragraph (d) of this section. In such a case, the BLM could proceed to the next highest bidder or re-offer the lands through a competitive process under § 2809.17.

A comment questioned the rationale behind determining the highest bidder as the presumptive leaseholder instead of the BLM making an offer to the highest bidder. The commenter suggested that the BLM would then offer the lease to subsequent bidders if the preceding highest bidder declines. The BLM's competitive process in this final rule informs prospective bidders what they would be bidding for in advance of a competitive process. The BLM's required process under this final rule provides important information to prospective bidders up front, reducing uncertainty on what they may bid on. Prospective bidders will be able to bid more confidently with that information. This will also likely result in more and higher bids than would be received if the BLM provided such information after a competitive process and will reduce the need for the BLM to engage the second highest bidder should the highest bidder decline.

The BLM understands from a comment that there may have been some confusion on how the rule distinguishes between holding a competitive process and selecting a presumptive leaseholder or preferred applicant. In this final rule, § 2809.15(b) makes clear that both of the following criteria must be met to be a presumptive leaseholder: first, lands offered must be located within a DLA, and second, the notice of competitive process must indicate that bidders are bidding to become a presumptive leaseholder. The requirement that the lands be within a DLA is important because DLAs, by definition, have been subject to prior environmental analysis and a land use plan decision to designate the area for solar or wind energy leasing. The environmental analysis would have identified potential conflicts and assessed the environmental impacts of siting a solar or wind energy generation facility, and through the land use planning process the BLM would have determined any necessary mitigation measures prior to the BLM offering the site for leasing. The requirement that the notice of competitive process must indicate that bidders are bidding to become a presumptive leaseholder, meanwhile, is important because it ensures that the terms and consequences of the competitive process are clear to all parties before the bidding occurs, and because it retains the BLM's discretion to conduct a competitive process for a preferred applicant, rather than a presumptive leaseholder, even within a DLA.

Some comments expressed concern that the BLM continues to determine that processing of applications for ''incompatible'' uses must wait until it issues a decision for a first-in-line solar or wind energy development and believe this violates the intent of FLPMA. Commenters believed the language of the rule is unclear about whether these other applications are from other applicants for a similar right-of-way or whether it would apply to applications for other land uses. These commenters assert that either scenario is inconsistent with FLPMA's multiple-use mandate.

In this portion of the rule, the BLM's presumption is that the BLM has already identified a ''preferred applicant'' or that the lands have already been identified in the BLM's land use planning process as a DLA. The FLPMA gives BLM discretion as to how it will process applications, including competing ones for the same parcel. This does not violate FLPMA's multiple-use mandate.

Section 2809.16 When do variable offsets apply?

Section 2809.16 provides that a successful bidder may be eligible for a variable offset of bonus bids. This section is also revised, consistent with other changes in this rule, to read as ''process'' where appropriate when describing the BLM's competitive process.

Paragraph (c) in this final rule clarifies to readers that the offsets are not limited explicitly to what is listed and that the BLM may use other factors, including progressive steps towards the listed factors.

Paragraph (c)(10) is unchanged except for formatting to account for new paragraphs (c)(11) and (12).

Paragraph (c)(11) provides an incentive for use of items that qualify for the Domestic Content preference in solar and wind energy generation facilities on public lands, to complement the fee reduction described in § 2806.52(b)(1)(iii). To qualify for the Domestic Content variable offset, prospective bidders must demonstrate how they will meet the thresholds to qualify for the variable offset. Similar to the Domestic Content reduction for the capacity fee described in 2806.52(b)(1)(iii), the thresholds identified in the notice of competitive process are consistent with the requirements for the domestic content preference in 2 CFR part 184. A prospective bidder is required to provide sufficient documentation to the BLM prior to the competitive process to show how the bidder qualifies or will qualify for this variable offset. This may be documentation in an initial Plan of Development provided to the BLM or other methods discussed in § 2806.52(b)(1)(v) of this preamble. As discussed below, the BLM may hold in suspense the amounts corresponding to the variable offset until construction of the facility is substantially complete or the successful bidder otherwise demonstrates to the BLM that the project has met the domestic content thresholds.

Some comments suggested that including a requirement for a domestic content preference as a variable offset would raise the cost to taxpayers. The BLM disagrees with commenters that this rule will increase costs to taxpayers. This final rule does not require bidders or holders to qualify for the Domestic Content preference as a variable offset or other reductions and variable offsets. As the comments were based on an incorrect assumption that the rule requires buying domestic equipment, no change was made in response to comments.

Paragraph (c)(12) provides an incentive for use of qualifying PLAs, such as during the construction of a solar or wind energy generation facility on public lands, to complement the fee reduction described in § 2806.52(b)(1)(iv). To receive the PLA variable offset, prospective bidders must demonstrate how they qualify in the notice of competitive process. A prospective bidder is required to provide sufficient documentation to the BLM to show how they qualify, such as in an initial Plan of Development or other methods discussed in § 2806.52(b)(1)(v) of this final rule. The BLM may hold in suspense the amounts corresponding to the variable offset until construction of the facility is substantially complete or the successful bidder can otherwise demonstrate to the BLM that the PLA has been executed for the facility.

Some comments supported the use of a PLA as a basis for offering a variable offset. These comments requested that the BLM hold a second competitive process if the BLM does not receive bidders qualifying for a PLA variable offset. This second competitive process would allow for other potential bidders to qualify. The final rule does not limit the number of competitive processes that the BLM may hold. However, the BLM has included PLAs as an optional variable offset.

Some comments noted that union labor laws vary from State to State, suggesting that oversight should be by the State. This final rule provides a variable offset for interested bidders when using a qualifying PLA for competitive processes for solar or wind energy. The BLM's offer of a PLA variable offset does not rely on or necessarily preclude applicable State laws as they may apply to project labor. The BLM may not approve a variable offset from a bidder if it does not comply with applicable laws.

Some commenters disagreed with the BLM offering variable offsets, such as for domestic content and the use of union labor, because developers may also receive reduced payments under § 2806.52. This final rule offers a bidder potential benefits from both a variable offset and a capacity fee reduction. The BLM believes these variable offsets will incentivize prospective bidders to initiate projects with known benefits and approaches that will further benefit the public. Moreover, as described above, reductions to the capacity fee under § 2806.52(b) will promote the greatest use of solar and wind energy resources on public lands consistent with 43 U.S.C. 3003.

Paragraph (c)(13) provides that the BLM may use other factors when determining whether additional types of variable offsets for a competitive process are appropriate.

Some comments requested additional variable offsets to promote responsible wind and solar development, using efficient technology, agreements with local authorities that benefit communities, redevelopment of disturbed sites, and combining or collocating energy infrastructure. The final rule continues to provide an opportunity for additional variable offsets in a competitive process under § 2809.16(c)(13). The BLM will describe the additional variable offsets, including how you may qualify for such additional variable offsets, in the notice of competitive process.

Paragraph (e) provides for bidders to qualify for a variable offset after the BLM holds a competitive process. This final rule recognizes that a bidder may not be able to demonstrate the qualifications for some variable offsets to the BLM's satisfaction until after the BLM holds the competitive process, such as with new provisions in §§ 2809.16(c)(11) or 2809.16(c)(12) for energy development facilities that would contain items qualifying for the Domestic Content preference or use of a PLA. A bidder may conditionally qualify for a variable offset before the competitive process and then later demonstrate their qualification to the BLM and perfect their qualification. The BLM will describe in the notice of competitive process the way a bidder may conditionally qualify for the variable offset and could include methods such as a written statement to the BLM that they intend to qualify for the variable offset. The bidder, if successful, must later demonstrate to the BLM that they have qualified for the variable offset. The BLM may set a deadline in the notice for bidders to demonstrate that the proposed facility qualifies for the variable offset. If the bidder does not qualify for the variable offset in the time provided or the bidder is not able to adequately demonstrate they qualify for the variable offset, the U.S. Government will retain the bid money as the balance of the bonus bid.

A comment stated that if the BLM sets a deadline to qualify for a variable offset in the notice of competitive process, there should be a reasonable deadline given to demonstrate qualifications. The BLM agrees with this comment and provides a deadline, including the timeframe to qualify for the variable offset, in its notice of competitive process. See § 2809.16(e) of this part.

Section 2809.17 Will the BLM ever reject bids or re-conduct a competitive process?

Section 2809.17 identifies situations when the BLM may reject a bid, offer a lease to another bidder, or re-offer a parcel. This section is retitled from the proposed rule, consistent with other changes in the final rule to read ''process'' when describing the BLM's competitive process.

Paragraph (b) provides that the BLM may make the next highest bidder the successful bidder if the named successful bidder does not satisfy the successful bidder requirements identified under § 2809.15, does not

execute the lease, or is for any reason disqualified from holding the lease.

As proposed, paragraph (d) is removed from this section as it is unnecessary with other revisions made in this final rule to make public lands inside of DLAs available to application without a competitive process.

Section 2809.18 What terms and conditions apply to a solar or wind energy development lease?

Section 2809.18 lists the terms and conditions of solar and wind energy leases, which are issued inside of areas classified or allocated for solar or wind energy (*e.g.,* DLAs).

Paragraph (a) clarifies that a lease awarded from a competitive process provides site control to a lessee. However, the presumptive leaseholder may not construct any facilities on the right-of-way until the BLM issues a subsequent notice to proceed, see paragraph 2809.15(b)(1)(ii) of this final rule. The term of a lease is consistent with § 2805.11(c) of this final rule, which provides for a reasonable term up to 50 years, considering the cost of the facility, its useful life, and the public purpose it serves.

Paragraph (b) provides for rent terms for solar and wind energy leases as specified in § 2806.52.

Paragraph (f) provides that lease assignments are applied for under § 2807.21. The BLM will not make any changes to the lease terms or conditions, as provided in § 2807.21(e), except for modifications required under § 2805.15(e). Changes to right-of-way terms or conditions would involve an amendment action by the BLM in addition to the assignment action.

One comment recommended that the BLM adjust the terms and conditions with an assignment to provide for land access, lease length, processes, collaboration with other agencies, and decommissioning. This final rule maintains the BLM's process for assigning leases. Generally, a solar or wind energy lease assignment is an administrative action transferring the lease from a holder to a prospective holder. The BLM's analysis to approve or approve with modification the development lease includes analyzing the access, lease term length, participation from public and partners, and the end-of-life decommissioning and restoration of the public lands. The BLM does not need to revisit these considerations before assigning a lease unless there are substantial changes that may justify a change to the lease. For example, the BLM may modify a lease under § 2805.15(e), which reserve the BLM's right to change the terms and conditions as a result in changes in legislation, regulation, or as otherwise necessary to protect public health or safety or the environment.

