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Contents

Federal Register

Vol. 88, No. 41

Thursday, March 2, 2023

Agency for Healthcare Research and Quality

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13119–13121

Agriculture Department

See Animal and Plant Health Inspection Service

See Rural Utilities Service

See The U.S. Codex Office

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13080

Alcohol and Tobacco Tax and Trade Bureau

PROPOSED RULES

Proposed Establishment of the Crystal Springs of Napa Valley Viticultural Area, 13072–13077

Animal and Plant Health Inspection Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Cooperative Agricultural Pest Survey, 13080–13081

Centers for Disease Control and Prevention

NOTICES

Meetings:

Board of Scientific Counselors, Center for Preparedness and Response, 13122–13123

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 13121–13122

Chemical Safety and Hazard Investigation Board

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Accidental Release Reporting Form, 13086

Civil Rights Commission

NOTICES

Meetings:

Minnesota Advisory Committee, 13087

South Dakota Advisory Committee, 13086–13087

Wyoming Advisory Committee, 13087–13088

Coast Guard

RULES

Safety Zone:

Ocean Rainforest Aquaculture, Santa Barbara, CA, Second Safety Zone, 13026–13028

Commerce Department

See Foreign-Trade Zones Board

See International Trade Administration

See National Oceanic and Atmospheric Administration

See National Telecommunications and Information Administration

See Patent and Trademark Office

Commodity Futures Trading Commission

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13106–13107

Meetings:

Technology Advisory Committee, 13107

Community Living Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Analysis of Senior Medicare Patrol Grantees' Program Implementation, 13124–13125

Intent to Award a Single-Source Supplement for the Expanding the National Capacity for Person-Centered, Trauma-Informed Care: Services and Supports for Holocaust Survivors and Other Older Adults with a History of Trauma and Their Family Caregivers Program, 13123–13124

Defense Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13107–13108

Employment and Training Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Migrant and Seasonal Farmworker Monitoring Report and Complaint/Apparent Violation Form, 13150–13151

Energy Department

See Federal Energy Regulatory Commission

Environmental Protection Agency

RULES

Final Authorization of State Hazardous Waste Management Program Revisions:

Vermont, 13034–13038

PROPOSED RULES

Final Authorization of State Hazardous Waste Management Program Revisions:

Vermont, 13077

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

National Emission Standards for Hazardous Air Pollutants for the Printing and Publishing Industry, 13115

Meetings:

Small Community Advisory Subcommittee, 13116–13117

Revision of Approved State Primacy Program for the State of Arizona, 13116

Federal Aviation Administration

PROPOSED RULES

Draft Policy Statement:

Submission of Outline of New and Changed Systems at the Beginning of the Type Certificate Amendment Process for Transport Category Aircraft, 13071

System Safety Assessments, 13071–13072

Federal Communications Commission**NOTICES**

Meetings:

Communications Security, Reliability, and Interoperability Council, 13117

Federal Deposit Insurance Corporation**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13117–13119

Federal Emergency Management Agency**NOTICES**

Adjustment of Statewide Per Capita Indicator for Recommending a Cost Share Adjustment, 13138

Disaster or Emergency Declaration and Related

Determination:

Alabama, 13134–13135

Alabama; Amendment No. 2, 13136

Alabama; Amendment No. 3, 13138

Alabama; Amendment No. 4, 13133

California, 13139–13141

California; Amendment No. 3, 13135, 13140

California; Amendment No. 4, 13137

California; Amendment No. 5, 13134

California; Amendment No. 6, 13137

California; Amendment No. 7, 13136–13137

Georgia, 13138–13139

Georgia; Amendment No. 1, 13134

Havasupai Tribe, 13140

New York, 13133

New York; Amendment No. 1, 13137–13138

South Carolina; Amendment No. 3, 13135

Washington, 13135–13136

Federal Energy Regulatory Commission**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13109–13112

Application:

Pacific Gas and Electric Co., 13114–13115

Combined Filings, 13108–13109, 13113–13114

Environmental Impact Statements; Availability, etc.:

Transcontinental Gas Pipe Line Co., LLC, 13114

Initial Market-Based Rate Filings Including Requests for

Blanket Section 204 Authorizations:

McFarland Solar A, LLC, 13113

Federal Railroad Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 13224–13226

Fish and Wildlife Service**RULES**

Endangered and Threatened Wildlife and Plants:

Threatened Species Status with Section 4(d) Rule for the

Upper Coosa River Distinct Population Segment of

Frecklebelly Madtom and Designation of Critical

Habitat, 13038–13070

Food and Drug Administration**RULES**

Change of Address; Technical Amendments, 13018

NOTICES

Guidance:

Potency Assay Considerations for Monoclonal Antibodies and Other Therapeutic Proteins Targeting Viral Pathogens, 13126–13128

Meetings:

Blood Products Advisory Committee, 13128–13130

Nonprescription Drugs Advisory Committee and the Anesthetic and Analgesic Drug Products Advisory Committee; Cancellation, 13130

Oncologic Drugs Advisory Committee, 13125–13126

Statement of Organization, Functions, and Delegations of Authority, 13126

Foreign Assets Control Office**RULES**

Publication of Venezuela Sanctions Regulations Web General Licenses 19, 20, 21, 22, and Subsequent Iterations, 13024–13026

Publication of Venezuela Sanctions Regulations Web General Licenses 36, 36A, 37, 38, and 39, 13022–13023

Foreign-Trade Zones Board**NOTICES**

Approval of Expansion of Subzone:

Foreign-Trade Subzone 196A, TTI, Inc., Fort Worth, TX, 13088

Health and Human Services Department

See Agency for Healthcare Research and Quality

See Centers for Disease Control and Prevention

See Community Living Administration

See Food and Drug Administration

See Health Resources and Services Administration

NOTICES

Meetings:

Advisory Committee on Human Research Protections, 13131–13132

Presidential Advisory Council on HIV/AIDS, 13132–13133

Physical Activity Guidelines Midcourse Report on Older Adults; Correction, 13132

Health Resources and Services Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Be The Match Patient Support Center Survey, 13130–13131

Homeland Security Department

See Coast Guard

See Federal Emergency Management Agency

NOTICES

Integrity Fund Fee:

Regional Center Integrity Fund Fee, 13141–13145

Indian Affairs Bureau**RULES**

Civil Monetary Penalty Inflation Adjustment, 13018–13022

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Data Elements for Bureau-Funded Schools, 13145–13146

Interior Department

See Fish and Wildlife Service

See Indian Affairs Bureau

See Land Management Bureau

See National Park Service

International Trade Administration**NOTICES**

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
 Common Alloy Aluminum Sheet from Croatia, 13095–13097
 Common Alloy Aluminum Sheet from Slovenia, 13090–13091
 Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, 13088–13090
 Large Residential Washers from Mexico, 13097–13098
 Opportunity to Request Administrative Review and Join Annual Inquiry Service List, 13091–13095

Labor Department

See Employment and Training Administration
 See Occupational Safety and Health Administration

Land Management Bureau**NOTICES**

Plats of Survey:
 Oklahoma, 13146

Marine Mammal Commission**NOTICES**

Requests for Nominations:
 Committee of Scientific Advisers on Marine Mammals, 13153

Maritime Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 Building American Production Capacity for Electric Port Equipment and other Port Infrastructure Items, 13226–13227

National Aeronautics and Space Administration**NOTICES**

Request for Information:
 Draft Federal Strategy to Advance an Integrated U.S. Greenhouse Gas Monitoring and Information System, 13153–13154

National Highway Traffic Safety Administration**NOTICES**

Request for Applications:
 National Emergency Medical Services Advisory Council, 13227–13228

National Oceanic and Atmospheric Administration**RULES**

Fisheries of the Exclusive Economic Zone off Alaska:
 Gulf of Alaska; Final 2023 and 2024 Harvest Specifications for Groundfish, 13238–13264

PROPOSED RULES

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
 Reef Fish Fishery of the Gulf of Mexico; Amendment 54, 13077–13079

NOTICES

Meetings:
 New England Fishery Management Council, 13098–13099
 Pacific Fishery Management Council, 13099–13100
 Permits; Applications, Issuances, etc.:
 Marine Mammals; File No. 27052, 13100

National Park Service**NOTICES**

Intent to Repatriate Cultural Items:
 California State University, Sacramento, Sacramento, CA, 13146–13147
 Inventory Completion:
 California State University, Sacramento, Sacramento, CA, 13147–13149
 National Register of Historic Places:
 Pending Nominations and Related Actions, 13149–13150

National Telecommunications and Information Administration**NOTICES**

Digital Equity Act, 13101–13106

Nuclear Regulatory Commission**RULES**

List of Approved Spent Fuel Storage Casks:
 Holtec International HI-STORM Flood/Wind Multipurpose Canister Storage System, Certificate of Compliance No. 1032, Amendment No. 6, 13017

NOTICES

Licenses; Exemptions, Applications, Amendments etc.:
 Vogtle Electric Generating Plant, Unit 3, Southern Nuclear Operating Co., Inc., 13154–13157

Occupational Safety and Health Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
 Hexavalent Chromium Standards for General Industry, Shipyard Employment, and Construction, 13151–13153

Patent and Trademark Office**RULES**

Establishing Permanent Electronic Filing for Patent Term Extension Applications, 13028–13033

Postal Regulatory Commission**NOTICES**

New Postal Products, 13157

Postal Service**NOTICES**

Privacy Act; Systems of Records, 13157–13161
 Product Change:
 Priority Mail Express and Priority Mail Negotiated Service Agreement, 13161

Presidential Documents**PROCLAMATIONS**

Aluminum; Adjusting Imports Into the U.S. (Proc. 10522), 13265–13276
 Russian Federation; Increase of Duties on Certain Articles (Proc. 10523), 13277–13281

ADMINISTRATIVE ORDERS

Defense Production Act of 1950; Presidential Waiver of Statutory Requirements Pursuant to Section 303 on Department of Defense Supply Chains Resilience (Memorandum of February 27, 2023), 13015–13016
 Ukraine; Continuation of National Emergency (Notice of March 1, 2023), 13283–13286
 Venezuela; Continuation of National Emergency (Notice of March 1, 2023), 13287
 Zimbabwe; Continuation of National Emergency (Notice of March 1, 2023), 13289–13290

Rural Utilities Service**NOTICES**

Funding Opportunity:

- Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes for Fiscal Year 2023, 13082–13085

Securities and Exchange Commission**NOTICES**

Application:

- Deregistration under the Investment Company Act, 13209–13210

Self-Regulatory Organizations; Proposed Rule Changes:

- Cboe BYX Exchange, Inc., 13218–13224
- Cboe BZX Exchange, Inc., 13176–13182
- Cboe EDGA Exchange, Inc., 13198–13203
- Cboe EDGX Exchange, Inc., 13203–13209
- Nasdaq ISE, LLC, 13182–13197
- Nasdaq PHLX, LLC, 13161–13176
- NYSE Arca, Inc., 13210–13218

Surface Transportation Board**NOTICES**

Trackage Rights Exemption:

- BNSF Railway Co.; Union Pacific Railroad Co., 13224

The U.S. Codex Office**NOTICES**

Meetings:

- Codex Alimentarius Commission, Committee on Contaminants in Food, 13081–13082

Transportation Department

See Federal Aviation Administration

See Federal Railroad Administration

See Maritime Administration

See National Highway Traffic Safety Administration

Treasury Department

See Alcohol and Tobacco Tax and Trade Bureau

See Foreign Assets Control Office

Veterans Affairs Department**RULES**

Program for the Repayment of Educational Loans, Urgent Care, and Specialty Education Loan Repayment Program, 13033–13034

NOTICES

Funding Opportunity:

- Staff Sergeant Fox Suicide Prevention Grant Program, 13229–13235

Requests for Nominations:

- Veterans and Community Oversight and Engagement Board, 13228–13229

Separate Parts In This Issue**Part II**

Commerce Department, National Oceanic and Atmospheric Administration, 13238–13264

Part III

Presidential Documents, 13265–13281

Part IV

Presidential Documents, 13283–13287, 13289–13290

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR**Proclamations:**

9704 (amended by Proc. 10522)	13267
9980 (revised by Proc. 10522)	13267
10522	13267
10523	13277

Administrative Orders:**Memorandums:**

Memorandum of February 27, 2023	13015
--	-------

Notices:

Notice of March 1, 2023	13285
Notice of March 1, 2023	13287
Notice of March 1, 2023	13289

10 CFR

72	13017
----------	-------

14 CFR**Proposed Rules:**

21	13071
25 (2 documents)	13071
29	13071

21 CFR

11	13018
----------	-------

25 CFR

140	13018
141	13018
211	13018
213	13018
225	13018
226	13018
227	13018
243	13018
249	13018

27 CFR**Proposed Rules:**

9	13072
---------	-------

31 CFR

591 (2 documents)	13022, 13024
-------------------------	-----------------

33 CFR

165	13026
-----------	-------

37 CFR

1	13028
---------	-------

38 CFR

17	13033
----------	-------

40 CFR

271	13034
-----------	-------

Proposed Rules:

271	13077
-----------	-------

50 CFR

17	13038
679	13238

Proposed Rules:

622	13077
-----------	-------

Presidential Documents

Title 3—

Memorandum of February 27, 2023

The President

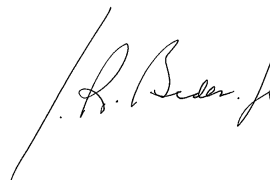
Presidential Waiver of Statutory Requirements Pursuant to Section 303 of the Defense Production Act of 1950, as Amended, on Department of Defense Supply Chains Resilience

Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 303 of the Defense Production Act of 1950, as amended (the “Act”) (50 U.S.C. 4533), I hereby determine, pursuant to section 303(a)(7)(B) of the Act, that action is necessary to avert shortfalls in critical Department of Defense supply chains that would severely impair national defense capability. Therefore, I waive the requirements of section 303(a)(1)–(a)(6) of the Act for supply chains enumerated in the June 2021 White House report titled “Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth: 100-Day Reviews Under Executive Order 14017” and the February 2022 Department of Defense report titled “Securing Defense-Critical Supply Chains: An Action Plan Developed in Response to President Biden’s Executive Order 14017,” specifically for defense organic industrial base supply chains critical to the Department of Defense and critical supply chains for electronics, kinetic capabilities, castings and forgings, minerals and materials, and power and energy storage.

Ensuring a robust, resilient, and sustainable domestic industrial base is essential to our national security and the preservation of domestic critical infrastructure.

You are authorized and directed to publish this memorandum in the *Federal Register*.

A handwritten signature in black ink, appearing to read "R. B. Biden" with a stylized flourish at the end.

THE WHITE HOUSE,
Washington, February 27, 2023

Rules and Regulations

Federal Register

Vol. 88, No. 41

Thursday, March 2, 2023

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

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2022–0181]

RIN 3150–AK88

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Certificate of Compliance No. 1032, Amendment No. 6

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of March 22, 2023, for the direct final rule that was published in the **Federal Register** on January 6, 2023. This direct final rule amended the Holtec International Storage Module Flood/Wind (HI–STORM FW) Multipurpose Canister Storage System listing within the “List of approved spent fuel storage casks” to include Amendment No. 6 to Certificate of Compliance No. 1032.

DATES: The effective date of March 22, 2023, for the direct final rule published January 6, 2023 (88 FR 949), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2022–0181 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC–2022–0181. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: Dawn.Forder@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, 301–415–4737, or by email to PDR.Resource@nrc.gov. The renewal of the certificate of compliance, the changes to the technical specifications, and the safety evaluation report can be viewed in ADAMS under Accession No. ML23041A437.

- **NRC’s PDR:** You may examine and purchase copies of public documents, by appointment, at the NRC’s PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Maryland 20852. 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 8:00 a.m. and 4:00 p.m. eastern time eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gregory Trussell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6244, email: Gregory.Trussell@nrc.gov.

SUPPLEMENTARY INFORMATION: On January 6, 2023 (88 FR 949), the NRC published a direct final rule amending its regulations in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR) to revise the Holtec International HI–STORM 100 Flood/Wind Multipurpose Canister Storage System listing within the “List of approved spent fuel storage casks” to add amendment No. 6 to Certificate of Compliance No. 1032. Amendment No. 6 revises and clarifies design and operational requirements in the certificate of compliance for the HI–STORM FW overpack. This amendment also incorporates additional clarifications as well as editorial changes that do not change the substantive technical information of the certificate of compliance.

Amendment No. 6 revises the certificate and technical specifications

to: (1) Add an anchored configuration for the HI–STORM FW overpack; (2) Allow use of non-single failure proof lifting equipment during handling of heavy loads within the 10 CFR part 72 jurisdictional boundary; (3) Revise LCO 3.1.2, “SFSC Heat Removal System Operability,” to allow an engineering evaluation to be performed in lieu of transferring the multipurpose canister (MPC) into a transfer cask; (4) Revise the Radioactive Effluent Control Program to no longer require annual submittal of a separate radioactivity effluent report [10 CFR 72.44(d)(3)] for the HI–STORM FW system; (5) Revise the allowable contents for the MPC–37, –89, and –32ML to clarify that fuel debris permitted for storage does not need to meet all the dimensional requirements and characteristics in tables 2.1–2 and 2.1–3, provided that requirements in table 2.1–1 are met; (6) Revise the MPC–37, –89, and –32ML basket Design Features to clarify that the minimum cell ID and minimum cell wall thickness are nominal dimensions; and (7) Incorporate additional clarifications and editorial changes that do not change the substantive technical information of the certificate of compliance.

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on March 22, 2023. The NRC did not receive any comments on the direct final rule. Therefore, this direct final rule will become effective as scheduled.

Dated: February 24, 2023.

For the Nuclear Regulatory Commission.

Cindy K. Bladley,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–04182 Filed 3–1–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 11

[Docket No. FDA-2019-N-0646]

Change of Address; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: Before using an electronic signature in an electronic record required by the Food and Drug Administration (FDA or Agency), a person must submit a letter of non-repudiation to FDA. Letters of non-repudiation are required to certify that a person's electronic signatures are intended to be the legally binding equivalent of traditional handwritten signatures. FDA is amending its regulations to update the address for submission of a certification in paper form and to provide an option for electronic submission. This amendment is to ensure accuracy and clarity in the Agency's regulations. This technical amendment is nonsubstantive.

DATES: This rule is effective March 2, 2023.

FOR FURTHER INFORMATION CONTACT: Elizabeth L. Kunkoski, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3332, Silver Spring, MD 20993-0002, elizabeth.kunkoski@fda.hhs.gov, 301-796-6439.

SUPPLEMENTARY INFORMATION: Before using an electronic signature in an electronic record required by FDA, a person must submit a letter of non-repudiation to FDA (§ 11.100(c) 21 CFR 11.100(c)). Letters of non-repudiation are required under § 11.100(c)(1) to certify that a person's electronic signatures are intended to be the legally binding equivalent of traditional handwritten signatures. FDA is amending its regulations in 21 CFR part 11 to update the address for submission of a certification in paper form and to provide an option for electronic submission. The new addresses are as follows:

- For certification of electronic signatures for submissions sent through FDA's Electronic Submissions Gateway Program, submit to: ESGHelpDesk@fda.hhs.gov; or
- For certification of electronic signatures for submissions not

submitted through FDA's Electronic Submissions Gateway Program, submit to: Jessica Bernhardt, Electronic Submissions Gateway, U.S. Food and Drug Administration, 3WFN, Rm. 7C34, 12225 Wilkins Ave., Rockville, MD 20852.

Information on where to submit the certification is currently found on FDA's web page on Letters of Non-Repudiation Agreement at <https://www.fda.gov/industry/about-esg/appendix-g-letters-non-repudiation-agreement>. This action is being taken to ensure accuracy and clarity in the Agency's regulations.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (APA) (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment makes only technical or non-substantive, ministerial changes to reflect a change in electronic submission capabilities and corrects the address for submission of a non-repudiation letter. Such technical, non-substantive changes are "routine determination[s], insignificant in nature and impact, and inconsequential to the industry and to the public." (*Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 94 (D.C. Cir. 2012)) (quotation marks and citation omitted). Accordingly, FDA for good cause finds that notice and public procedure thereon are unnecessary for these changes in where and how the certification is submitted.

In addition, we find good cause for these amendments to become effective on the date of publication of this action. The APA allows an effective date of less than 30 days after publication as "provided by the agency for good cause found and published with the rule" (5 U.S.C. 553(d)(3)). A delayed effective date is unnecessary in this case because the amendments do not impose any new regulatory requirements on affected parties. As a result, affected parties do not need time to prepare before the rule takes effect. Therefore, we find good cause for this correction to become effective on the date of publication of this action.

List of Subjects in 21 CFR Part 11

Computer technology, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 11 is amended as follows:

PART 11—ELECTRONIC RECORDS; ELECTRONIC SIGNATURES

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 21 U.S.C. 321–393; 42 U.S.C. 262.

■ 2. In § 11.100, revise paragraph (c)(1) to read as follows:

§ 11.100 General requirements.

* * * * *

(c) * * *

(1) The certification shall be signed with a traditional handwritten signature and submitted in electronic or paper form. Information on where to submit the certification can be found on FDA's web page on Letters of Non-Repudiation Agreement.

* * * * *

Dated: February 22, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023-04010 Filed 3-1-23; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 140, 141, 211, 213, 225, 226, 227, 243, and 249

[234A2100DD/AAKC001030/A0A501010.999900253G]

RIN 1076-AF74

Civil Penalties Inflation Adjustments; Annual Adjustments

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This rule provides for annual adjustments to the level of civil monetary penalties contained in Bureau of Indian Affairs (Bureau) regulations to account for inflation under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget (OMB) guidance.

DATES: This rule is effective on March 2, 2023.

FOR FURTHER INFORMATION CONTACT: Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action (RACA), Office of the Assistant Secretary—Indian Affairs; Department of the Interior, telephone (202) 738-6065, RACA@bia.gov.