Section 2809.19 Applications in Designated Leasing Areas or on Lands That Later Become Designated Leasing Areas

As proposed, Section 2809.19 is removed from the BLM's rules in its entirety. In this former section, the BLM explained how it would evaluate applications for public lands that later become a DLA. The former section is inconsistent with the changes in this rule that allow for applications in DLAs without first holding a competitive process. Because designation of a DLA does not preclude non-competitive leasing, there is no need for the BLM to automatically suspend a non-competitive leasing application because the lands at issue are being considered for designation. At the same time, the BLM may in its discretion deny an application or assign the application a low priority under § 2804.35.

Some commenters supported the BLM making public lands inside DLAs available for non-competitive leasing by application. These commenters continued to suggest that the BLM should provide public notice regarding how the BLM will handle non-competitive lease applications. The notice should provide for at least a 30-day cutoff date for any expressions of interest regarding a competitive interest for offering lands within the DLA. The BLM agrees with comments that notice to the public is appropriate regarding how the BLM will administer solar and wind energy applications in an area affected by a land use plan amendment. However, each planning action or programmatic analysis is unique, and the BLM will respond to the unique conditions for solar and wind energy applications specific to that plan amendment or programmatic analysis. This may or may not include a period of time in which the BLM would continue to accept applications.

Severability

Existing § 2801.8 provides: ''If a court holds any provisions of the regulations in this part or their applicability to any person or circumstances invalid, the remainder of these rules and their applicability to other people or circumstances will not be affected.'' If any portion of this final rule were to be stayed or invalidated by a reviewing court, the remaining elements would continue to provide BLM with important and independently effective tools relating to the administration of its right-of-way and renewable energy programs. Hence, if a court prevents any provision of one part of this rule from taking effect, that should not affect the other parts of the rule. The remaining provisions would remain in force because they could still operate sensibly.

For example, the provisions that reduce rents and fees to implement the Energy Act of 2020 may function independently of the rest of the rule. Indeed, each particular change in rents and fees may function independently. Thus, if a court were to invalidate the Domestic Content reduction or Project Labor Agreement reduction, the other rent and fee provisions should remain undisturbed. Similarly, the provisions that reduce rents and fees may function independently of the provisions that allow the BLM to choose whether to conduct competitive processes inside and outside DLAs.

V. Procedural Matters

Regulatory Planning and Review (Executive Orders 12866 and 13563) and Modernizing Regulatory Review (Executive Order 14094)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. E.O. 14094 updates the significance criteria in section 3(f) of E.O. 12866.

OIRA has determined that this final rule is a ''significant regulatory action'' within the scope of E.O. 12866, as amended by E.O. 14094.

The BLM's Regulatory Impact Analysis concluded that the rule may have an annual effect on the economy of $200 million or more. These effects are associated with construction of projects induced by this rule. Additionally, the BLM estimated that the rule would have distributional impacts in the form of transfer payments from right-of-way applicants and holders to the BLM. Transfer payments are monetary payments from one group to another that do not affect total resources available to society. While disclosing the estimated transfers are important for describing the distributional effects of the rule, these payments should not be included in the estimated costs and benefits per OMB Circular A–4.

For more detailed information, see the Regulatory Impact Analysis for Revisions to 43 CFR 2800 (Regulatory Impact Analysis) prepared for this rule. This Regulatory Impact Analysis has been posted in the docket for the rule on the Federal eRulemaking Portal: *https://*

www.regulations.gov. In the Searchbox, enter ''RIN 1004–AE78,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rule making process must allow for public participation and an open exchange of ideas. The BLM has developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

This rule will not likely have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The RFA generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the ''notice-and-comment'' rulemaking requirements found in the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. See 5 U.S.C. 601–612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The BLM reviewed the Small Business Size standards for the affected industries. We determined that a small share of the entities in the affected industries are small businesses as defined by the Small Business Act (SBA). However, the BLM believes that the impact on the small entities is not significant. Although the rule could potentially affect a substantial number of small entities, the BLM does not believe that these effects would be economically significant.

The rule would benefit small businesses by streamlining the BLM's processes and reducing annual rent and capacity fee payments. These reductions may motivate investment in additional generation capacity and facilities by freeing up money that would have otherwise been paid to the BLM as rents or fees. The rule also modifies provisions that allow for an entity to request a waiver or reduction to annual rent and capacity fee payments.

For the purpose of conducting its review pursuant to the RFA, the BLM believes that the rule would not likely have a ''significant economic impact on a substantial number of small entities,'' as that phrase is used in 5 U.S.C. 605. Therefore, the BLM has not prepared a final regulatory flexibility analysis.

Some comments noted that they believe there has been insufficient analysis on this rule and request the BLM perform an initial and final regulatory flexibility analysis, as it is required by Sections 603 and 604 of the Regulatory Flexibility Act for rules that may have a significant economic impact on a substantial number of small business and governmental entities. Some commenters also believe the BLM has broken down connected and interrelated rule-making processes to avoid significance and therefore has failed to conduct the necessary impacts analysis under the Regulatory Flexibility Act, NEPA, E.O. 12866 and other applicable authorities as required under the Administrative Procedure Act.

The BLM determines that solar and wind projects with generating capacities of less than 100 MW have average annual receipts of $5.2 million (solar) and $4.1 million (wind), which falls within the range of receipts identified for small businesses in the SBA size standards. The average size of projects currently under review by the BLM is 500MW. Also, projects smaller than 100MW may still fail to be small businesses if they are owned by larger corporations or governmental entities. While it is reasonable to expect that some small businesses will be affected, it is not expected to be a substantial number. Further, the principal effect will be a reduction in rents and capacity fees for the small businesses—a benefit. In general, the share of rents and capacity fees is small relative to project revenues. Therefore, the benefits are not a significant economic impact on the small businesses.

Congressional Review Act

This action is subject to the CRA, and BLM will submit a rule report to each chamber of Congress and to the Comptroller General of the United States. This action meets the criteria in 5 U.S.C. 804(2).

Comment Summary: In response to the proposed rule, a commenter requested that the BLM explain contradictory conclusions of regulatory impact in accordance with the Congressional Review Act and E.O 12866, and coordinate with local governments and businesses to collect inclusive and broad economic data to make an informed determination.

Response: The commenter's concern has been overtaken because DOI will report to Congress on the promulgation of this rule prior to its effective date. The report will state that the Office of Information and Regulatory Affairs has determined that this rule meets the criteria set forth in 5 U.S.C. 804(2).''

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments, or the private sector. Under the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531 *et seq.*), agencies must prepare a written statement about benefits and costs, prior to issuing a proposed or final rule that may result in aggregate expenditure by State, local, and Tribal governments, or the private sector, of $100 million or more in any 1 year.

This rule is not subject to the requirements under the UMRA. The rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or to the private sector in any one year. The rule would not significantly or uniquely affect small governments. A statement containing the information required by the UMRA is not required.

One comment requested that the BLM submit documentation that is complete, transparent, and factual for this rulemaking and that is informed by economic data obtained through coordination with local governments and a diverse range of private sector industries, such as grazing, mining and recreation. The resubmitted documentation should support the claim that this rule does not impose an unfunded mandate under the UMRA. If a finding shows that the rule does impose an unfunded mandate, then the BLM must complete a cost and benefit analysis as required by the UMRA. The BLM disagrees that this rule requires resubmitting documentation supporting the BLM's unfunded mandate determination. This final rule, including its Regulatory Impact Analysis, clearly, transparently, and factually discusses the impacts of the rule, which governs the BLM's administration of applications and right-of-way grants and

leases for solar and wind energy. This rule does not result in Tribal, State, or local governments having to expend funds. Therefore, this rule does not impose an unfunded federal mandate and does not require a cost and benefit analysis. In any event, this rule and the accompanying Regulatory Impact Analysis provide all the information the UMRA requires.

Governmental Actions and Interference With Constitutionally Protected Property Right—Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under E.O. 12630. Section 2(a) of E.O. 12630 identifies policies that do not have takings implications, such as those that abolish regulations, discontinue governmental programs, or modify regulations in a manner that lessens interference with the use of private property. The rule would not interfere with private property. A takings implication assessment is not required.

Some comments noted that access across federal, state, or county managed lands should not entail encumbrances or restrictions on private property. This final rule does not restrict access across any lands. Through separate environmental review, such as through land use planning, the BLM may consider actions that affect access. Tribal, Federal, State, and local government offices, as well as communities and private citizens will have opportunity to engage in those environmental processes.

Federalism (E.O. 13132)

Under the criteria in Section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. A federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

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

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

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

Consultation and Coordination With Indian Tribes (E.O. 13175 and Departmental Policy)

DOI strives to maintain and strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the DOI's consultation policy and under the criteria in E.O. 13175 and have determined that it has no substantial direct effects on federally recognized Indian Tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, and that consultation under the DOI's Tribal consultation policy is not required. However, consistent with the DOI's consultation policy (52 Departmental Manual 4) and the criteria in E.O. 13175, the BLM will consult with federally recognized Indian Tribes on any renewable energy project proposals that may have a substantial direct effect on the Tribes.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) generally provides that an agency may not conduct or sponsor and, not withstanding any other provision of law, a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. Collections of information include any request or requirement that persons obtain, maintain, retain, or report information to an agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)).

This rule contains information-collection requirements that are subject to review by OMB under the PRA. OMB has generally approved the existing information-collection requirements contained in 43 CFR part 2800 associated with wind and solar rights-of-way grants or leases under OMB control number 1004–0206 (expiration date: June 30, 2026). Additionally, the BLM's regulations at 43 CFR part 2800 require the use of Standard Form 299 (SF–299), ''Application for Transportation and Utility Systems and Facilities on Federal Lands,'' for right-of-way applications and the regulations at 43 CFR part 2800. OMB has approved the requirements associated with SF–299 and has assigned control number 0596–0249.

This rule does not include any changes to the information-collection requirements currently contained in 43 CFR parts 2800 and 2880 and approved by OMB as noted above. There is a new information-collection requirement contained in 43 CFR 2806.52(b)(5) regarding an annual certified statement. The rule would require that by October of each year wind and solar grant or leaseholders must submit to the BLM a certified statement identifying the first year's estimated energy generation on public lands and the prior year's actual energy generation on public lands. The BLM will determine the capacity fee based on the certified statement provided. To prepare the annual certified statement, grant or leaseholders will need to compile information based on capacity fee as instructed in 43 CFR 2806.

The information-collection requirements contained in 43 CFR 2800 and 2880 and approved under OMB Control Number 1004–0206 and the aforementioned new information-collection pertaining to 43 CFR 2806.52(b)(5) are described below.

Activities That Require SF–299

The following discussion describes the information-collection activities in this control number that require use of SF–299.

Application for a Solar or Wind Energy Development Project Outside Any Designated Leasing Area (43 CFR 2804.12, 2804.25(c), 2804.26(a)(5), and 2804.30(g)); and Application for an Electric Transmission Line With a Capacity of 100 kV or More (43 CFR 2804.12, 2804.25(c), and 2804.26(a)(5))

Section 2804.12(b) applies to solar and wind energy development grants outside any DLA and electric transmission lines with a capacity of 100 kV or more.

Section 2804.12(b) includes the following requirements for applications for a solar or wind energy development project outside a DLA and for applications for a transmission line project with a capacity of 100 kV or more:

- A discussion of all known potential resource conflicts with sensitive resources and values, including special designations or protections; and
- Applicant-proposed measures to avoid, minimize, and compensate for such resource conflicts, if any.

Section 2804.12(b) also requires applicants to initiate early discussions with any grazing permittees that may be affected by the proposed project. This

requirement stems from FLPMA Section 402(g) (43 U.S.C. 1752(g)) and a BLM grazing regulation (section 4110.4–2(b)) that require 2 years' prior notice to grazing permittees and lessees before cancellation of their grazing privileges.

In addition to the information listed at § 2804.12(b), an application for a solar or wind project, or for a transmission line of at least 100 kV, must include the information listed at §§ 2804.12(a)(1) through (a)(7).

Section 2804.25 provides that the BLM will notify an applicant upon receipt of an application and may require the applicant to submit additional information necessary to process the application (such as a Plan of Development or cultural resource surveys). As amended, § 2084.25(c) provides that, for solar or wind energy development projects and transmission lines with a capacity of 100 kV or more, the applicant must commence any required resource surveys or inventories within 1 year of the request date, unless otherwise specified by the BLM. The amended regulation also authorizes an applicant to submit a request for an alternative requirement by showing good cause under § 2804.40.

Applications for solar or wind energy development outside any DLA, but not applications for large-scale transmission lines, are subject to a requirement (at § 2804.12(c)(2)) to submit an ''application filing fee'' of $15 per acre. As defined in an amendment to § 2801.5, an application filing fee is specific to solar and wind energy right-of-way applications. Section 2804.30(e)(4) provides that the BLM will refund the fee, except for the reasonable costs incurred on behalf of the applicant, if the applicant is not a successful bidder in the competitive process outlined in subpart 2804.

Section 2804.26(a)(5) provides the authority that allows the BLM to deny an application for a right-of-way grant if the applicant does not have or cannot demonstrate the technical or financial capability to construct the project or operate facilities within the right-of-way. Amendments to that provision list the following ways an applicant may demonstrate their financial and technical capability to construct, operate, maintain, and terminate a project:

- Documenting any previous successful experience in construction, operation, and maintenance of similar facilities on either public or non-public lands;
- Providing information on the availability of sufficient capitalization to carry out development, including the preliminary study stage of the project and the environmental review and clearance process; or
- Providing written copies of conditional commitments of Federal and other loan guarantees; confirmed power purchase agreements; engineering, procurement, and construction contracts; and supply contracts with credible third-party vendors for the manufacture or supply of key components for the project facilities.

General Description of a Proposed Project and Schedule for Submittal of a Plan of Development (43 CFR 2804.12(b)(1) and (b)(2))

Sections 2804.12(b)(1) and (b)(2) require applicants for a solar or wind development project outside a DLA to submit the following information, using Form SF–299:

- A general description of the proposed project and a schedule for the submission of a Plan of Development (POD) conforming to the POD template at *http://www.blm.gov;*
- A discussion of all known potential resource conflicts with sensitive resources and values, including special designations or protections; and
- Proposals to avoid, minimize, and compensate for such resource conflicts, if any.

Application for an Energy Site-Specific Testing Grant (43 CFR 2804.12(a), and 2804.30(g)); Application for an Energy Project-Area Testing Grant (43 CFR 2804.12(a), and 2804.30(g)); and Application for a Short-Term Grant (43 CFR 2804.12(a))

Section 2804.12(a) addresses the general requirements of an application for a FLPMA right-of-way grant. Section 2804.30(g) authorizes only one applicant (*i.e.,* a ''preferred applicant'') to apply for an energy project-area testing grant or an energy site-specific testing grant for land outside any DLA.

Each of these grants is for 3 years or less, in accordance with § 2805.11(c)(2). All of these applications must be submitted on SF–299. Applications for project-area grants (but not site-specific grants) are subject to a $2 per-acre application filing fee in accordance with § 2804.12(c)(2). Applicants for short-term grants for other purposes (such as geotechnical testing and temporary land-disturbing activities) are subject to a processing fee in accordance with § 2804.1.

Request To Assign a Solar or Wind Energy Development Right-of-Way (43 CFR 2807.21)

Section 2807.21, as amended, provides for assignment, in whole or in part, of any right or interest in a grant or lease for a solar or wind development right-of-way. Actions that may require an assignment include the transfer by the holder (assignor) of any right or interest in the grant or lease to a third party (assignee) or any change in control transaction involving the grant holder or leaseholder, including corporate mergers or acquisitions. The proposed assignee must file an assignment application, using SF–299, and pay application and processing fees.

The assignment application must include:

- Documentation that the assignor agrees to the assignment; and
- A signed statement that the proposed assignee agrees to comply with and be bound by the terms and conditions of the grant that is being assigned and all applicable laws and regulations.

Environmental, Technical, and Financial Records, Reports, and Other Information (43 CFR 2805.12(a)(15))

Section 2805.12(a)(15) authorizes the BLM to require a holder of any type of right-of-way to provide, or give the BLM access to, any pertinent environmental, technical, and financial records, reports, and other information. The use of SF–299 is required. The BLM will use the information for monitoring and inspection activities.

Application for Renewal of a Solar or Wind Energy Development Grant or Lease (43 CFR 2805.14(g) and 2807.22)

Section 2805.14(g) provides that a holder of a right-of-way grant, which includes solar or wind energy generating facilities, may apply for renewal in accordance with § 2807.22. Section 2807.22(c) provides that an application to renew a grant must include the same information, on SF–299, that is necessary for a new application. It also provides that processing fees, in accordance with § 2804.14, as amended, apply to these renewal applications. Sections 2807.22(a) and (b) provide that an application for renewal of any right-of-way grant or lease, including a solar or wind energy development grant or lease, must be submitted at least 120 calendar days before the grant or lease expires. The application must show that the grantee or lessee is complying with the renewal terms and conditions (if any), with the other terms, conditions, and stipulations of the grant or lease, and with other applicable laws and regulations. The application also must explain why a renewal of the grant or lease is necessary.

Request for Amendment, Assignment, or Other Change (FLPMA) (43 CFR 2807.11(b) and (d) and 2807.21)

Section 2807.11(b) requires a holder of any type of right-of-way grant to contact the BLM to seek an amendment to the grant under § 2807.20 and obtain the BLM's approval before beginning any activity that is a ''substantial deviation'' from what is authorized.

Section 2807.11(d) requires contacting the BLM to request an amendment to the pertinent right-of-way grant or lease and prior approval whenever site-specific circumstances or conditions result in the need for changes to an approved right-of-way grant or lease, Plan of Development, site plan, mitigation measures, or construction, operation, or termination procedures that are not ''substantial deviations.''

Section 2807.21 authorizes assignment of a grant or lease with the BLM's approval. It also authorizes the BLM to require a grant or leaseholder to file new or revised information in circumstances that include, but are not limited to:

- Transactions within the same corporate family;
- Changes in the holder's name only; and
- Changes in the holder's articles of incorporation.

A request for an amendment of a right-of-way, using SF–299, is required in cases of a substantial deviation (for example, a change in the boundaries of the right-of-way, major improvements not previously approved by the BLM, or a change in the use of the right-of-way). Other changes, such as changes in project materials, or changes in mitigation measures within the existing, approved right-of-way area, must be submitted to the BLM for review and approval. In order to assign a grant, the proposed assignee must file an assignment application and follow the same procedures and standards as for a new grant or lease, as well as pay application and processing fees. In order to request a name change, the holder will be required to file an application and follow the same procedures and standards as for a new grant or lease and pay processing fees, but no application fee is required. The following documents are also required in the case of a name change:

- A copy of the court order or legal document effectuating the name change of an individual; or
- If the name change is for a corporation, a copy of the corporate resolution proposing and approving the name change, a copy of a document showing acceptance of the name change by the State in which incorporated, and a copy of the appropriate resolution, order, or other document showing the name change.

In all these cases, the BLM will use the information to monitor and inspect rights-of-way, and to maintain current data.

Activities That Do Not Require Any Form

Preliminary Application Review Meetings for a Large-Scale Right-of-Way (43 CFR 2804.12(b)(4))

''Preliminary application review meetings'' are required after submission of an application for a large-scale right-of-way. A large-scale right-of-way is for solar or wind energy development outside a DLA, or for a transmission line with a capacity of 100 kV or more.

Within 6 months from the date that the BLM receives the cost recovery fee for an application for a large-scale project, the applicant must schedule and hold at least two preliminary application review meetings.

In the first meeting, the BLM will collect information from the applicant to supplement the application on subjects such as the general project proposal. The BLM will also discuss with the applicant subjects such as the status of the BLM's land use planning for the lands involved, potential siting issues or concerns, potential environmental issues or concerns, potential alternative site locations, and the right-of-way application process.

In the second meeting, the applicant and the BLM will meet with appropriate Federal and State agencies and Tribal and local governments to facilitate coordination of potential environmental and siting issues and concerns.

The applicant and the BLM may agree to hold additional preliminary application review meetings.

Application for Renewal of an Energy Project-Area Testing Grant or Other Short-Term Grant (43 CFR 2805.11(c)(2)(ii), 2805.14(h), and 2807.22)

Section 2805.11(c)(2)(ii) provides that holders of energy project-area testing grants may seek renewal of those grants. The initial term for such a grant is 3 years or less, with the option to renew for one additional 3-year period.

For other short-term grants, such as for geotechnical testing and temporary land-disturbing activities, the initial term is 3 years or less. Short-term grants include an option for renewal.

Section 2805.14(h) provides that applications to renew an energy project-area testing grant must include an energy development application submitted in accordance with § 2801.9(d)(2). Cost recovery fees in accordance with § 2804.14, as amended, apply to these renewal applications.

Section 2807.22 provides that an application for renewal of any right-of-way grant or lease, including an energy project-area testing grant or a short-term grant, must be submitted at least 120 calendar days before the grant or lease expires. The application must show that the grantee or lessee is complying with the renewal terms and conditions (if any), with the other terms, conditions, and stipulations of the grant or lease, and with other applicable laws and regulations. The application also must explain why a renewal of the grant or lease is necessary.

Showing of Good Cause (43 CFR 2804.40 and 2805.12)

Under § 2804.40, an applicant for a FLPMA right-of-way grant who is unable to meet any of the requirements in subpart 2804 may request approval for an alternative requirement from the BLM. Any such request is not approved until the applicant receives BLM approval in writing. This type of request to the BLM must:

(a) Show good cause for the applicant's inability to meet a requirement;

(b) Suggest an alternative requirement and explain why that requirement is appropriate; and

(c) Be received in writing by the BLM in a timely manner, before the deadline to meet a particular requirement has passed.