SUPPLEMENTARY INFORMATION:

I. Background

II. Calculation of Annual Adjustments

III. Procedural Requirements

- A. Regulatory Planning and Review (E.O. 12866 and 13563)
- B. Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)
- C. Regulatory Flexibility Act
- D. Congressional Review Act (CRA)
- E. Unfunded Mandates Reform Act
- F. Takings (E.O. 12630)
- G. Federalism (E.O. 13132)
- H. Civil Justice Reform (E.O. 12988)
- I. Consultation With Indian Tribes (E.O. 13175)
- J. Paperwork Reduction Act
- K. National Environmental Policy Act
- L. Effects on the Energy Supply (E.O. 13211)
- M. Clarity of This Regulation
- N. Administrative Procedure Act

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (sec. 701 of Pub. L. 114–74) (“the Act”). The Act requires Federal agencies to adjust the level of civil monetary penalties with an initial “catch-up” adjustment through rulemaking and then make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

The Office of Management and Budget (OMB) issued guidance for Federal agencies on calculating the catch-up adjustment. See February 24, 2016, Memorandum for the Heads of Executive Departments and Agencies, from Shaun Donovan, Director, Office of Management and Budget, re: *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (M–16–06). Under the guidance, the Department identified applicable civil monetary

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

The Bureau issued an interim final rule providing for calculated catch-up adjustments on June 30, 2016 (81 FR 42478), with an effective date of August 1, 2016, and requesting comments post-promulgation. The Bureau issued a final rule affirming the catch-up adjustments set forth in the interim final rule on December 2, 2016 (81 FR 86953). The Bureau then issued a final rule making the next scheduled annual inflation adjustment for 2017 on January 23, 2017 (82 FR 7649), for 2018 on February 6, 2018 (83 FR 5192), for 2019 on April 15, 2019 (84 FR 15098), for 2020 on February 19, 2020 (85 FR 9366), for 2021 on January 28, 2021 (86 FR 7344), and for 2022 on March 9, 2022 (87 FR 13153).

II. Calculation of 2023 Annual Adjustments

OMB recently issued guidance to assist Federal agencies in implementing

the annual adjustments required by the Act, which agencies must complete by January 15, 2023. See December 15, 2022, Memorandum for the Heads of Executive Departments and Agencies, from Shalanda D. Young, Director, Office of Management and Budget, re: *Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (M–23–05). The guidance states that the cost-of-living adjustment multiplier for 2023, based on the CPI-U for the month of October 2022, not seasonally adjusted, is 1.07745. The annual inflation adjustments are based on the percent change between the October CPI-U preceding the date of the adjustment, and the prior year’s October CPI-U. For 2023, OMB explains, October 2022 CPI-U (298.012)/October 2021 CPI-U (276.589) = 1.07745. The guidance instructs agencies to complete the 2023 annual adjustment by multiplying each applicable penalty by the multiplier 1.07745 and rounding to the nearest dollar. Further, agencies should apply the multiplier to the most recent penalty amount that includes the initial catch-up adjustment required by the Act.

The annual adjustment applies to all civil monetary penalties with a dollar amount that are subject to the Act. This final rule adjusts the following civil monetary penalties contained in the Bureau’s regulations for 2023 by multiplying 1.07745 by each penalty amount as updated by the adjustment made in the prior year (2022):

CFR citation	Description of penalty	Current penalty including catchup adjustment	Annual adjustment (multiplier)	Adjusted penalty for 2023
25 CFR 140.3	Penalty for trading in Indian country without a license	\$1,453	1.07745	\$1,566
25 CFR 141.50	Penalty for trading on Navajo, Hopi, or Zuni reservations without a license.	1,453	1.07745	1,566
25 CFR 211.55	Penalty for violation of leases of tribal land for mineral development, violation of part 211, or failure to comply with a notice of non-compliance or cessation order.	1,747	1.07745	1,882
25 CFR 213.37	Penalty for failure of lessee to comply with lease of restricted lands of members of the Five Civilized Tribes in Oklahoma for mining, operating regulations at part 213, or orders.	1,453	1.07745	1,566
25 CFR 225.37	Penalty for violation of minerals agreement, regulations at part 225, other applicable laws or regulations, or failure to comply with a notice of noncompliance or cessation order.	1,849	1.07745	1,992
25 CFR 226.42	Penalty for violation of lease of Osage reservation lands for oil and gas mining or regulations at part 226, or noncompliance with the Superintendent’s order.	1,037	1.07745	1,117
25 CFR 226.43(a)	Penalty per day for failure to obtain permission to start operations ...	103	1.07745	111
25 CFR 226.43(b)	Penalty per day for failure to file records	103	1.07745	111
25 CFR 226.43(c)	Penalty for each well and tank battery for failure to mark wells and tank batteries.	103	1.07745	111

CFR citation	Description of penalty	Current penalty including catchup adjustment	Annual adjustment (multiplier)	Adjusted penalty for 2023
25 CFR 226.43(d)	Penalty each day after operations are commenced for failure to construct and maintain pits.	103	1.07745	111
25 CFR 226.43(e)	Penalty for failure to comply with requirements regarding valve or other approved controlling device.	207	1.07745	223
25 CFR 226.43(f)	Penalty for failure to notify Superintendent before drilling, redrilling, deepening, plugging, or abandoning any well.	414	1.07745	446
25 CFR 226.43(g)	Penalty per day for failure to properly care for and dispose of deleterious fluids.	1,037	1.07745	1,117
25 CFR 226.43(h)	Penalty per day for failure to file plugging and other required reports	103	1.07745	111
25 CFR 227.24	Penalty for failure of lessee of certain lands in Wind River Indian Reservation, Wyoming, for oil and gas mining to comply with lease provisions, operating regulations, regulations at part 227, or orders.	1,453	1.07745	1,566
25 CFR 243.8	Penalty for non-Native transferees of live Alaskan reindeer who violates part 243, takes reindeer without a permit, or fails to abide by permit terms.	6,852	1.07745	7,383
25 CFR 249.6(b)	Penalty for fishing in violation of regulations at part 249 (Off-Reservation Treaty Fishing).	1,453	1.07745	1,566

Consistent with the Act, the adjusted penalty levels for 2023 will take effect immediately upon the effective date of the adjustment. The adjusted penalty levels for 2023 will apply to penalties assessed after that date including, if consistent with agency policy, assessments associated with violations that occurred on or after November 2, 2015 (the date of the Act). The Act does not, however, change previously assessed penalties that the Bureau is collecting or has collected. Nor does the Act change an agency's existing statutory authorities to adjust penalties.

III. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order 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 rulemaking process must allow for

public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771)

This rule is not an E.O. 13771 regulatory action because this rule is not significant under Executive Order 12866.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The RFA does not apply to this final rule because the Bureau is not required to publish a proposed rule for the reasons explained below in Section III.M below.

D. Congressional Review Act (CRA)

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

E. 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. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

F. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

G. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

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

This rule complies with the requirements of Executive Order 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.

I. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian Tribes and that consultation under the Department's tribal consultation policy is not required.

J. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

K. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. For further information see 43 CFR 46.210(i). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

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

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

M. Administrative Procedure Act

The Act requires agencies to publish annual inflation adjustments by no later than January 15, of each year, notwithstanding section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). OMB has interpreted this direction to mean that the usual APA public procedure for rulemaking—which includes public notice of a proposed rule, an opportunity for public comment, and a delay in the effective

date of a final rule—is not required when agencies issue regulations to implement the annual adjustments to civil penalties that the Act requires. Accordingly, we are issuing the annual adjustments as a final rule without prior notice or an opportunity for comment and with an effective date immediately upon publication in the **Federal Register**.

Section 553(b) of the APA provides that, when an agency for good cause finds that “notice and public procedure . . . are impracticable, unnecessary, or contrary to the public interest,” the agency may issue a rule without providing notice and an opportunity for prior public comment. Under section 553(b), the Bureau finds that there is good cause to promulgate this rule without first providing for public comment. It would not be possible to meet the deadlines imposed by the Act if we were to first publish a proposed rule, allow the public sufficient time to submit comments, analyze the comments, and publish a final rule. Also, the Bureau is promulgating this final rule to implement the statutory directive in the Act, which requires agencies to publish a final rule and to update the civil penalty amounts by applying a specified formula. The Bureau has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, it would serve no purpose to provide an opportunity for public comment on this rule prior to promulgation. Thus, providing for notice and public comment is impracticable and unnecessary.

List of Subjects

25 CFR Part 140

Business and industry, Indians, Penalties.

25 CFR Part 141

Business and industry, Credit, Indians—business and finance, Penalties.

25 CFR Part 211

Geothermal energy, Indians—lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

25 CFR Part 213

Indians—lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

25 CFR Part 225

Geothermal energy, Indians—lands, Mineral resources, Mines, Oil and gas

exploration, Penalties, Reporting and recordkeeping requirements, Surety bonds.

25 CFR Part 226

Indians—lands.

25 CFR Part 227

Indians—lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

25 CFR Part 243

Indians, Livestock.

25 CFR Part 249

Fishing, Indians.

For the reasons given in the preamble, the Department of the Interior amends chapter I of title 25 Code of Federal Regulations as follows.

Title 25—Indians

Chapter I—Bureau of Indian Affairs, Department of the Interior

PART 140—LICENSED INDIAN TRADERS

■ 1. The authority citation for part 140 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 437; 25 U.S.C. 2, 9, 261, 262, 264; sec. 5, 19 Stat. 200, sec. 1, 31 Stat. 1066, as amended; and sec. 701, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

§ 140.3 [Amended]

■ 2. In § 140.3, remove “\$1,453” and add in its place “\$1,566” and remove the parenthetical authority citation at the end of the section.

PART 141—BUSINESS PRACTICES ON THE NAVAJO, HOPI AND ZUNI RESERVATIONS

■ 3. The authority citation for part 141 continues to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2 and 9; and Sec. 701, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

§ 141.50 [Amended]

■ 4. In § 141.50, remove “\$1,453” and add in its place “\$1,566”.

PART 211—LEASING OF TRIBAL LANDS FOR MINERAL DEVELOPMENT

■ 5. The authority citation for part 211 continues to read as follows:

Authority: Sec. 4, Act of May 11, 1938 (52 Stat. 347); Act of August 1, 1956 (70 Stat. 744); 25 U.S.C. 396a–g; 25 U.S.C. 2 and 9; and Sec. 701, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

§ 211.55 [Amended]

■ 6. In § 211.55(a), remove “\$1,747” and add in its place “\$1,882”.

PART 213—LEASING OF RESTRICTED LANDS FOR MEMBERS OF FIVE CIVILIZED TRIBES, OKLAHOMA, FOR MINING

■ 7. The authority citation for part 213 continues to read as follows:

Authority: Sec. 2, 35 Stat. 312; sec. 18, 41 Stat. 426; sec. 1, 45 Stat. 495; sec. 1, 47 Stat. 777; 25 U.S.C. 356; and Sec. 701, Pub. L. 114–74, 129 Stat. 599. Interpret or apply secs. 3, 11, 35 Stat. 313, 316; sec. 8, 47 Stat. 779, unless otherwise noted.

§ 213.37 [Amended]

■ 8. In § 213.37, remove “\$1,453” and add in its place “\$1,566”.

PART 225—OIL AND GAS, GEOTHERMAL, AND SOLID MINERALS AGREEMENTS

■ 9. The authority citation for part 225 continues to read as follows:

Authority: 25 U.S.C. 2, 9, and 2101–2108; and Sec. 701, Pub. L. 114–74, 129 Stat. 599.

§ 225.37 [Amended]

■ 10. In § 225.37(a), remove “\$1,849” and add in its place “\$1,992”.