The BLM will use the information to determine whether to apply an alternative requirement.

Other showings of good cause are authorized or may be required by § 2805.12, which requires due diligence in development and operations of any right-of-way grant or lease. In accordance with § 2805.12(c)(6) and (c)(8), the BLM will notify the holder before suspending or terminating a right-of-way for lack of due diligence. This notice will provide the holder with a reasonable opportunity to correct any noncompliance or to start or resume use of the right-of-way. A showing of good cause will be required in response. That showing must include:

- Reasonable justification for any delays in construction or reductions in energy generation (for example, delays in equipment delivery, legal challenges, and acts of God);
- The anticipated date for the completion of construction or resumption of energy generation; and

evidence of progress toward the start or resumption of construction; and

• A request for extension of the timelines in the approved POD or extension of the period in which the holder must satisfy the minimum energy threshold.

Section 2805.12(e), as amended, applies as soon as a right-of-way holder anticipates noncompliance with stipulation, term, or condition of the approved right-of-way grant or lease, or in the event of noncompliance with any such stipulation, term, or condition. In these circumstances, the holder must notify the BLM in writing and show good cause for the noncompliance, including an explanation of the reasons for the noncompliance.

In addition, the holder may request that the BLM consider alternative stipulations, terms, or conditions. Any request for an alternative stipulation, term, or condition must comply with applicable law in order to be considered. Any proposed alternative to applicable bonding requirements must provide the United States with adequate financial assurance for potential liabilities associated with the right-of-way grant or lease. Any such request is not approved until the holder receives the BLM's approval in writing.

Bonding Requirements (43 CFR 2805.20)

Section 2805.20 provides that the bond amount for projects other than a solar or wind energy lease under subpart 2809 (*i.e.,* inside a DLA) will be determined based on the preparation of a reclamation cost estimate that includes the cost to the BLM to administer a reclamation contract and review it periodically for adequacy.

Section 2805.20(a)(5) provides that the reclamation cost estimate must include at a minimum:

• Remediation of environmental liabilities such as use of hazardous materials waste and hazardous substances, herbicide use, the use of petroleum-based fluids, and dust control or soil stabilization materials;

• The decommissioning, removal, and proper disposal, as appropriate, of any improvements and facilities; and

• Interim and final reclamation, re-vegetation, recontouring, and soil stabilization.

Sections 2805.20(b) and 2805.20(c) identify specific bond requirements for solar and wind energy development respectively outside of DLAs. A holder of a solar or wind energy grant outside of a DLA will be required to submit a reclamation cost estimate to help the BLM determine the bond amount. For solar energy development grants outside of DLAs, the bond amount will be no less than $10,000 per acre. For wind energy development grants outside of DLAs, the bond amount will be no less than $10,000 per authorized turbine with a nameplate generating capacity of less than one Megawatt (MW), and no less than $20,000 per authorized turbine with a nameplate generating capacity of one MW or greater.

Section 2805.20(d) separates site- and project-area testing authorization bond requirements from § 2805.20(c). Meteorological and other instrumentation facilities are required to be bonded at no less than $2,000 per location. These bond amounts are the same as standard bond amounts for leases required under § 2809.18(e)(3).

Annual Certified Statement (43 CFR 2806.52(b)(5))—New Information Collection

The rule requires that by October of each year, wind and solar grant or leaseholders must submit to the BLM a certified statement identifying the first year's estimated energy generation on public lands and the prior year's actual energy generation on public lands. The BLM will determine the capacity fee based on the certified statement provided. To prepare the annual certified statement, grant or leaseholders will need to compile information based on the capacity fee as instructed in subpart 2806. This is the only new information-collection requirement contained in this rule.

Nomination of a Parcel of Land Inside a Designated Leasing Area (43 CFR 2809.11)

Sections 2809.10 and 2809.11 authorize the BLM, on its own initiative, to offer land through a competitive process for solar or wind energy development. These regulations also authorize the BLM to solicit nominations for such development by publishing a notice in the **Federal Register**. To nominate a parcel under this process, the nominator must be qualified to hold a right-of-way under 43 CFR 2803.10. After publication of a notice by the BLM, anyone meeting the qualifications may submit a nomination for a specific parcel of land to be developed for solar or wind energy. There is a fee of $5 per acre for each nomination. The following information is required:

• The nominator's name and personal or business address;

• The legal land description; and

• A map of the nominated lands.

The BLM will use the information to communicate with the nominator and to determine whether to proceed with a competitive process.

Plan of Development for a Solar or Wind Energy Development Lease Inside a Designated Leasing Area (43 CFR 2809.18)

Section 2809.l8(c) requires the holder of a lease for solar or wind energy development to submit a Plan of Development (POD) within 2 years of the lease issuance date. The POD must be consistent with the development schedule and other requirements in the POD template posted at *http://www.blm.gov*; and must address all pre-development and development activities.

Section 2809.18(d) requires the holder of a solar or wind energy development lease for land inside a DLA to pay reasonable costs for the BLM or other Federal agencies to review and approve the POD and monitor the lease. To expedite review and monitoring, the holder may notify the BLM in writing of an intention to pay the full actual costs incurred by the BLM.

Request for Amendment, Assignment, or Other Change (MLA) (43 CFR 2886.12(b) and (d) and 43 CFR 2887.11)

Sections 2886.12 and 2887.11 pertain to holders of rights-of-way and temporary use permits authorized under the MLA. A temporary use permit authorizes a holder of a MLA right-of-way to use land temporarily in order to construct, operate, maintain, or terminate a pipeline, or for purposes of environmental protection or public safety. See § 2881.12. The regulations require these holders to contact the BLM:

• Before engaging in any activity that is a ''substantial deviation'' from what is authorized;

• Whenever site-specific circumstances or conditions arise that result in the need for changes that are not substantial deviations;

• When the holder submits a certification of construction;

• Before assigning, in whole or in part, any right or interest in a grant or lease;

• Before any change in control transaction involving the grant- or lease-holder; and

• Before changing the name of a holder (*i.e.,* when the name change is not the result of an underlying change in control of the right-of-way).

A request for an amendment of a right-of-way or temporary use permit is required in cases of a substantial deviation (*e.g.,* a change in the boundaries of the right-of-way, major improvements not previously approved by the BLM, or a change in the use of the right-of-way). Other changes, such

as changes in project materials, or changes in mitigation measures within the existing, approved right-of-way area are required to be submitted to the BLM for review and approval. In order to assign a grant, the proposed assignee must file an assignment application and follow the same procedures and standards as for a new grant or lease, as well as pay processing fees. In order to request a name change, the holder will be required to file an application and follow the same procedures and standards as for a new grant or lease and pay processing fees, but no application fee is required. The following documents are also required in the case of a name change:

- A copy of the court order or legal document effectuating the name change of an individual; or
- If the name change is for a corporation, a copy of the corporate resolution proposing and approving the name change, a copy of a document showing acceptance of the name change by the State in which incorporated, and a copy of the appropriate resolution, order, or other document showing the name change.

In all these cases, the BLM will use the information gathered for monitoring and inspection purposes, and to maintain current data on rights-of-way.

Certification of Construction (43 CFR 2886.12(f))

A certification of construction is a document a holder of an MLA right-of-way must submit to the BLM after finishing construction of a facility, but before operations begin. The BLM will use the information to verify that the holder has constructed and tested the facility to ensure that it complies with the terms of the right-of-way and is in accordance with applicable Federal and State laws and regulations.

The information-collection request for this rule has been submitted to OMB for review under 44 U.S.C. 3507(d). You may view the information-collection request(s) at *http://www.reginfo.gov/public/do/PRAMain.*

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information-collection, including:

- Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
- The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information to be collected; and
- How to minimize the information-collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Currently, the information-collection requirements contained in 43 CFR parts 2800 and 2880 and approved under OMB control number 1004–0206 are estimated as follows: 3,042 annual responses; 47,112, annual burden hours; and $2,182,302 annual cost burden. We are projecting a burden increase of 75 new annual responses and 150 new annual burden hours as result of this rule. This burden hour increase would result from a new information collection requirement contained in § 2806.52(b)(5) pertaining to the annual certified statement. This new information collection is needed to help the BLM more accurately determine the capacity fee based on the certified statement provided.

The final rule also removes an existing information collection previously contained in 43 CFR 2809.11(c) titled, *Expression of Interest in a Parcel of Land Inside a Designated Leasing Area.* The removal of this information collection results in the reduction of 1 annual response and 4 annual burden hours.

Therefore, we estimate that the final rule will result in a net increase of 74 annual responses and 226 annual burden hours.

We are also adjusting the burden for two existing and unchanged information collections to reflect more accurately the burden those activities would involve the industry. These adjustments include the following:

- *Preliminary Application Review Meetings for 2 public meetings for a Large-Scale Right-of-Way (43 CFR 2804.12(b)(4)).* The average response time is adjusted from 2 hours to 4 hours. This adjustment resulted in a 40-hour burden increase (from 40 hours to 80 hours).
- *Environmental, Technical, and Financial Records, Reports, and Other Information (43 CFR 2805.12(a)(15)).* We have added a 50 percent increase in the hours required to prepare reports (from 4 per response to 6 per response). This resulted in an increasing the estimated annual burden hours for these activities from 80 hours to 120 hours.

There are no projected changes to the non-hour cost burdens as a result of this rule. The resulting new estimated total burdens for OMB Control Number 1004–0206 are provided below.

Title of Collection: Competitive Processes, Terms, and Conditions for Leasing Public Lands for Solar and Wind Energy Development (43 CFR parts 2800 and 2880).

OMB Control Number: 1004–0206.

Form Number: SF–299 (Burden approved by OMB in Request for Common Form under OMB Control Number 0596–0249).

Type of Review: Revision of a currently approved collection of information.

Respondents/Affected Public: Private sector (applicants for and holders of wind and solar rights-of-way grants or leases on Federal public lands.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion and annually for the Annual Certified Statement in 43 CFR 2806.52(i).

Number of Respondents: 75.

Annual Responses: 3,116.

Annual Burden Hours: 47,338.

Annual Burden Cost: $2,182,302.

If you want to comment on the information-collection requirements this in this rule, please send your comments and suggestions on this information-collection request within 30 days of publication of this final rule in the **Federal Register** to OMB at *www.reginfo.gov.* Click on the link, ''Currently under Review—Open for Public Comments.''

National Environmental Policy Act

These proposed regulatory amendments are of an administrative or procedural nature and thus are eligible to be categorically excluded from the requirement to prepare an EA or an EIS. See 43 CFR 46.205 and 46.210(i). They do not present any of the extraordinary circumstances listed at 43 CFR 46.215.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

Federal agencies are to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order, and (2) Is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) Is designated by the Administrator of OIRA as a significant energy action.