PART 226—LEASING OF OSAGE RESERVATION LANDS FOR OIL AND GAS MINING

■ 11. The authority citation for part 226 continues to read as follows:

Authority: Sec. 3, 34 Stat. 543; secs. 1, 2, 45 Stat. 1478; sec. 3, 52 Stat. 1034, 1035; sec. 2(a), 92 Stat. 1660; and Sec. 701, Pub. L. 114–74, 129 Stat. 599.

§ 226.42 [Amended]

■ 12. In § 226.42, remove “\$1,037” and add in its place “\$1,117”.

§ 226.43 [Amended]

- 13. In § 226.43:
 - a. Remove “\$103” wherever it appears and add “\$111” in its place.
 - b. In paragraph (e), remove “\$207” and add in its place “\$223”.
 - c. In paragraph (f), remove “\$414” and add in its place “\$446”.
 - d. In paragraph (g), remove “\$1,037” and add in its place “\$1,117”.

PART 227—LEASING OF CERTAIN LANDS IN WIND RIVER INDIAN RESERVATION, WYOMING, FOR OIL AND GAS MINING

■ 14. The authority citation for part 227 continues to read as follows:

Authority: Sec. 1, 39 Stat. 519; and Sec. 701, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

§ 227.24 [Amended]

■ 15. In § 227.24, remove “\$1,453” and add in its place “\$1,566”.

PART 243—REINDEER IN ALASKA

■ 16. The authority citation for part 243 continues to read as follows:

Authority: Sec. 12, 50 Stat. 902; 25 U.S.C. 500K; and Sec. 701, Pub. L. 114–74, 129 Stat. 599.

§ 243.8 [Amended]

■ 17. In § 243.8(a) introductory text, remove “\$6,852” and add in its place “\$7,383”.

PART 249—OFF-RESERVATION TREATY FISHING

■ 18. The authority citation for part 249 continues to read as follows:

Authority: 25 U.S.C. 2, and 9; 5 U.S.C. 301; and Sec. 701, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

§ 249.6 [Amended]

■ 19. In § 249.6(b), remove “\$1,453” and add in its place “\$1,566”.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–03995 Filed 3–1–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****31 CFR Part 591****Publication of Venezuela Sanctions Regulations Web General Licenses 36, 36A, 37, 38, and 39**

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury’s Office of Foreign Assets Control (OFAC) is publishing five general licenses (GLs) issued in the Venezuela Sanctions program: GLs 36, 36A, 37, 38, and 39, each of which was previously made available on OFAC’s website.

DATES: GL 36 was issued on February 18, 2020. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:**Electronic Availability**

This document and additional information concerning OFAC are available on OFAC’s website: www.treas.gov/ofac.

Background

On February 18, 2022, OFAC issued GL 36 to authorize certain transactions otherwise prohibited by the Venezuela Sanctions Regulations, 31 CFR part 591 (VSR). On March 12, 2020, OFAC issued GL 36A, which superseded GL 36. On June 18, 2020, OFAC issued GL 37 to authorize certain transactions otherwise prohibited by the VSR. On November 30, 2020, OFAC issued GL 38 to authorize certain transactions otherwise prohibited by the VSR. GLs 36A and 38 are now expired. GL 37 was revoked on July 2, 2020.

On June 17, 2021, OFAC issued GL 39 to authorize certain transactions otherwise prohibited by the VSR. GL 39 was superseded by GL 39A, which was issued on June 10, 2022 (87 FR 47932). Each GL was made available on OFAC’s website (www.treas.gov/ofac) when it was issued. The text of GLs 36, 36A, 37, 38, and 39 is provided below.

OFFICE OF FOREIGN ASSETS CONTROL**Venezuela Sanctions Regulations****31 CFR Part 591****GENERAL LICENSE NO. 36****Authorizing Certain Activities Necessary to the Wind Down of Transactions Involving Rosneft Trading S.A.**

(a) Except as provided in paragraph (b) of this general license, all transactions and activities prohibited by Executive Order (E.O.) 13850 of November 1, 2018, as amended by E.O. 13857 of January 25, 2019, and incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), that are ordinarily incident and necessary to the wind down of transactions involving Rosneft Trading S.A., or any entity in which Rosneft Trading S.A. owns, directly or indirectly, a 50 percent or greater interest, are authorized through 12:01 a.m. eastern daylight time, May 20, 2020.

(b) This general license does not authorize:

- (1) Any debit to an account of Rosneft Trading S.A., or any entity in which Rosneft Trading S.A. owns, directly or indirectly, a 50 percent or greater interest, on the books of a U.S. financial institution; or
- (2) Any transactions or activities otherwise prohibited by the VSR, or any other part of 31 CFR chapter V, or any transactions or activities with any blocked person other than the blocked persons identified in paragraph (a) of this general license.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: February 18, 2020.

OFFICE OF FOREIGN ASSETS CONTROL**Venezuela Sanctions Regulations****31 CFR Part 591****GENERAL LICENSE NO. 36A****Authorizing Certain Activities Necessary to the Wind Down of Transactions Involving Rosneft Trading S.A. or TNK Trading International S.A.**

(a) Except as provided in paragraph (b) of this general license, all transactions and activities prohibited by Executive Order (E.O.) 13850 of November 1, 2018, as amended by E.O. 13857 of January 25, 2019, and incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), that are ordinarily incident and necessary to the wind down of transactions involving Rosneft Trading S.A. or TNK Trading International S.A., or any entity in which Rosneft Trading S.A. or TNK Trading International S.A. owns, directly or indirectly, a 50 percent or greater interest, are authorized through 12:01 a.m. eastern daylight time, May 20, 2020.

(b) This general license does not authorize:

(1) Any debit to an account of Rosneft Trading S.A. or TNK Trading International S.A., or any entity in which Rosneft Trading S.A. or TNK Trading International S.A. owns, directly or indirectly, a 50 percent or greater interest, on the books of a U.S. financial institution; or

(2) Any transactions or activities otherwise prohibited by the VSR, or any other part of 31 CFR chapter V, or any transactions or activities with any blocked person other than the blocked persons identified in paragraph (a) of this general license.

(c) Effective March 12, 2020, General License No. 36, dated February 18, 2020, is replaced and superseded in its entirety by this General License No. 36A.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: March 12, 2020.

OFFICE OF FOREIGN ASSETS CONTROL**Venezuela Sanctions Regulations****31 CFR Part 591****GENERAL LICENSE NO. 37****Authorizing the Wind Down of Transactions Involving Delos Voyager Shipping Ltd, Romina Maritime Co Inc, and Certain Vessels**

(a) Except as provided in paragraph (c) of this general license, all transactions and activities prohibited by Executive Order (E.O.) 13850 of November 1, 2018, as amended by E.O. 13857 of January 25, 2019, and incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), that are ordinarily incident and necessary to the wind down of transactions involving persons or vessels listed in paragraph (b) are authorized through 12:01 a.m. eastern daylight time, July 21, 2020.

(b) The authorization in paragraph (a) of this general license applies to the following persons and vessels listed on the Office of Foreign Assets Control's List of Specially Designated Nationals and Blocked Persons,

and any entity in which the following persons own, directly or indirectly, a 50 percent or greater interest:

- DELOS VOYAGER SHIPPING LTD (Marshall Islands)
- Vessel: Delos Voyager (IMO: 9273052)
- ROMINA MARITIME CO INC (Greece)
- Vessel: Euroforce (IMO: 9251585)

(c) This general license does not authorize:

(1) The entry into any new commercial contracts involving the persons or vessels listed in paragraph (b), except as authorized by paragraph (a);

(2) Any debit to an account of persons listed in paragraph (b) on the books of a U.S. financial institution; or

(3) Any transactions or activities otherwise prohibited by the VSR, or any other part of 31 CFR chapter V, or any transactions or activities with any blocked person or vessel other than the persons or vessels identified in paragraph (b) of this general license.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: June 18, 2020.

OFFICE OF FOREIGN ASSETS CONTROL**Venezuela Sanctions Regulations****31 CFR Part 591****GENERAL LICENSE NO. 38****Authorizing the Wind Down of Transactions Involving CEIEC**

(a) Except as provided in paragraph (b) of this general license, all transactions and activities prohibited by Executive Order (E.O.) 13692 of March 8, 2015, as amended by E.O. 13857 of January 25, 2019, each as incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), that are ordinarily incident and necessary to the wind down of transactions and activities involving CEIEC, or any entity in which CEIEC owns, directly or indirectly, a 50 percent or greater interest, are authorized through 12:01 a.m. eastern standard time, Thursday, January 14, 2021.

(b) This general license does not authorize:

(1) Any debit to an account of CEIEC, or any entity in which CEIEC owns, directly or indirectly, a 50 percent or greater interest, on the books of a U.S. financial institution; or

(2) Any transactions or activities otherwise prohibited by the VSR, or any other part of 31 CFR chapter V, or any transactions or activities with any blocked person other than the blocked persons identified in paragraph (a) of this general license.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: November 30, 2020.

OFFICE OF FOREIGN ASSETS CONTROL**Venezuela Sanctions Regulations****31 CFR Part 591****GENERAL LICENSE NO. 39****Authorizing Certain Activities To Respond to the Coronavirus Disease 2019 (COVID-19) Pandemic**

(a) *Authorizing certain COVID-19-related transactions involving the Government of Venezuela.* Except as provided in paragraph

(c) of this general license, all transactions and activities involving the Government of Venezuela that are related to the prevention, diagnosis, or treatment of COVID-19 (including research or clinical studies relating to COVID-19), that are prohibited by Executive Order (E.O.) 13808 of August 27, 2017, as amended by E.O. 13857 of January 25, 2019, or E.O. 13884 of August 5, 2019, each as incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), are authorized through 12:01 a.m. eastern daylight time, June 17, 2022.

(b) *Authorizing certain COVID-19-related transactions involving certain banks.* Except as provided in paragraph (c) of this general license, all transactions and activities described in paragraph (a) of this general license involving Banco Central de Venezuela (BCV), Banco de Venezuela, S.A. Banco Universal (Banco de Venezuela), Banco Bicentenario del Pueblo, de la Clase Obrera, Mujer y Comunas, Banco Universal C.A. (Banco Bicentenario del Pueblo), or any entity in which BCV, Banco de Venezuela, or Banco Bicentenario del Pueblo owns, whether individually or in the aggregate, directly or indirectly, a 50 percent or greater interest, that are prohibited by E.O. 13850 of November 1, 2018, as amended by E.O. 13857, each as incorporated into the VSR, are authorized through 12:01 a.m. eastern daylight time, June 17, 2022.

(c) This general license does not authorize:

(1) The exportation or reexportation of any goods, technology, or services to military, intelligence, or law enforcement purchasers or importers;

(2) Any transactions or activities involving Petróleos de Venezuela, S.A. (PdVSA), Banco de Desarrollo Económico y Social de Venezuela (BANDES), or Banco Bandes Uruguay S.A. (Bandes Uruguay), or any entity in which PdVSA, BANDES, or Bandes Uruguay owns, whether individually or in the aggregate, directly or indirectly, a 50 percent or greater interest;

(3) The unblocking of any property blocked pursuant to any part of 31 CFR chapter V; or

(4) Any transactions or activities otherwise prohibited by the VSR, or prohibited by any other part of 31 CFR chapter V, statute, or other E.O., or involving any blocked persons other than Government of Venezuela persons blocked solely pursuant to E.O. 13884 or the blocked persons identified in paragraph (b) of this general license.