The BLM reviewed the rule and determined that it is not likely a significant energy action as defined by E.O. 13211. While the rights-of-way affected by this rule are for solar and

wind energy generation, the rule is limited in scope and would not likely have a significant, adverse effect on the supply, distribution, or use of energy from these sources. The rule would not result in a shortfall in supply, price increases, or increase the use of foreign supplies.

Authors

The principal authors of this rule are: Jayme M. Lopez, BLM National Renewable Energy Coordination Office; Jeremy Bluma, BLM National Renewable Energy Coordination Office; Radford Schantz, Division of Lands, Realty and Cadastral Survey; Patrick Lee, DOI, Office of Policy Analysis; Jeff Holdren, BLM Division of Lands, Realty and Cadastral Survey; Darrin King, BLM Division of Regulatory Affairs; Jennifer Noe, BLM Division of Regulatory Affairs, assisted by the DOI Office of the Solicitor. This action by the Principal Deputy Assistant Secretary is taken pursuant to an existing delegation of authority.

Steven H. Feldgus, Ph.D.,

Principal Deputy Assistant Secretary, Land and Minerals Management.

List of Subjects in 43 CFR Part 2800

Electric power, Highways and roads, Penalties, Public lands and rights-of-way, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, the BLM amends 43 CFR part 2800 as set forth below:

PART 2800—RIGHTS–OF–WAY UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT

■ 1. The authority citation for part 2800 is revised to read as follows:

Authority: 43 U.S.C. 1733, 1740, 1763, 1764, and 3003.

Subpart 2801—General information

■ 2. Amend § 2801.5:
■ a. In paragraph (a) by adding the acronym for ''FLPMA'' in alphabetical order;
■ b. In paragraph (b) by:
■ i. Removing the term ''Act'';
■ ii. Adding in alphabetical order the terms ''Domestic Content'' and ''Capacity fee'';
■ iii. Revising the term for ''Grant'';
■ iv. Removing the term ''Megawatt (mw) capacity fee'';
■ v. Revising the terms ''Megawatt hour (MWh) rate'' and ''Reasonable costs''; and
■ vi. Adding in alphabetical order the terms ''Renewable energy coordination office (RECO)'', ''Solar or wind energy development'', and ''Solar or wind energy lease''.

The additions and revisions to read as follows:

§ 2801.5 What acronyms and terms are used in the regulations in this part?

(a) * * *

FLPMA means the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*).

* * * * *

(b) * * *

Domestic Content reduction means an item or product that qualifies for the domestic content preference under the Build America, Buy America Act, Public Law 117–58, 135 Stat. 429, §§ 70901 through 70927 (Nov. 15, 2021), and the implementing guidance at 2 CFR part 184.

Capacity fee is the fee charged to right-of-way holders once energy production commences that is based on the production of energy on public lands from solar and wind energy generating facilities.

* * * * *

Grant means an authorization or instrument (*e.g.,* easement, license, or permit) the BLM issues under Title V of the Federal Land Policy and Management Act, 43 U.S.C. 1761 *et seq.,* and any authorization or instrument the BLM and its predecessors issued for like purposes before October 21, 1976, under then existing statutory authority, except for solar or wind energy leases. It does not include authorizations issued under the Mineral Leasing Act (30 U.S.C. 185).

* * * * *

Megawatt hour (MWh) rate means the 5 calendar-year average of the annual average wholesale electricity prices per MWh for the major trading hubs serving the 11 western States of the continental United States.

* * * * *

Reasonable costs has the meaning found in Section 304(b) of FLPMA.

* * * * *

Renewable energy coordination office (RECO) means one of the National, State, district, or field offices established by the Secretary under 43 U.S.C. 3002(a) that is responsible for implementing a program for improving Federal permit coordination with respect to solar, wind, and geothermal projects on BLM-administered land, and such other activities as the Secretary determines necessary.

* * * * *

Solar or wind energy development means the use of public lands to generate electricity from solar or wind energy resources. It includes the construction, operation, maintenance, and decommissioning of any such facilities, as well as the subsequent reclamation of the site.

Solar or wind energy lease means any right-of-way issued for solar or wind energy development in an area classified or allocated for solar or wind energy (*i.e.,* a designated leasing area) in a resource management plan.

* * * * *

■ 3. Amend § 2801.6 by revising paragraph (a)(1) to read as follows:

§ 2801.6 Scope.

(a) * * *

(1) Grants or leases for necessary transportation or other systems and facilities that are in the public interest and require the use of public lands for the purposes identified in 43 U.S.C. 1761, and administering, amending, assigning, monitoring, renewing, and terminating them;

* * * * *

■ 4. Amend § 2801.9 by revising paragraphs (d) introductory text, (d)(3) and (4), and adding paragraph (d)(6) to read as follows:

§ 2801.9 When do I need a grant?

* * * * *

(d) All systems, facilities, and related activities for energy generation, storage, or transmission projects are specifically authorized as follows:

* * * * *

(3) Energy generation facilities, including solar and wind energy development facilities, are authorized with a right-of-way grant or lease that may be issued for up to 50 years (plus initial partial year of issuance);

(4) Energy storage facilities, which are separate from energy generation facilities, are authorized with a right-of-way grant that may be issued for up to 50 years;

* * * * *

(6) Electric transmission lines with a capacity of 100 kV or more are authorized with a right-of-way grant that may be issued for up to 50 years.

■ 5. Revise the heading for subpart 2802 to read as follows:

Subpart 2802—Lands Available for FLPMA Grants or Leases

■ 6. Amend § 2802.11 by revising paragraphs (b) introductory text and (b)(1) and adding paragraphs (b)(10) and (11) to read as follows:

§ 2802.11 How does the BLM designate right-of-way corridors and designated leasing areas?

* * * * *

(b) When determining which public lands may be suitable for right-of-way corridors or designated leasing areas, the BLM may consider various factors, including:

(1) Federal, State, Tribal, and local land use plans, and applicable Federal, State, Tribal, and local laws;

* * * * *

(10) Access to electric transmission; and

(11) Whether there are areas for solar and wind energy development with low potential for conflict with resources or uses due to environmental, cultural, and other relevant criteria, which the BLM will identify by:

(i) Assessing the demand for new or expanded areas;

(ii) Applying environmental, cultural, and other screening criteria; and

(iii) Analyzing proposed areas through the land use planning process described in part 1600 of this chapter.

* * * * *

■ 7. Amend § 2803.10 by revising paragraph (c) to read as follows:

§ 2803.10 Who may hold a grant or lease?

* * * * *

(c) Of legal age and authorized to do business in the State or States where the right-of-way you seek is located.

■ 8. Revise § 2803.12 to read as follows:

§ 2803.12 What happens to my grant or lease if I die?

(a) If a grant holder dies, any inheritable interest in a grant or lease will be distributed under State law.

(b) If the receiver of a grant or lease is not qualified to hold a grant or lease under § 2803.10 of this subpart, the BLM will recognize the receiver as grant or leaseholder for up to two years, subject to full compliance with all terms, conditions, and stipulations. During that period, the receiver must either become qualified or divest itself of the interest.

Subpart 2804—Applying for FLPMA Grants

■ 9. Amend § 2804.12 by revising paragraphs (c) and (f) and adding paragraph (j) to read as follows:

§ 2804.12 What must I do when submitting my application?

* * * * *

(c) You must meet additional requirements when applying for a solar or wind energy development or short-term right-of-way, as follows:

(1) Pay an application filing fee of $2 per acre for short-term right-of-way applications or $15 per acre for solar or wind energy development applications. The BLM will apply the application filing fee toward the processing fees described in §§ 2804.14 through 2804.22. The BLM will refund the balance of any application filing fee at the end of the BLM's application review process if the application filing fee exceeds the amount of the processing fee.

(2) Pay additional reasonable costs in addition to payment of the application filing fee when processing your application, pursuant to § 2804.14. A processing or monitoring Category 6 cost recovery fee may be reduced by the application filing fee paid when submitting an application.

* * * * *

(f) The BLM may require you to submit additional information at any time while processing your application. The BLM will identify additional information in a written deficiency notice asking you to provide the information within a specified time pursuant to § 2804.25(c).

* * * * *

(j) Your application will not be complete until you have met or addressed the requirements of this section to the satisfaction of the BLM. The BLM will notify you in writing when your application is complete.

■ 10. Revise § 2804.22 to read as follows:

§ 2804.22 How will the availability of funds affect the timing of the BLM's processing your application?

(a) If the BLM has insufficient funds to process your application, we will not continue to process it until funds become available or you elect to pay full actual costs under § 2804.14(f) of this part.

(b) The BLM may deny your application if we have not received requested reasonable costs for processing your application within 90 days.

(c) If your cost recovery agreement provides that a portion of the funds you pay will be used in the hiring of additional staff or contractors, such funds may not be refundable.

■ 11. Revise § 2804.23 to read as follows:

§ 2804.23 What costs am I responsible for when the BLM decides to use a competitive process for lands included in my application?

If the BLM decides to use a competitive process for lands included in your application and your application is in:

(a) *Processing Categories 1 through 4.* You must reimburse the Federal Government for processing costs as if the other application or applications had not been filed.

(b) *Processing Category 6.* You are responsible for processing costs identified in your application. If the BLM cannot readily separate costs, such as costs associated with preparing environmental analyses, you and any competing applicants must pay an equal share, or a proportion agreed to in writing among all applicants and the BLM. If you agree to share the costs that are common to your application and that of a competing applicant, and the competitor does not pay the agreed upon amount, you are liable for the entire amount due. You must pay the entire processing fee in advance. The BLM will not process your application until we receive the advance payments.

■ 12. Amend § 2804.25 by revising paragraphs (c), (e)(2), (e)(4), (e)(5), and (f)(3) to read as follows:

§ 2804.25 How will the BLM process my application?

* * * * *

(c) The BLM may require you to submit additional information necessary to process the application. This information may include a detailed construction, operation, rehabilitation, and environmental protection plan (*i.e.,* a POD), and any needed cultural resource surveys or inventories for threatened or endangered species. If the BLM needs more information, the BLM will identify this information in a written deficiency notice asking you to provide the additional information within a specified period of time. The failure to provide additional information requested by the BLM under this section may result in the BLM denying your application pursuant to § 2804.26.

(e) * * *

(2) If your application is for solar or wind energy development;

(i) Hold a local public meeting if there is no other public meeting or opportunity for early engagement on the project, such as those completed when complying with the National Environmental Policy Act (NEPA).

(ii) Prioritize the application in accordance with § 2804.35; and

(iii) Evaluate the application based on the information provided by the applicant and input from other parties, such as Federal, State, Tribal, and local government agencies, as well as comments received in preliminary application review meetings held under § 2804.12(b)(4) and any public meeting held under paragraph (e)(1) of this section. Based on these evaluations, the BLM will either deny your application or continue processing it.