Note 1 to General License 39. Nothing in this general license relieves any person from compliance with the requirements of other Federal agencies, including the Department of Commerce's Bureau of Industry and Security or the Department of State's Directorate of Defense Trade Controls.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control.

Dated: June 17, 2021.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2023-04317 Filed 3-1-23; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****31 CFR Part 591****Publication of Venezuela Sanctions Regulations Web General Licenses 19, 20, 21, 22, and Subsequent Iterations**

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing six general licenses (GLs) issued in the Venezuela Sanctions program: GLs 19, 20, 20A, 20B, 21, and 22, each of which was previously made available on OFAC's website.

DATES: GLs 19 and 20 were issued on April 17, 2019. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:**Electronic Availability**

This document and additional information concerning OFAC are available on OFAC's website: www.treas.gov/ofac.

Background

On April 17, 2019, OFAC issued GLs 19 and 20 to authorize certain transactions otherwise prohibited by Executive Order (E.O.) 13850 of November 1, 2018, “Blocking Property of Additional Persons Contributing to the Situation in Venezuela” (83 FR 55243, November 2, 2018). GL 19 expired on May 17, 2019. Subsequently, OFAC issued two further iterations of GL 20: on August 5, 2019, OFAC issued GL 20A, which superseded GL 20 and authorized certain transactions otherwise prohibited by E.O. 13850 and E.O. 13884 of August 5, 2019, “Blocking Property of the Government of Venezuela” (84 FR 38843, August 7, 2019); and on January 21, 2020, OFAC issued GL 20B, which superseded GL 20A. On August 5, 2019, OFAC also issued GL 21 to authorize transactions otherwise prohibited by E.O.s 13850 and 13884 and GL 22, to authorize transactions otherwise prohibited by E.O. 13884.

Each GL was made available on OFAC's website (www.treas.gov/ofac) when it was issued. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL**Executive Order 13850 of November 1, 2018****Blocking Property of Additional Persons Contributing to the Situation in Venezuela****GENERAL LICENSE NO. 19****Authorizing Certain Activities Necessary to the Wind Down of Operations or Existing Contracts Involving Banco Central de Venezuela**

(a) Except as provided in paragraph (b) of this general license, all transactions and activities prohibited by Executive Order (E.O.) 13850, as amended by E.O. 13857 of January 25, 2019 (“Taking Additional Steps to Address the National Emergency With Respect to Venezuela”), that are ordinarily incident and necessary to the wind down of operations, contracts, or other agreements involving Banco Central de Venezuela that were in effect prior to April 17, 2019, are authorized through 12:01 a.m. eastern daylight time, May 17, 2019.

(b) This general license does not authorize:

- (1) Any debit to an account of Banco Central de Venezuela on the books of a U.S. financial institution; or
- (2) Any transactions or dealings otherwise prohibited by E.O. 13850, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, E.O. 13692 of March 8, 2015, each as amended by E.O. 13857, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than Banco Central de Venezuela.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: April 17, 2019.

OFFICE OF FOREIGN ASSETS CONTROL**Executive Order 13850 of November 1, 2018****Blocking Property of Additional Persons Contributing to the Situation in Venezuela****GENERAL LICENSE NO. 20****Authorizing Official Activities of Certain International Organizations Involving Banco Central de Venezuela**

(a) Except as provided in paragraph (c) of this general license, all transactions and activities prohibited by Executive Order (E.O.) 13850, as amended by E.O. 13857 of January 25, 2019 (“Taking Additional Steps to Address the National Emergency With Respect to Venezuela”) (E.O. 13850), that are for the official business of the following entities are authorized:

- CAF Development Bank of Latin America
- Fondo Latinoamericano de Reservas
- Inter-American Development Bank
- International Committee of the Red Cross
- International Federation of the Red Cross and Red Crescent Societies
- International Monetary Fund
- Organization of American States

- United Nations and its specialized agencies, programs, funds, and related organizations
- World Bank

(b) This authorization automatically renews on the first day of each month, and is valid for a period of 18 months from the effective date of General License No. 20 or the date of any subsequent renewal of General License No. 20, whichever is later.

(c) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to E.O. 13850, or any part of 31 CFR chapter V, except as authorized by paragraph (a); or

(2) Any transactions or dealings otherwise prohibited by E.O. 13850, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, E.O. 13692 of March 8, 2015, each as amended by E.O. 13857, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than Banco Central de Venezuela.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: April 17, 2019.

OFFICE OF FOREIGN ASSETS CONTROL**Executive Order 13850 of November 1, 2018****Blocking Property of Additional Persons Contributing to the Situation in Venezuela****Executive Order of August 5, 2019****Blocking Property of the Government of Venezuela****GENERAL LICENSE NO. 20A****Authorizing Official Activities of Certain International Organizations Involving the Government of Venezuela**

(a) Except as provided in paragraph (c) of this general license, all transactions and activities prohibited by Executive Order (E.O.) 13850, as amended by E.O. 13857 of January 25, 2019, involving Banco Central de Venezuela, or E.O. of August 5, 2019 involving the Government of Venezuela, that are for the official business of the following entities are authorized:

- Corporación Andina de Fomento (CAF)
- Fondo Latinoamericano de Reservas
- Inter-American Development Bank
- International Committee of the Red Cross
- International Federation of the Red Cross and Red Crescent Societies
- Organization of American States, and its specialized organizations, other autonomous and decentralized organs, agencies, entities, and dependencies
- United Nations, including its Programmes and Funds, and its Specialized Agencies and Related Organizations, including those entities specifically listed separately below:
 - World Bank
 - IMF (International Monetary Fund)
 - FAO (UN Food and Agriculture Organization)
 - IOM (International Organization for Migration)
 - OCHA (UN Office for the Coordination of Humanitarian Affairs)
 - OHCHR (UN Office of the United Nations High Commissioner for Human Rights)

- UN Habitat
- UNDP (UN Development Program)
- UNFPA (UN Population Fund)
- UNHCR (Office of the UN High Commissioner for Refugees)
- UNICEF (UN Children's Fund)
- WFP (World Food Program)
- The World Health Organization (WHO), including the Pan-American Health Organization (PAHO)

Note 1 to paragraph (a): The authorization in paragraph (a) of this general license authorizes transactions involving Banco Central de Venezuela, or involving other Government of Venezuela persons that are blocked solely pursuant to E.O. of August 5, 2019.

Note 2 to paragraph (a): For an organizational chart of the United Nations and its specialized agencies and related organizations, see the following page on the United Nations website: <http://www.unsceb.org/directory>.

(b) This authorization automatically renews on the first day of each month, and is valid for a period of 18 months from the effective date of General License No. 20A or the date of any subsequent renewal of General License No. 20A, whichever is later.

(c) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to E.O. of August 5, 2019, or E.O. 13850, as amended, or any part of 31 CFR chapter V, except as authorized by paragraph (a); or

(2) Any transactions or dealings otherwise prohibited by E.O. of August 5, 2019, or E.O. 13850, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than Banco Central de Venezuela, or any other Government of Venezuela person that is blocked solely pursuant to E.O. of August 5, 2019.

(c) Effective August 5, 2019, General License No. 20, dated April 17, 2019, is replaced and superseded in its entirety by this General License No. 20A.

Andrea Gacki,
Director, Office of Foreign Assets Control.

Dated: August 5, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

Executive Order 13884 of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE NO. 20B

Authorizing Official Activities of Certain International Organizations Involving the Government of Venezuela

(a) Except as provided in paragraph (c) of this general license, all transactions and activities prohibited by Executive Order (E.O.) 13850, as amended by E.O. 13857 of January 25, 2019, involving Banco Central de

Venezuela, or E.O. 13884 involving the Government of Venezuela, that are for the official business of the following entities are authorized:

- Corporación Andina de Fomento (CAF)
- Fondo Latinoamericano de Reservas
- Inter-American Development Bank
- International Committee of the Red Cross
- International Federation of the Red Cross and Red Crescent Societies
- Organization of American States, and its specialized organizations, other autonomous and decentralized organs, agencies, entities, and dependencies
- The World Bank Group (also referred to as the World Bank), including the International Bank for Reconstruction and Development (IBRD), International Development Association (IDA), International Finance Corporation (IFC), Multilateral Investment Guarantee Agency (MIGA), and International Centre for Settlement of Investment Disputes (ICSID)
- United Nations, including its Programmes and Funds, and its Specialized Agencies and Related Organizations, including those entities specifically listed separately below:
 - IMF (International Monetary Fund)
 - FAO (UN Food and Agriculture Organization)
 - IOM (International Organization for Migration)
 - OCHA (UN Office for the Coordination of Humanitarian Affairs)
 - OHCHR (UN Office of the United Nations High Commissioner for Human Rights)
 - UN Habitat
 - UNDP (UN Development Program)
 - UNFPA (UN Population Fund)
 - UNHCR (Office of the UN High Commissioner for Refugees)
 - UNICEF (UN Children's Fund)
 - WFP (World Food Program)
 - The World Health Organization (WHO), including the Pan-American Health Organization (PAHO)

Note 1 to paragraph (a): The authorization in paragraph (a) of this general license authorizes transactions involving Banco Central de Venezuela, or involving other Government of Venezuela persons that are blocked solely pursuant to E.O. 13884.

Note 2 to paragraph (a): For an organizational chart of the United Nations and its specialized agencies and related organizations, see the following page on the United Nations website: <http://www.unsceb.org/directory>.

(b) This authorization automatically renews on the first day of each month, and is valid for a period of 18 months from the effective date of General License No. 20B or the date of any subsequent renewal of General License No. 20B, whichever is later.

(c) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to E.O. 13884, or E.O. 13850, as amended, or any part of 31 CFR chapter V, except as authorized by paragraph (a); or

(2) Any transactions or dealings otherwise prohibited by E.O. 13884, or E.O. 13850, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692 of March 8, 2015, each as

amended by E.O. 13857, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than Banco Central de Venezuela, or any other Government of Venezuela person that is blocked solely pursuant to E.O. 13884.

(c) Effective January 21, 2020, General License No. 20A, dated August 5, 2019, is replaced and superseded in its entirety by this General License No. 20B.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: January 21, 2020.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

Executive Order of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE NO. 21

Entries in Certain Accounts for Normal Service Charges and Payments and Transfers to Blocked Accounts in U.S. Financial Institutions Authorized

(a) Except as provided in provided in paragraph (d), a U.S. financial institution is authorized to debit any account blocked pursuant to Executive Order (E.O.) of August 5, 2019 or E.O. 13850, as amended by E.O. 13857 of January 25, 2019, held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this general license, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

(c) Except as provided in paragraph (d), any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to E.O. of August 5, 2019 or E.O. 13850, as amended, has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

(d) This general license does not authorize any transaction that is otherwise prohibited by E.O. of August 5, 2019, or E.O. 13850, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692 of March 8, 2015, each as

amended by E.O. 13857, or any part of 31 CFR chapter V.

Andrea Gacki,
Director, Office of Foreign Assets Control.

Dated: August 5, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE NO. 22

Venezuela's Mission to the United Nations

(a) Except as provided in paragraph (c), the provision of goods or services in the United States to Venezuela's mission to the United Nations and payment for such goods or services are authorized, provided that:

(1) The goods or services are for the conduct of the official business of the mission, or for personal use of staff members of the mission, their families, or persons forming part of their household, and are not for resale;

(2) The transaction does not involve the purchase, sale, financing, or refinancing of real property; and

(3) The transaction is not otherwise prohibited by law.

Note to paragraph (a): U.S. financial institutions are required to obtain specific licenses to operate accounts for, or extend credit to, the mission of the Government of Venezuela to the United Nations.

(b) Except as provided in paragraph (c), the provision of goods or services in the United States to staff members of Venezuela's mission to the United Nations, and payment for such goods or services are authorized, provided that:

(1) The goods or services are for personal use of the staff members of the mission; and

(2) The transaction is not otherwise prohibited by law.

(c) This general license does not authorize:

(1) Any transfer of any property to the Government of Venezuela, or any other person whose property and interests in property are blocked pursuant to Executive Order (E.O.) of August 5, 2019, other than Venezuela's mission to the United Nations in the United States;

(2) Any transactions or dealings prohibited by any part of 31 CFR chapter V other than part 591;

(3) Any debit to a blocked account of the Government of Venezuela on the books of a U.S. financial institution; or

(4) Any transaction that is otherwise prohibited by E.O. of August 5, 2019, or E.O. 13850 of November 1, 2018, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857 of January 25, 2019, or any part of 31 CFR chapter V.

Andrea Gacki,
Director, Office of Foreign Assets Control.

Dated: August 5, 2019.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2023-04360 Filed 3-1-23; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0008]

RIN 1625-AA00

Safety Zone; Ocean Rainforest Aquaculture, Santa Barbara, CA, Second Safety Zone

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

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is establishing a temporary safety zone for the navigable waters, approximately 5 miles offshore of Santa Barbara, California. This safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by ongoing aquaculture gear deployment and installation. Entry of persons or vessels into this safety zone is prohibited unless specifically authorized by the Captain of the Port Sector Los Angeles—Long Beach (COTP), or their designated representative. The Coast Guard recently issued a safety zone for this area, but additional time is needed to complete the installation.

DATES: This rule is effective without actual notice from March 2, 2023, until March 31, 2023. For the purposes of enforcement, actual notice will be used from February 27, 2023, until March 2, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2023-0008 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LCDR Maria Wiener, Waterways Management, U.S. Coast Guard Sector Los Angeles—Long Beach; telephone (310) 357-1603, email D11-SMB-SectorLALB-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
LLNR Light List Number
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because it is impracticable. The sponsor recently updated their timeline and timeframe for the aquaculture gear installation after we issued the first safety zone. Immediate action is needed to protect the public from safety hazards associated with the ongoing aquaculture gear deployment and installation. This safety zone needs to be extended due to delays with gear deployment. It is impracticable to publish an NPRM because we must establish this safety zone by February 27, 2023, and lack sufficient time to publish a rule, collect public comments, and to address them before the event date.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to ensure the safety of persons, vessels, and the marine environment in the vicinity of Santa Barbara during aquaculture gear installation and deployment starting February 27, 2023.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Los Angeles—Long Beach (COTP) has determined that potential hazards associated with the aquaculture gear deployment and installation will be a safety concern for anyone within 34°20'13.28" N, 119°42'49.84" W; thence to 34°20'14.60" N, 119°42'3.71" W; thence to 34°19'56.48" N, 119°42'4.01" W; thence to 34°19'55.20" N, 119°42'50.24" W; thence to the beginning.

The Coast Guard recently published a safety zone titled "Safety Zone; Ocean Rainforest Aquaculture, Santa Barbara, CA" for this area and purpose on February 9, 2023, at 88 FR 8369. That safety zone was in effect between February 9 until February 16, 2023. The sponsor has indicated that they need

additional time to complete the deployment and installation. The Coast Guard is issuing this subsequent safety zone to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while aquaculture deployment and installation is occurring.

IV. Discussion of the Rule

This rule establishes a safety zone from February 27, 2023, through March 31, 2023. The safety zone will cover all navigable waters from the surface to the sea floor in and around Santa Barbara, CA, starting from: 34°20'13.28", 119°42'49.84" W; thence to 34°20'14.60" N, 119°42'3.71" W; thence to 34°19'56.48" N, 119°42'4.01" W; thence to 34°19'55.20" N, 119°42'50.24" W; thence to the beginning. These coordinates are based on North American Datum of 1983. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or his designated representative. Sector Los Angeles—Long Beach may be contacted on VHF-FM Channel 16 or (310) 521-3801. The marine public will be notified of the safety zone via Broadcast Notice to Mariners.

A designated representative means a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel designated by or assisting the COTP in the enforcement of the safety zone.

If the COTP determines that the zone need not be enforced during this entire period, the Coast Guard will announce via Broadcast Notice to Mariners when the zone will no longer be subject to enforcement.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration,

and time-of-year of the safety zone. This rule impacts an area of 16-acres for 36 days between the months of February and March 2023. Vessel traffic will be able to safely transit around this safety zone, which will impact a small, designated area of Santa Barbara, CA.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone encompassing an area of 16-acres for 14 days during the aquaculture gear installation and deployment. It is categorically excluded from further review under paragraph L60, in Appendix A, Table 1 of DHS Instruction Manual 023–001–01, Rev. 1. Due to urgency, a record of environmental consideration is not required, but will be provided if necessary.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

- 2. Add § 165.T11–122 to read as follows:

§ 165.T11–122 Safety Zone; Ocean Rainforest Aquaculture, Santa Barbara, CA.

(a) *Location.* The following area is a safety zone: all navigable waters from the surface to the sea floor in and around Santa Barbara, CA, starting from: 34°20'13.28", 119°42'49.84" W; thence to 34°20'14.60" N, 119°42'3.71" W; thence to 34°19'56.48" N, 119°42'4.01" W; thence to 34°19'55.20" N, 119°42'50.24" W; thence to the beginning. These coordinates are based on North American Datum of 1983.

(b) *Definitions.* As used in this section, a *designated representative* means a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel designated by or assisting the Captain of the Port Sector Los Angeles-Long Beach (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by hailing Coast Guard Sector Los Angeles—Long Beach on VHF–FM Channel 16 or calling at (310) 521–3801. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from February 27, 2023, through March 31, 2023. If the COTP determines that the zone need not be enforced during this entire period, the Coast Guard will announce via Broadcast Notice to Mariners when the zone will no longer be subject to enforcement.

Dated: February 27, 2023.

R.D. Manning,

Captain, U.S. Coast Guard, Captain of the Port Sector Los Angeles—Long Beach.

[FR Doc. 2023–04331 Filed 3–1–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2021–0061]

RIN 0651–AD59

Establishing Permanent Electronic Filing for Patent Term Extension Applications

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule.

SUMMARY: To further advance the United States Patent and Trademark Office's (USPTO or Office) information technology strategy of achieving complete beginning-to-end electronic processing of patent-related submissions, the USPTO is revising the Rules of Practice in Patent Cases to require that patent term extension (PTE) applications, interim PTE applications, and any related submissions to the USPTO be submitted electronically via the USPTO patent electronic filing system (Patent Center or EFS-Web). The rule changes reduce the administrative burden on PTE applicants and improve administrative efficiency by facilitating electronic file management, optimizing workflow processes, and reducing processing errors.

DATES: This rule is effective on May 1, 2023.

FOR FURTHER INFORMATION CONTACT: Ali Salimi, Senior Legal Advisor, Office of Patent Legal Administration, at 571–272–0909; or Raul Tamayo, Senior Legal Advisor, Office of Patent Legal Administration, at 571–272–7728. You can also send inquiries to patentpractice@uspto.gov.

SUPPLEMENTARY INFORMATION: PTE under 35 U.S.C. 156 enables the owners of patents that claim certain human drug

products, medical device products, animal drug products, veterinary biological products, or food or color additive products to restore to the terms of those patents some of the time lost while awaiting premarket government approval for the products from a regulatory agency. *See, e.g.,* section 2750 of the Manual of Patent Examining Procedure (MPEP, Ninth Edition, R–10.2019). The USPTO administers 35 U.S.C. 156 in partnership with the relevant regulatory agencies (*i.e.,* the Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA)). As part of its administration, the USPTO sends to the relevant agency a copy of any initial submission for PTE that the USPTO receives (*i.e.,* a copy of any PTE application under 35 U.S.C. 156(d)(1) and 37 CFR 1.740 or any interim PTE application under 35 U.S.C. 156(d)(5) and 37 CFR 1.790).

Prior to the COVID–19 pandemic, the USPTO prohibited the electronic filing of initial submissions for PTE. *See* section B2 of the Legal Framework for Patent Electronic System, available at www.uspto.gov/patents/apply/filing-online/legal-framework-efs-web and section 502.05(I)(B)(2) of the MPEP. Requiring initial PTE submissions, which often comprise hundreds of pages to be physically filed in triplicate under 37 CFR 1.740(b), was viewed as the most effective way to minimize processing errors.

Due to the workplace changes caused by the COVID–19 pandemic, the USPTO waived its prohibition on the electronic filing of initial submissions for PTE and the triplicate copy requirements in 37 CFR 1.740(b) and 1.790(b). *See* Relief Available to Patentees in View of the COVID–19 Outbreak for Submission of Initial Patent Term Extension Applications Filed Pursuant to 35 U.S.C. 156, 1475 Off. Gaz. Pat. Office 234 (June 23, 2020). The waiver did not impact related follow-on submissions to the USPTO, which were already permitted to be filed electronically prior to the pandemic.

Through informal feedback, stakeholders have thus far communicated unanimous support for electronic filing of initial PTE submissions. Additionally, the USPTO and its partner agencies have successfully implemented a system by which the USPTO electronically transmits a copy of any initial submission for PTE to the relevant agency. The new system has not caused any processing errors.

The USPTO is revising its rules of practice to require that PTE applications, interim PTE applications,

and any related submissions to the USPTO be submitted electronically via the USPTO patent electronic filing system. The changes are designed to streamline the filing of PTE applications and related documents and minimize paper handling. As has been the case since the June 2020 implementation of the electronic filing waiver, PTE applications will be viewable in the USPTO patent electronic viewing systems (Patent Center or the private Patent Application Information Retrieval (PAIR) system) immediately upon filing. The changes permit the USPTO to more efficiently allocate the personnel and physical space it currently deploys for the handling of physical copies of PTE submissions.

Due to the revised rules, PTE applicants must use the correct document description to ensure that USPTO personnel are timely apprised of electronic submissions. “Patent Term Extension Application Under 35 U.S.C. 156” (document code TERM.REQ) is the correct document description for a PTE application under 35 U.S.C. 156(d)(1) and 37 CFR 1.740, and “Interim Patent Term Extension Application Under 35 U.S.C. 156(d)(5)” (document code TERM.REQ.ITM) is the correct document description for an interim PTE application under 35 U.S.C. 156(d)(5) and 37 CFR 1.790. The USPTO patent electronic filing system also includes the document descriptions “Interim Patent Term Extension Request Under 35 U.S.C. 156(e)(2)” (document code TERM.REQ.E2) for requests for interim extension of the patent term under 35 U.S.C. 156(e)(2) and 37 CFR 1.760, and “Disclosure Under 37 CFR 1.765 in a Patent Term Extension Application” (document code TERM.PTE.DIS) for disclosures to the USPTO under 37 CFR 1.765.