* * * * *

(4) Complete appropriate NEPA compliance for the application, as required by 43 CFR part 46 and 40 CFR chapter V, subchapter A;

(5) Determine whether your proposed use complies with applicable Federal laws;

* * * * *

(f) * * *

(3) The segregation period may not exceed 2 years from the date of publication in the **Federal Register** of the notice initiating the segregation, unless the state director determines and documents in writing, prior to the expiration of the segregation period, that an extension is necessary for the orderly administration of the public lands. If the state director determines an extension is necessary, the BLM will extend the segregation for up to 2 years by publishing a notice in the **Federal Register**, prior to the expiration of the initial segregation period. A segregation will not be extended unless the application is complete and cost recovery has been received. Segregations under this part may only be extended once and the total segregation period may not exceed 4 years.

■ 13. Amend § 2804.26 by revising the section heading, paragraphs (a)(4) and (9) and adding paragraph (a)(10), and removing paragraph (c).

The revisions and additions read as follows:

§ 2804.26 Under what circumstances may the BLM deny my application?

(a) * * *

(4) Issuing the grant would be inconsistent with FLPMA, other laws, or these or other regulations;

* * * * *

(10) You fail to pay costs for processing your application within 90 days of receiving the BLM's request for funds under § 2804.22(b).

* * * * *

§ 2804.30 [Removed and Reserved]

■ 14. Remove and reserve § 2804.30.

§ 2804.31 [Removed and Reserved]

■ 15. Remove and reserve § 2804.31.

■ 16. Revise § 2804.35 to read as follows:

§ 2804.35 Application prioritization for solar and wind energy development rights-of-way.

(a) The BLM will prioritize the processing of applications to ensure that agency resources are allocated to applications with the greatest potential for approval and implementation. The BLM's prioritization of an application is not a decision and is not subject to appeal under 43 CFR part 4.

(b) The BLM will consider relevant criteria when prioritizing applications, including the following:

(1) Whether the proposed project is located within an area preferred for solar or wind energy development, such as designated leasing areas, which include solar energy zones, development focus areas, and renewable energy development areas;

(2) Whether the proposed project is likely to avoid adverse impacts to or conflicts with known resources or uses on or adjacent to public lands, and includes specific measures designed to further mitigate impacts or conflicts;

(3) Whether the proposed project is in conformance with the governing BLM land use plans;

(4) Whether the proposed project is consistent with relevant State, Tribal, and local government laws, plans, or priorities;

(5) Whether the proposed project incorporates the best management practices set forth in the applicable BLM land use plans and other BLM plans and policies; and

(6) Any other circumstances or prioritization criteria identified by the BLM in subsequent policy guidance or management direction through land use planning.

(c) The BLM will prioritize your complete application based on all available information, including information you provide to the BLM in the application or in response to deficiency notices, and information provided to the BLM in public meetings or consultations.

(d) The BLM may re-prioritize your application at any time.

■ 17. Amend § 2804.40 by revising the introductory text to read as follows:

§ 2804.40 Alternative requirements.

If you are unable to meet any of the application requirements in this subpart, you may request approval for an alternative requirement from the BLM. Any such request is not approved until you receive BLM approval in writing. Your request to the BLM must:

* * * * *

Subpart 2805—Terms and Conditions of Grants

■ 18. Amend § 2805.10 by revising paragraph (c) to read as follows:

§ 2805.10 How will I know whether the BLM has approved or denied my application or if my bid for a solar or wind energy development grant or lease is successful or unsuccessful?

* * * * *

(c) If you agree with the terms and conditions of the unsigned grant or lease, you should sign and return it to the BLM with any payment required under § 2805.16. The BLM will issue the right-of-way by signing the grant or lease and transmitting it to you, if the regulations in this part, including § 2804.26, remain satisfied.

* * * * *

■ 19. Amend § 2805.11 by revising the section heading and paragraphs (c)(2) introductory text and (c)(2)(iv) and (v) and adding paragraph (b)(4) to read as follows:

§ 2805.11 What does a grant or lease contain?

* * * * *

(c) * * *

(2) Specific terms for energy grants and leases, such as solar or wind energy development projects, are as follows:

* * * * *

(iv) Energy generation facilities, including solar or wind energy development facilities, are authorized with a grant or lease for up to 50 years (plus initial partial year of issuance), subject to the terms and conditions including but not limited to § 2805.12(c); and

(v) Energy storage facilities which are separate from energy generation facilities are authorized with a right-of-way grant for up to 50 years, subject to the terms and conditions including but not limited to § 2805.12(c);

* * * * *

(4) Electric transmission lines with a capacity of 100 kV or more are authorized with a right-of-way grant for up to 50 years.

* * * * *

■ 20. Amend § 2805.12 by adding paragraph (c)(8) and by revising paragraph (e)(2) to read as follows:

§ 2805.12 What terms and conditions must I comply with?

* * * * *

(c) * * *

(8) Comply with the operational standards in this section for solar or wind energy development projects on public lands. The holder of a grant or lease for solar or wind energy development is authorized to operate for the purpose of generating energy. Diligent operation requires the holder to annually maintain at least 75 percent of energy generation capacity for the authorized development. Failure to meet this required generation in continuous two calendar year period during the term of the grant or lease may support suspension or termination of the grant or lease under §§ 2807.17 through 2807.19. Before suspending or terminating the authorization, the BLM will send you a notice that gives you a reasonable opportunity to correct any

noncompliance or to start or resume use of the right-of-way (see § 2807.18). In response to this notice, you must:

(i) Provide reasonable justification for any reductions in energy generation (for example, delays in equipment delivery, legal challenges, and Acts of God);

(ii) Provide the anticipated date in which production of energy generation will resume; and

(iii) Submit a written request under paragraph (e) of this section for extension of the period in which the holder must satisfy the minimum energy threshold. If you do not comply with the requirements of paragraph (c)(8) of this section, the BLM may deny your request for an extension of the period for complying with the minimum energy generation threshold.

* * * * *

(e) * * *

(2) You may also request that the BLM consider alternative stipulations, terms, or conditions, other than rents or fees, and except as provided in § 2806.52(b)(1)(i). Any proposed alternative stipulation, term, or condition must comply with applicable law in order to be considered. Any proposed alternative to applicable bonding requirements must provide the United States with adequate financial assurance for potential liabilities associated with your right-of-way grant or lease. Any such request is not approved until you receive BLM approval in writing.

■ 21. Revise § 2805.13 to read as follows:

§ 2805.13 When is a grant or lease effective?

A grant is effective after both you and the BLM sign it. You must accept its terms and conditions in writing and pay any necessary rent and monitoring fees as set forth in subpart 2806 of this part and § 2805.16 of this subpart. Your written acceptance constitutes an agreement between you and the BLM that your right to use the public lands, as specified in the grant or lease, is subject to the terms and conditions of the grant or lease and applicable laws and regulations.

■ 22. Amend § 2805.14 by revising the section heading and paragraph (g) to read as follows:

§ 2805.14 What rights does a right-of-way grant or lease convey?

* * * * *

(g) Apply to renew your right-of-way grant or lease under § 2807.22;

* * * * *

Subpart 2806—Annual Rents and Payments

■ 23. Amend § 2806.10 by revising the section heading and adding paragraph (c) to read as follows:

§ 2806.10 What rent must I pay for my grant or lease?

* * * * *

(c) You must pay rent for your grant or lease using the per-acre rent schedule for linear right-of-way grants (see § 2806.20) unless a separate rent schedule is established for your use, such as for communication sites per § 2806.30 or solar and wind energy development per § 2806.50. The BLM may also determine that these schedules do not apply to your right-of-way pursuant to § 2806.70.

■ 24. Amend § 2806.12 by revising paragraphs (a)(1) introductory text, (a)(2), and (b) to read as follows:

§ 2806.12 When and where do I pay rent?

(a) * * *

(1) If your grant or lease is effective on:

* * * * *

(2) If your grant or lease allows for multiyear payments, such as a short-term grant issued for energy site-specific testing, you may request that your initial rent bill be for the full term instead of the initial rent bill periods provided under paragraph (a)(1)(i) or (ii) of this section.

(b) You must make all rent payments for rights-of-way according to the payment plan described in § 2806.24.

* * * * *

■ 25. Amend § 2806.20 by revising paragraph (c) to read as follows:

§ 2806.20 What is the rent for a linear right-of-way grant?

* * * * *

(c) You may obtain a copy of the current Per Acre Rent Schedule from any BLM state, district, or field office or by writing the address found under § 2804.14(c) of this part. We also post the current rent schedule at *http://www.blm.gov.*

■ 26. Revise the undesignated center heading that precedes § 2806.50 and § 2806.50 to read as follows:

Solar and Wind Energy Development Rights-of-Way

§ 2806.50 Rents and fees for solar and wind energy development.

If you hold a right-of-way for solar or wind energy development, you must pay an annual rent and fee in accordance with this section and subpart. The annual rent and fee is the greater of the acreage rent or the capacity fee that would be due in a given year, and must be paid in advance each year. The acreage rent will be calculated consistent with § 2806.11 and prorated consistent with § 2806.12(a). The capacity fee will vary depending on the project's annual energy generation on public lands and will be calculated consistent with § 2806.52(b). Any underpayment will be billed pursuant to § 2806.13 and any overpayment will be credited pursuant to § 2806.16.

■ 27. Amend § 2806.51 by revising the section heading and paragraph (c) to read as follows:

§ 2806.51 Grant and lease rate adjustments.

* * * * *

(c) If you hold a right-of-way for solar or wind energy development that is in effect prior to July 1, 2024, you may either request that the BLM apply the annual rent and fee set forth in § 2806.52 or use the rate methodology applicable to your authorization immediately prior to this rule. If you wish to use the annual rent and fee set forth in § 2806.52, your request must be received by the BLM before July 1, 2026. The BLM will continue to apply the rate in effect immediately prior to this rule unless it receives your request to use the rate adjustments in this part. A request to change your rate methodology will include your agreement to a re-issuance of the grant or lease with updated Terms and Conditions found under this part, pursuant to § 2807.20(f).

■ 28. Amend § 2806.52 by revising the section heading, the introductory text and paragraphs (a), (b), and (c) to read as follows:

§ 2806.52 Annual rents and fees for solar and wind energy development.

You must pay the greater of either an annual acreage rent or a capacity fee. The acreage rent and capacity fee are determined as follows:

(a) *Acreage rent.* The BLM will calculate the acreage rent for your grant or lease by multiplying the number of acres of the authorized area (rounded up to the nearest tenth of an acre) by the annual per-acre rate for the year in which the payment is due.

(1) *Per-acre rate.* The annual per-acre rate for your grant or lease is calculated using the State per-acre value from the solar or wind energy acreage rent schedule, the encumbrance factor, the year of the grant or lease term, and the annual adjustment factor. The calculation for determining the annual per-acre rate is $A \times B \times [(1 + C) \wedge D]$ where:

(i) A is the state per-acre value from the solar or wind energy acreage rent schedule published by the BLM for the year on which your right-of-way grant or lease is issued and is based on the National Agricultural Statistics Service (NASS) Survey of Pastureland Rents. The BLM will prepare the rent schedule by averaging the NASS reported pastureland rents for the most recent 5-year period, using only those years for which rent is reported by NASS. The BLM will update the rent schedule every 5 years consistent with the timing of rent adjustments under § 2806.22.

(ii) B is the encumbrance factor, which is 100 percent for solar energy and 5 percent for wind energy;

(iii) C is the annual adjustment factor, which is 3 percent; and,

(iv) D is the year of the grant or lease term, which is the number of years the grant or lease has been authorized. For example, the first year (whether partial or full year) would be 0 and the second year would be 1.

(2) You may obtain a copy of the current solar or wind energy acreage rent schedule from any BLM state, district, or field office or by writing the address found under § 2804.14(c) of this part, Attention: Renewable Energy Coordination Office. The BLM also posts the current solar energy acreage rent schedule at *http://www.blm.gov.*

(b) *Capacity fee.* (1) The capacity fee is calculated using the MWh rate or the alternative MWh rate, the MWh rate reduction, the domestic content reduction, the Project Labor Agreement (PLA) reduction, the rate of return, the year of the grant or lease, the annual adjustment factor, and the annual power generated on the right-of-way. You must pay the capacity fee annually, beginning the year in which electricity generation begins or is scheduled to begin in the approved POD, whichever comes first, unless the acreage rent (see paragraph (a) of this section) exceeds the capacity fee in a given year. The calculation for determining the capacity fee is $A \times B \times C \times D \times [(1 + E) \text{^} F] \times G \times H$ where:

(i) A is the *MWh rate* or the *alternative MWh rate.* The MWh rate is the annual weighted average wholesale price per MWh for the major trading hubs serving the 11 Western States of the continental United States for the full 5 calendar-year period preceding the year in which your grant or lease was issued, rounded to the nearest dollar increment (see paragraph (7)). An Alternative MWh rate may be approved by the BLM if you have entered into a power purchase agreement, such as with a utility, and that rate is lower than the MWh rate. You must provide proof of the lower rate to the BLM, and if the BLM determines the lower rate is appropriate, the alternative MWh rate will be used in place of the MWh rate.

(ii) B is the *MWh rate reduction,* which is equal to 80 percent for fee payments due before 2036. Starting 2036, the MWh rate reduction for new authorizations transitions to 20 percent, as follows:

TABLE 1 TO PARAGRAPH (b)(1)(ii)

Calendar year	MWh rate reduction (%)	B—calculation multiplier (%)
2035	80	20
2036	60	40
2037	40	60
2038 and beyond	20	80

(iii) C is the *Domestic Content reduction,* which is equal to 1.0 for fee payments when a holder's project does not qualify for the domestic content reduction. C is equal to 0.8 when the holder can demonstrate that a facility qualifies for the domestic content reduction. A facility qualifies for the domestic content reduction if a holder documents that the facility would qualify as ''Produced in the United States'', consistent with 2 CFR part 184.

(iv) D is the factor for the *Project Labor Agreement reduction,* which is equal to 1.0 for fee payments when the holder does not execute a PLA. D is equal to 0.8 if the holder executes a PLA for the construction of the project.

(v) *Request for conditional approval: Alternative MWh rate, Domestic Content reduction and PLA reduction.* The alternative MWh rate, the Domestic Content reduction and PLA reduction (paragraphs (b)(1)(ii) and (iii) and (iv) of this section) may only be applied if a request for conditional approval is received by the BLM prior to the issuance of a grant or lease. A request for conditional approval must be submitted with sufficient documentation to demonstrate that the development qualifies or may later qualify for the rate reductions. A request for conditional approval is subject to the holder demonstrating, to the satisfaction of the BLM's Authorized Officer, that the development qualifies. If energy generation begins before the holder has demonstrated that the facility qualifies, the BLM will charge the holder the full capacity fee, without the alternative MWh rate, Domestic Content reduction, or PLA reduction. The capacity fee may be updated for subsequent calendar years after the holder demonstrates that the facility qualifies, but the BLM will not refund past payments made before the alternative MWh rate, domestic content reduction, or PLA reduction went into effect.

(2) E is the annual adjustment factor, which is 3 percent.

(3) F is the year of the grant or lease term, which is the number of years the grant or lease has been authorized. For example, the first year (whether partial or full year) would be 0 and the second year would be 1.

(4) G is the rate of return, which is 7 percent.

(5) H is the annual energy generated on the right-of-way and will be provided to the BLM by the grant or leaseholder in an annual certified statement. The BLM will bill to coincide with the start of the calendar year. The first-year payment in advance will be based on estimated energy generation and the BLM will determine final payment for the first year based on actual energy generation. Subsequent payments in advance will be based on the most recent calendar year's actual energy generation reported on the certified statement, unless exception is approved in paragraph (vi) of this section.

(i) The holder must submit the annual certified statement to the BLM before the first year of energy generation begins or is scheduled to begin as approved in the Plan of Development, whichever comes first. Certified annual statements must be submitted to the BLM by October, each year.

(ii) Prior to the start of energy generation, the holder must submit to the BLM in the certified statement the estimated energy generation of the development for the first year.

(iii) Once energy generation has begun, the holder must submit to the BLM in the certified statement the most recent calendar year's actual energy generation of the development.

(iv) The BLM will calculate the capacity fee from the certified statement. For projects that include generation on public and non-public lands, the holder will prorate the total energy generation by the percentage of the right-of-way footprint on public lands relative to the total development area footprint.

(v) If the year's actual energy generation exceeds or is less than the amount of energy generation used to bill for the payment in advance, the holder will be billed, credited, or refunded for the underpayment or overpayments pursuant to §§ 2806.13(e) and 2806.16. In no event will the total payment be less than the annual acreage rent.

(vi) The BLM may approve a request made by a right-of-way holder to provide a new estimate of energy generation to the BLM in the annual

certified statement to use for billing the next year's payment in advance if: the right-of-way holder has planned maintenance activities, or other interruptions to energy generation, that would reduce the amount of energy generated by 25 percent or more; or, the right-of-way holder is aware that the energy generation in the subsequent year will exceed the actual energy generation for the previous year by 25 percent or more. See § 2805.12(c)(8)(i) through (iii) for the steps to follow when failing to meet diligent operation requirements.

(vii) If the right-of-way holder underestimates energy generation by 25 percent or more of the actual energy generation or does not provide the BLM with a new estimate when energy production will exceed the previous year's actual production by more than 25 percent, the BLM may assess the holder a late payment fee of 10 percent of the actual generation for each year of underestimation. This section applies unless the BLM has approved a request to provide a new estimate under § 2806.52(b)(5)(vi), and the approved new estimate does not underestimate energy generation by 25 percent or more of actual energy generation or if the holder can provide the BLM with justification consistent with § 2805.12(e).

(6) *MWh rate schedule.* You may obtain a copy of the current MWh rate schedule from any BLM state, district, or field office or by writing the address found under § 2804.14(c) of this part, Attention: Renewable Energy Coordination Office. The BLM also posts the current MWh rate schedule at *http://www.blm.gov.*

(7) *Periodic adjustments.* (i) The MWh rate applicable to your right-of-way will be the MWh rate in effect the first year for your grant or lease and will not be updated with subsequent MWh rate schedule adjustments. The MWh rate applicable to your right-of-way will only be updated each year by the annual adjustment factor under paragraph (b)(2) of this section.

(ii) The MWh rate schedule for new grants and leases will be adjusted once every 5 years consistent with the timing of rent adjustments under § 2806.22 of this part and consistent with paragraph (b)(1) of this section.

(8) The general payment provisions for rents described in this subpart, except for § 2806.14(a)(4), also apply to the capacity fee.

(c) *Implementation of the acreage rent and capacity fee.* The rates for acreage rent and capacity fees apply to all grants and leases issued after the effective date of this rule, and to existing grants and leases if the holder elects to continue paying under the rate setting methodology established at the time of your authorization per § 2806.51(c).

* * * * *

■ 29. Add an undesignated center heading between §§ 2806.52 and 2806.54 and revise § 2806.54 to read as follows:

Renewable Energy Rights-of-Way

§ 2806.54 Rent for energy storage facilities that are not part of a solar or wind energy development facility.

Rent for energy storage facilities that are not part of a solar or wind energy development facility will be determined pursuant to the linear rent formula set forth in § 2806.23. The BLM may determine your rent pursuant to § 2806.70 if we determine the linear rent schedule does not apply.

§ § 2806.60 through 2806.68 [Removed]

■ 30. Remove the undesignated center heading ''Wind Energy Rights-of-Way'' and §§ 2806.60 through 2806.68.

Subpart 2807—Grant Administration and Operation

■ 31. Amend § 2807.17 by revising paragraph (c) to read as follows:

§ 2807.17 Under what conditions may BLM suspend or terminate my grant or lease?

* * * * *

(c) Your failure to use your right-of-way for its authorized purpose for any continuous 5-year period creates a presumption of abandonment, except for solar and wind energy rights-of-way. Consistent with § 2805.12(c)(8), a presumption of abandonment or insufficient productivity of a grant or lease for a solar or wind energy generation occurs for any continuous two calendar-year period.

■ 32. Amend § 2807.20 by revising paragraph (b) and adding paragraph (f) to read as follows:

§ 2807.20 When must I amend my application, seek an amendment of my grant or lease, or obtain a new grant or lease?

* * * * *

(b) The requirements to amend an application or grant are the same as those for a new application, including paying processing and monitoring fees and rent according to §§ 2804.14, 2805.16, and 2806.10, except for solar and wind energy development grants and leases per § 2806.51(c) requesting a rent adjustment addressed under paragraph (f) of this section.

* * * * *

(f) A request to the BLM per § 2806.51(c) to adjust your solar or wind energy rates must be received before July 1, 2026. The BLM will re-issue your grant or lease, without further review, for the remainder of your existing term consistent with the requirements of this part, including processing and monitoring costs under §§ 2804.14 and 2805.16, the terms and conditions under § 2805.12, and rent provision under § 2806.50.

■ 33. Amend § 2807.21 by revising paragraph (e) to read as follows:

§ 2807.21 May I assign or make other changes to my grant or lease?

* * * * *

(e) Your assignment is not recognized until the BLM approves it in writing. We will approve the assignment if doing so is in the public interest. We may modify the grant or lease or add bonding and other requirements, including additional terms and conditions, to the grant or lease when approving the assignment, except that we may only modify solar or wind energy leases where modification is warranted under § 2805.15(e). We may decrease rents if the new holder qualifies for an exemption (see § 2806.14) or waiver or reduction (see § 2806.15) and the previous holder did not. Similarly, we may increase rents if the previous holder qualified for an exemption or waiver or reduction and the new holder does not. If we approve the assignment, the benefits and liabilities of the grant or lease apply to the new grant or leaseholder.