Note that the USPTO changed the document code corresponding to the document description “Disclosure Under 37 CFR 1.765 in a Patent Term Extension Application” to TERM.PTE.DIS from the document code TERM.DISCL, which was announced in the notice of proposed rulemaking published on May 6, 2022, at 87 FR 27043. The document code TERM.DISCL was being erroneously used by filers for the submissions of terminal disclaimers. PTE applicants are reminded that, when multiple PTE applications are filed for different patents based on the same regulatory review period, it is incumbent upon the PTE applicants to inform the USPTO of the various PTE applications, pursuant to 37 CFR 1.740(a)(13) and 37 CFR 1.765. See also section 2761 of the MPEP.

The USPTO patent electronic filing system includes the document description “Limited POA and/or Change of Address for a Patent Term Extension Application” (document code PTE.POA) for limited powers of attorney and/or changes of correspondence address that are filed specifically for PTE applications. Although a power of attorney (POA) or limited POA is not required for a practitioner to prosecute a PTE application (practitioners may prosecute PTE applications by acting in a representative capacity pursuant to 37 CFR 1.34), the USPTO routinely receives limited POAs specifying that the power is limited to prosecution of the PTE application. A limited POA filed using the document description “Limited POA and/or Change of Address for a Patent Term Extension Application” (document code PTE.POA) will not be processed by the Office of Patent Application Processing (OPAP) and will not serve to change an existing power for the underlying patent or establish power for the underlying patent.

As for a change of the correspondence address that is filed specifically for a PTE application, the USPTO uses the 37 CFR 1.740(a)(15) address provided in an initial PTE or interim PTE application strictly for communications regarding the PTE application. If a PTE applicant subsequently wishes to change the 37 CFR 1.740(a)(15) address, the document description “Limited POA and/or Change of Address for a Patent Term Extension Application” (document code PTE.POA), should be used. A change of address filed using the document description, “Limited POA and/or Change of Address for a Patent Term Extension Application” (document code PTE.POA) will not be processed by the OPAP and will not serve to change the correspondence address for the underlying patent. PTE applicants are reminded to separately file a change of address with any other relevant regulatory agency to timely receive copies of correspondence from that agency.

PTE applicants are strongly encouraged to confirm that they have used the correct document description for any PTE submission, especially time-sensitive PTE submissions, such as interim PTE applications under 35 U.S.C. 156(d)(5) and 37 CFR 1.790 or requests for interim extension of the patent term under 35 U.S.C. 156(e)(2) and 37 CFR 1.760. Use of the correct document description may be verified by reviewing the EFS Acknowledgement Receipt (document code N417) issued for the submission. In addition, both the document description and code for a

submission may be verified in the electronic application file. If a mistake is identified, PTE applicants should contact the Patent Electronic Business Center at 866–217–9197 or EBC@uspto.gov.

When electronically filing a PTE or interim PTE application, the PTE or interim PTE application, including all exhibits, attachments, or appendices, should be submitted as a single file. If the single file comprising the application and its exhibits, attachments, or appendices exceeds the upload limit of the USPTO patent electronic filing system, the file may be split into smaller files to permit uploading, but the number of separate files to be uploaded should be minimized. Additionally, when splitting a file into smaller files, the order of the exhibits, attachments, or appendices as mentioned in the application should be maintained, and a single exhibit, attachment, or appendix should not be split, if possible. The USPTO patent electronic filing system includes the document description, “Continuation of Patent Term Extension Application” (document code PTE.APPENDIX), to be used for any exhibit, attachment, or appendix to a PTE or interim PTE application that is filed separately from the application.

In the limited circumstance when the USPTO patent electronic filing system is unavailable during an unscheduled outage and a PTE application, interim PTE application, or any related submission to the USPTO cannot be filed electronically, the USPTO may, on its own initiative, waive the electronic filing requirement under 37 CFR 1.740(b) for the application or submission to enable the application or submission to be filed by hand-delivery to the USPTO, or via the “Priority Mail Express®” service of the United States Postal Service in accordance with 37 CFR 1.10, and be entitled to a filing date. When submitting by hand-delivery or “Priority Mail Express®,” the PTE applicant must provide an explanation of the unavailability of the USPTO patent electronic filing system.

The filing fee under 37 CFR 1.20(j) is not a filing date requirement under 37 CFR 1.741(a). PTE applications and interim PTE applications will receive a filing date without the filing fee. If the USPTO patent electronic filing system is available, but the fee payment component of the USPTO patent electronic filing system is not accepting payment, PTE applicants may include an authorization to charge a deposit account as an acceptable form of payment (see 37 CFR 1.25(b)) or they may delay payment to a later time. If

payment has not been made by the time the USPTO processes the application, the USPTO will notify the PTE applicant to pay the 37 CFR 1.20(j) filing fee, in accordance with 37 CFR 1.740(c).

Discussion of Specific Rules

The following is a discussion of the amendments to 37 CFR part 1.

Section 1.740: Section 1.740(a)(15) is amended to require the provision of an email address of the person to whom inquiries and correspondence related to the PTE application are to be directed. The USPTO has found that the availability of an email address facilitates contact with the PTE applicant's representative.

Section 1.740(b) is amended to require that PTE applications under § 1.740, and any related submissions to the USPTO, be submitted using the USPTO patent electronic filing system in accordance with the USPTO patent electronic filing system requirements. Submissions to the USPTO related to PTE applications under § 1.740 include any related follow-on documents that must be submitted to the USPTO, such as corrections of informalities under § 1.740(c), petitions requesting review of incomplete filings or review of an accorded filing date under § 1.741(b), requests for reconsideration of notices of final determination and responses to requirements for information under § 1.750, requests for 35 U.S.C. 156(e)(2) interim extensions under § 1.760, disclosures to the USPTO under § 1.765, express withdrawals under § 1.770, and replies to requests to identify the holder of an approval under § 1.785(d). PTE-related submissions to the FDA or the USDA, such as disclosures to the Secretary of Health and Human Services or the Secretary of Agriculture under § 1.765, should continue to be filed directly with the relevant agency. This final rule removes from § 1.740(b) the requirement to file each PTE application in triplicate.

Section 1.741: Section 1.741(a) is amended to provide that the filing date of a PTE application is the date on which a complete PTE application is either received in the USPTO via the USPTO patent electronic filing system or filed pursuant to the procedure set forth in § 1.8(a)(1)(i)(C) and (a)(1)(ii). In view of the requirement to file PTE applications via the USPTO patent electronic filing system, this final rule removes from § 1.741(a) the provision that provided that the filing date of a PTE application may be the date on which a complete application is filed pursuant to the physical mailing or facsimile transmission procedures set forth in §§ 1.8(a)(1)(i)(A) or (B) or 1.10.

Section 1.770 is amended to remove the requirement to file duplicates of express declarations of withdrawal of PTE applications. The requirement is no longer needed in view of the requirement to file submissions related to PTE applications via the USPTO patent electronic filing system.

Section 1.790: Section 1.790(a) is amended to clarify that the referenced paragraphs are paragraphs of 35 U.S.C. 156(g). Additionally, the time periods previously in § 1.790(a) for filing initial and subsequent applications for interim extension are moved to new paragraphs (c)(1) and (d)(1), respectively, of this section.

Section 1.790(b) is amended to require any application for interim extension under this section (*i.e.*, both initial and subsequent interim extension applications) to be filed using the USPTO patent electronic filing system in accordance with the USPTO patent electronic filing system requirements. This final rule moves the provisions regarding a complete application for interim extension from § 1.790(b) to new paragraph (c)(2) of this section.

Section 1.790(c) is amended to provide the requirements for complete initial applications for interim extension. Newly added § 1.790(c)(1) contains the time period for filing an initial interim extension application previously in § 1.790(a). It also requires a statement that the initial application is being submitted within the time period and an identification of the date of the last day on which the initial application could be submitted. Newly added § 1.790(c)(2) contains the provisions regarding a complete interim extension application previously in § 1.790(b). Paragraphs (a)(16) and (17) were removed from § 1.740 on September 8, 2000. Accordingly, the reference to § 1.740(a)(16) and (17) previously in § 1.790(b) is not carried over to § 1.790(c)(2). Newly added § 1.790(c)(3) requires a statement that the applicable regulatory review period, described in 35 U.S.C. 156(g)(1)(B)(ii), (2)(B)(ii), (3)(B)(ii), (4)(B)(ii), or (5)(B)(ii), has begun for the product.

Newly added § 1.790(d) contains the requirements for subsequent interim extension applications. Newly added § 1.790(d)(1) contains the time period for filing each subsequent interim extension application previously in § 1.790(a). It also requires a statement that the subsequent application is being submitted within the time period and an identification of the date of the last day on which the subsequent application could be submitted. Newly added § 1.790(d)(2) contains provisions regarding the content of each

subsequent interim extension application previously in § 1.790(c). Newly added § 1.790(d)(3) contains the requirement that an application contain a statement that the applicable regulatory review period, described in 35 U.S.C. 156(g)(1)(B)(ii), (2)(B)(ii), (3)(B)(ii), (4)(B)(ii), or (5)(B)(ii), has not been completed, which was previously in § 1.790(c).

Changes From the Proposed Rule

This final rule removes a provision proposed in the May 6, 2022, notice of proposed rulemaking. Specifically, § 1.790(c)(3) does not include the proposed requirement to identify the application, petition, or notice that caused the applicable regulatory review period, described in 35 U.S.C. 156(g)(1)(B)(ii), (2)(B)(ii), (3)(B)(ii), (4)(B)(ii), or (5)(B)(ii), to begin. The proposed requirement is unnecessary in view of the requirements set forth in § 1.740(a)(10), *e.g.*, the requirement in § 1.740(a)(10)(i)(B) to provide the new drug application number for a patent claiming a human drug. A complete initial application for interim extension must meet the requirements set forth in § 1.740(a)(10) under newly added § 1.790(c)(2) (previously under § 1.790(b)).

Comments and Responses to Comments

The May 6, 2022, notice of proposed rulemaking solicited public comments on the proposed amendments to 37 CFR part 1 being adopted in this final rule. The USPTO received written input from two commenters on the proposed rule. Summaries of the comments and the USPTO's responses to the written comments follow.

Comment 1: One comment noted that, because a limited POA document might be submitted as an exhibit to an initially-filed PTE application or initially-filed interim PTE application, either the document description "Limited POA and/or Change of Address for a Patent Term Extension Application" (document code PTE.POA) or the document description "Continuation of Patent Term Extension Application" (document code PTE.APPENDIX) might be used. The comment asked the USPTO to clarify that either would be acceptable for initial filings and that changes in power filed subsequent to the initial filings should use the document description "Limited POA and/or Change of Address for a Patent Term Extension Application" (document code PTE.POA).

Response: Yes, PTE applicants may continue to include limited POAs for PTE applications as part of an appendix

document that is submitted using the document description “Continuation of Patent Term Extension Application” (document code PTE.APPENDIX). However, the USPTO prefers all limited POAs for PTE applications to be filed as a separate document using the document description “Limited POA and/or Change of Address for a Patent Term Extension Application” (document code PTE.POA). By doing so, the limited POA is more readily identifiable in the electronic file wrapper.