* * * * *

■ 34. Revise the heading of subpart 2809 to read as follows:

Subpart 2809—Competitive Process for Solar and Wind Energy Development Applications or Leases

■ 35. Revise § 2809.10 to read as follows:

§ 2809.10 Competitive process for energy development grants and leases.

(a) The BLM may conduct a competitive process for solar and wind energy development grants or leases on its own initiative; or

(b) The BLM may solicit nominations for public lands to be included in a competitive process by publishing a call for nominations under § 2809.11(a); or

(c) You may request that the BLM conduct a competitive process by submitting a request in writing that complies with § 2809.11(b); or

(d) The BLM may conduct a competitive process if it receives two or more competing applications.

(e) Except where an applicant has failed to timely provide information requested by the BLM under § 2804.25(c), the BLM will not offer lands in a competitive process for which the BLM has accepted a complete application, received a Plan of Development, and entered into a cost recovery agreement.

■ 36. Revise § 2809.11 to read as follows:

§ 2809.11 How will the BLM call for nominations?

(a) *Call for nominations.* The BLM may publish a call for nominations for lands to be included in a competitive process. The BLM will publish this notice in the **Federal Register** and may also use other notification methods, such as a newspaper of general circulation in the area affected, or the internet. The **Federal Register** notice and any other notices will include:

(1) The date, time, and location by which nominations must be submitted;

(2) The date by which nominators will be notified of the BLM's decision on timely submissions;

(3) The area or areas within which nominations are being requested; and

(4) The qualification for a nominator, which must include, at a minimum, the requirements for an applicant, see § 2803.10.

(b) *Nomination submission.* Nominations for lands to be included in a competitive process must be in writing, and include the following:

(1) A refundable nomination fee of $5 per acre;

(2) The nominator's name and personal or business address. The name of only one citizen, association, partnership, corporation, or municipality may appear as the nominator. All communications relating to submissions will be sent to that name and address, which constitutes the nominator's name and address of record; and

(3) The legal land description and a map of the nominated lands. The lands nominated may be the entire area or part of the area made available under the call for nominations.

(c) The BLM will not accept your submission if it does not comply with the requirements of this section, or if you are not qualified to hold a grant or lease under § 2803.10.

(d) *Withdrawing a nomination.* A nomination cannot be withdrawn, except by the BLM for cause, in which case the nomination fee will be refunded.

(e) The BLM may decide whether to conduct an offer for nominated lands.

■ 37. Revise § 2809.12 to read as follows:

§ 2809.12 How will the BLM select and prepare parcels?

(a) The BLM will identify parcels for a competitive process based on information received in public nominations, land use designations, and on any other information it deems relevant.

(b) The BLM and other Federal agencies, as applicable, may conduct necessary studies and site evaluation work, including applicable environmental reviews and public meetings, before offering lands in a competitive process.

(c) The BLM's choice to conduct a competitive process is not a decision to grant or deny a right-of-way application and is not subject to appeal under 43 CFR part 4.

■ 38. Amend § 2809.13 by revising paragraphs (b)(7) and (c) to read as follows:

§ 2809.13 How will the BLM conduct competitive processes?

* * * * *

(b) * * *

(7) The terms and conditions of the process, including whether a successful bidder will become a preferred applicant or a presumptive leaseholder; the requirements for the successful bidder to submit an application, see § 2804.12, or a Plan of Development, see § 2809.18; and any mitigation requirements, including compensatory mitigation.

(c) We will notify you in writing of our decision to conduct a competitive process at least 30 days prior to the competitive process if you nominated lands that are included in the process, paid the nomination fees, and demonstrated your qualifications to hold a grant or lease as required by § 2809.11.

■ 39. Amend § 2809.15 by:
■ a. Revising paragraph (a);
■ b. Removing paragraph (d);
■ c. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;
■ d. Adding a new paragraph (b); and
■ e. Revising newly redesignated paragraphs (d)(1) through (4);
■ f. Adding paragraph (d)(5); and
■ f. Revising paragraph (e).

The revisions and addition read as follows:

§ 2809.15 How will the BLM select the successful bidder?

(a) The bidder with the highest total bid, prior to any variable offset, is the successful bidder, and may become the preferred applicant or the presumptive leaseholder in accordance with § 2809.15(b).

(b) The successful bidder will become the presumptive leaseholder or preferred applicant only after making the payments required in paragraph (d) and satisfying the requirements of this section and § 2803.10. If the successful bidder does not satisfy these requirements, the BLM may make the next highest bidder the successful bidder under § 2809.17(b) or re-offer the lands under § 2809.17(d).

(1) *Presumptive leaseholder.* (i) The successful bidder will become a presumptive leaseholder if:

(A) The lands for which the bidder has successfully bid are located within a designated leasing area; and,

(B) The notice of the competitive process indicated that a successful bidder will become a presumptive leaseholder.

(ii) A presumptive leaseholder will be awarded a lease only if the presumptive leaseholder submits a proposed Plan of Development in accordance with § 2804.25(c) and the proposed Plan of Development is approved by the BLM.

(2) *Preferred applicant.* A successful bidder who does not become a presumptive leaseholder in accordance with § 2809.15(b)(1) may become a preferred applicant. The preferred applicant's application for a grant or lease will be processed for the parcel identified in the submission under § 2809.12(b). Approval of the application is not guaranteed and is solely at the BLM's discretion. The BLM will not process other applications for solar and wind energy development on lands where a preferred applicant has been identified, unless allowed by the preferred applicant.

* * * * *

(d) * * *

(1) Make payments by personal check, cashier's check, certified check, bank draft, or money order, or by other means deemed acceptable by the BLM, payable to the Department of the Interior—Bureau of Land Management;

(2) By the close of official business hours on the day on which the BLM conducts the competitive process or such other time as the BLM may have specified in the offer notices, submit for each parcel:

(3) Within 15 calendar days after the day on which the BLM conducts the competitive process, submit the balance of the bonus bid (after the variable offsets are applied under paragraph (c) of this section) to the BLM office conducting the process; and

(4) Within 15 calendar days after the day on which the BLM conducts the

competitive process, submit the application filing fee under § 2804.12(c) less the application fee submitted under § 2809.11(c)(1) (if you are the preferred applicant), or submit the acreage rent for the first full year of the lease as provided in part 2806 (if you are the presumptive leaseholder).

(5) You may be required to pay reasonable costs in addition to payment of the application filing fee when processing your application, pursuant to § 2804.14. A processing or monitoring Category 6 cost recovery fee may be reduced by the application filing fee paid when submitting an application.

(e) The successful bidder will not become the preferred applicant or be offered a lease and the BLM will keep all money that has been submitted with the competitive process if the successful bidder does not satisfy the requirements of paragraph (d) of this section. In this case, the BLM may make the next highest bidder the successful bidder under § 2809.17(b) or re-offer the lands.

■ 40. Amend § 2809.16 by redesignating paragraph (c)(11) as paragraph (c)(13), revising paragraphs (c) introductory text and (c)(10), adding paragraphs (c)(11) and (12), revising newly redesignated paragraph (c)(13), and adding paragraph (e) to read as follows:

§ 2809.16 When do variable offsets apply?

* * * * *

(c) The variable offset may be based on the following factors, including progressive steps towards:

* * * * *

(10) Public benefits;

(11) Use of items qualifying for the Domestic Content preference;

(12) Use of a project labor agreement; and

(13) Other factors.

* * * * *

(e) If the successful bidder's eligibility for a variable offset cannot be verified until a later time, the BLM may require the successful bidder to submit the full bid amount, without taking into account the variable offset, and hold the amount of the variable offset in suspense. The amount of the bonus bid corresponding to the variable offset will be refunded or credited to the successful bidder once the successful bidder has demonstrated that it has qualified for the variable offset. The BLM may set a deadline in the notice of competitive process by which the successful bidder must demonstrate its qualifications.

■ 41. Amend § 2809.17 by revising paragraph (b) and removing paragraph (d) to read as follows:

§ 2809.17 Will the BLM ever reject bids or re-conduct a competitive process?

* * * * *

(b) We may make the next highest bidder the successful bidder if the first successful bidder does not satisfy the requirements of § 2809.15, does not execute the lease, or is for any reason disqualified from holding the lease.

* * * * *

■ 42. Amend § 2809.18 by revising the introductory text and paragraphs (a), (b), and (f) to read as follows:

§ 2809.18 What terms and conditions apply to a solar and wind energy development lease?

The lease will be issued subject to the following terms and conditions:

(a) *Site control.* A lease provides site control to the leaseholder. The term of your lease will be consistent with § 2805.11(b) and will terminate on December 31 of the final year of the lease term. You may submit an application for renewal under § 2805.14(g). A leaseholder may not construct any facilities on the right-of-way until the BLM issues a notice to proceed or other written form of approval to begin surface disturbing activities.

(b) *Rent.* You must pay any rent as specified in § 2806.52.

* * * * *

(f) *Assignments.* You may apply to assign your lease under § 2807.21, and if an assignment is approved, the BLM will not make any changes to the lease terms or conditions, as provided for by § 2807.21(e), except for modifications required under § 2805.15(e).

* * * * *

§ 2809.19 [Removed]

■ 43. Remove § 2809.19.

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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**.

Last List April 26, 2024

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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
May 1	May 16	May 22	May 31	Jun 5	Jun 17	Jul 1	Jul 30
May 2	May 17	May 23	Jun 3	Jun 6	Jun 17	Jul 1	Jul 31
May 3	May 20	May 24	Jun 3	Jun 7	Jun 17	Jul 2	Aug 1
May 6	May 21	May 28	Jun 5	Jun 10	Jun 20	Jul 5	Aug 5
May 7	May 22	May 28	Jun 6	Jun 11	Jun 21	Jul 8	Aug 5
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May 17	Jun 3	Jun 7	Jun 17	Jun 21	Jul 1	Jul 16	Aug 15
May 20	Jun 4	Jun 10	Jun 20	Jun 24	Jul 5	Jul 19	Aug 19
May 21	Jun 5	Jun 11	Jun 20	Jun 25	Jul 5	Jul 22	Aug 19
May 22	Jun 6	Jun 12	Jun 21	Jun 26	Jul 8	Jul 22	Aug 20
May 23	Jun 7	Jun 13	Jun 24	Jun 27	Jul 8	Jul 22	Aug 21
May 24	Jun 10	Jun 14	Jun 24	Jun 28	Jul 8	Jul 23	Aug 22
May 28	Jun 12	Jun 18	Jun 27	Jul 2	Jul 12	Jul 29	Aug 26
May 29	Jun 13	Jun 20	Jun 28	Jul 3	Jul 15	Jul 29	Aug 27
May 30	Jun 14	Jun 20	Jul 1	Jul 5	Jul 15	Jul 29	Aug 28
May 31	Jun 17	Jun 21	Jul 1	Jul 5	Jul 15	Jul 30	Aug 29