Comment 2: One comment expressed concern that electronic filing could significantly exacerbate the unauthorized filing of PTE applications by patent owners who are not the marketing applicant or its agent. The comment proposes that the USPTO address the issue by amending 37 CFR 1.740 to expressly require, in any PTE application where the patent owner is a different and unrelated entity from the marketing applicant, an authorization letter from the marketing applicant allowing the patent owner to rely on the regulatory review period activities of the marketing applicant. The comment further proposes that such an authorization letter would need to be submitted during the pendency of the PTE application.

Response: The USPTO understands the commenter’s concern. However, the proposal is outside the scope of the current rulemaking. The USPTO will consider requiring an authorization letter in a future rulemaking.

Comment 3: One comment asked the USPTO to continue to allow the filing of trade secret, proprietary, and protective order material on paper in PTE applications using the procedures of MPEP sections 724.02 and 2760.

Response: The process for filing trade secret, proprietary, and/or protective order material on paper in PTE applications using the procedures of MPEP sections 724.02 and 2760 is not being changed by this final rule. If the USPTO receives a submission in accordance with the procedures of MPEP sections 724.02 and 2760, the USPTO will, on its own initiative, waive the electronic filing requirement under 37 CFR 1.740(b) for the submission.

Comment 4: One comment asked the USPTO to consider a provision that would allow a PTE applicant to submit a PTE application on paper if the USPTO’s patent electronic filing system is not working.

Response: As stated earlier, in the limited circumstance when the USPTO patent electronic filing system is unavailable during an unscheduled outage, the USPTO may waive the

electronic filing requirement under 37 CFR 1.740(b) for a PTE application, interim PTE application, or any related submission to the USPTO, if the application or submission is accompanied by an explanation of the unavailability of the USPTO patent electronic filing system and requests waiver (a petition under 37 CFR 1.183 is not required).

Comment 5: One comment requested that the USPTO ensure that all PTE correspondence becomes part of the USPTO’s electronic system that provides applicants with an email notification that a new document has been added to the electronic file wrapper.

Response: The USPTO understands the comment to be requesting that all USPTO communications issued with respect to a PTE application be included in the USPTO’s e-Office Action program. See www.uspto.gov/patents/apply/checking-application-status/e-office-action-program. The electronic notification system currently used by the USPTO for its e-Office Action program cannot accommodate communications issued with respect to a PTE application. If that changes, the USPTO will revisit the matter. In the interim, the USPTO will endeavor to notify the PTE applicant of any outgoing USPTO PTE correspondence via the email address provided under 37 CFR 1.740(a)(15).

Rulemaking Requirements

A. Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. See *Bachow Commc’ns Inc. v. FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp. v. Shalala*, 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals are procedural where they do not change the substantive standard for reviewing claims); *Nat’l Org. of Veterans’ Advocates v. Sec’y of Veterans Affairs*, 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Prior notice and opportunity for public comment for the changes in this rulemaking were not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. See *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice-and-comment rulemaking for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice”

(quoting 5 U.S.C. 553(b)(A))). However, the USPTO chose to seek public comment before implementing the rule to benefit from the public’s input.

B. Regulatory Flexibility Act: For the reasons set forth in this final rule, the Senior Counsel for Regulatory and Legislative Affairs, Office of General Law, of the USPTO has certified to the Chief Counsel for Advocacy of the Small Business Administration that the changes in this rule will not have a significant economic impact on a substantial number of small entities (see 5 U.S.C. 605(b)).

PTE, under 35 U.S.C. 156, is only available for patents that claim drug products, medical devices, food or color additives, or methods of using or manufacturing such products, devices, or additives. Approximately 100 PTE applications are filed annually, and they are typically filed by non-small entity pharmaceutical and medical device companies because of the expense required to develop and obtain marketing approval for such inventions.

The changes in this rule are procedural in nature and are not expected to result in significant costs to applicants. The rules of practice prior to this final rule already permitted follow-on documents related to PTE applications to be filed electronically. The USPTO estimates that approximately 99% of follow-on documents related to PTE applications were being filed electronically prior to this final rule. Accordingly, the rule change requiring follow-on documents related to PTE applications to be filed electronically should not cause a substantial change in practice or result in additional costs to PTE applicants. As for the rule change requiring PTE applications to be filed electronically, although this is a change in practice, stakeholders have unanimously communicated support for the USPTO’s waiver of the prohibition against electronic filing of PTE applications as a result of the COVID–19 outbreak, and the rule change is not expected to result in any additional cost to applicants.

Thus, this rule change requiring PTE applications to be filed electronically is not expected to negatively impact stakeholders’ PTE practice.

The USPTO patent electronic filing system allows PTE applicants to file PTE documents through a standard web browser without downloading special software, changing documentation preparation tools, or altering workflow processes. PTE applicants may create documents using the tools and processes that they already use, and then convert those documents into standard PDF files for submission

through the USPTO's patent electronic filing system.

For these reasons, the changes will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across Government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not

required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not expected to result in a "major rule" as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of \$100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of \$100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act of 1969: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act of 1995: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act of 1995: The Paperwork Reduction Act of 1995 requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. In accordance with section 3507(d) of the Paperwork Reduction Act of 1995, the paperwork and other information collection burdens involved with this rulemaking have already been approved under the Office of Management and Budget (OMB) Control Number 0651-0020 (Patent Term Extension and Adjustment). However, 0651-0020 is being updated to reflect a net reduction in burden (time). Taking into consideration the removal of the requirement to file PTE applications in paper in triplicate and the additional requirements of newly added 37 CFR 1.790(c)(1) and (d)(1), the USPTO estimates that this information collection's annual burden will decrease by a total of approximately 72 burden hours. This estimate is based on the response volumes associated with the most recent OMB submissions for this information collection.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information has a currently valid OMB control number.

P. E-Government Act Compliance: The USPTO is committed to compliance with the E-Government Act 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.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, the USPTO amends 37 CFR part 1 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Amend § 1.740 by revising paragraphs (a)(15) and (b) to read as follows:

§ 1.740 Formal requirements for application for extension of patent term; correction of informalities.

(a) * * *

(15) The name, address, telephone number, and email address of the person to whom inquiries and correspondence related to the application for patent term extension are to be directed.

(b) The application under this section, and any related submissions to the Office, must be submitted using the USPTO patent electronic filing system in accordance with the USPTO patent electronic filing system requirements.

* * * * *

■ 3. Amend § 1.741 by revising paragraph (a) introductory text to read as follows:

§ 1.741 Complete application given a filing date; petition procedure.

(a) The filing date of an application for extension of a patent term is the date on which a complete application is received in the Office via the USPTO patent electronic filing system or filed pursuant to the procedure set forth in § 1.8(a)(1)(i)(C) and (a)(1)(ii). A complete application must include:

* * * * *

■ 4. Amend § 1.770 by revising the first sentence to read as follows:

§ 1.770 Express withdrawal of application for extension of patent term.

An application for extension of patent term may be expressly withdrawn before a determination is made pursuant to § 1.750 by filing in the Office a written declaration of withdrawal signed by the owner of record of the patent or its agent. * * *

■ 5. Revise § 1.790 to read as follows:

§ 1.790 Interim extension of patent term under 35 U.S.C. 156(d)(5).

(a) An owner of record of a patent or its agent who reasonably expects that the applicable regulatory review period, described in 35 U.S.C. 156(g)(1)(B)(ii), (2)(B)(ii), (3)(B)(ii), (4)(B)(ii), or (5)(B)(ii), that began for a product that is the subject of such patent may extend beyond the expiration of the patent term in effect may submit one or more

applications for interim extensions for periods of up to one year each. In no event will the interim extensions granted under this section be longer than the maximum period of extension to which the applicant would be entitled under 35 U.S.C. 156(c).

(b) Any application for interim extension under this section must be filed using the USPTO patent electronic filing system in accordance with the USPTO patent electronic filing system requirements.

(c) Complete initial applications for interim extension under this section must:

(1) Be filed during the period beginning 6 months and ending 15 days before the patent term is due to expire, and include a statement that the initial application is being submitted within the period and an identification of the date of the last day on which the initial application could be submitted;

(2) Include all of the information required for a formal application under § 1.740 and a complete application under § 1.741, except as follows:

(i) Paragraphs (a)(1), (2), (4), and (6) through (15) of §§ 1.740 and 1.741 shall be read in the context of a product currently undergoing regulatory review; and

(ii) Paragraphs (a)(3) and (5) of § 1.740 are not applicable to an application for interim extension under this section; and

(3) Include a statement that the applicable regulatory review period, described in 35 U.S.C. 156(g)(1)(B)(ii), (2)(B)(ii), (3)(B)(ii), (4)(B)(ii), or (5)(B)(ii), has begun for the product that is the subject of the patent.

(d) Each subsequent application for interim extension:

(1) Must be filed during the period beginning 60 days before and ending 30 days before the expiration of the preceding interim extension and include a statement that it is being submitted within the period and an identification of the date of the last day on which it could be submitted;

(2) May be limited in content to a request for a subsequent interim extension along with any materials or information required under §§ 1.740 and 1.741 that are not present in the preceding interim extension application; and

(3) Must include a statement that the applicable regulatory review period, described in 35 U.S.C. 156(g)(1)(B)(ii),

(2)(B)(ii), (3)(B)(ii), (4)(B)(ii), or (5)(B)(ii), has not been completed.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2023–04162 Filed 3–1–23; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AP57, AQ47, AQ63

Program for the Repayment of Educational Loans, Urgent Care, and Specialty Education Loan Repayment Program

AGENCY: Department of Veterans Affairs.

ACTION: Correcting amendment.

SUMMARY: This final rule will revise the Department of Veterans Affairs (VA) regulations that govern the Program for the Repayment of Educational Loans (PREL) and Specialty Education Loan Repayment Program (SELRP) by adding the Office of Management and Budget approval number for the associated collections of information. VA is also making technical corrections to its regulation that governs VA's urgent care benefit.

DATES: Section 17.644 of title 38, published at 81 FR 66815 on September 29, 2016, is effective March 2, 2023. This final rule is effective March 2, 2023.

FOR FURTHER INFORMATION CONTACT:

Ethan Kalett, Office of Regulations, Appeals, and Policy, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–7633. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Revisions to §§ 17.528 and 17.643 of Title 38, Code of Federal Regulations (CFR)

In a final rule published in the **Federal Register** (FR) on September 29, 2016, VA added new regulations for the PREL, a program in which VA repays educational loans to individuals who pursued a program of study leading to a degree in psychiatric medicine and who are seeking employment in VA. See 81 FR 66815. In a separate final rule

published in the FR on July 29, 2020, VA also added to new regulations for the SELRP, a program which serves as an incentive for physicians starting or currently in residency programs in medical specialties, for which VA has determined that recruitment and retention of qualified personnel is difficult, to work at VA facilities that need more physicians within that medical specialty after the individual completes their residency program. See 85 FR 45532.

Both of those rulemakings contained provisions constituting collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). See 38 CFR 17.528 and 17.643. The Paperwork Reduction Act of 1995 requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. See also 5 CFR 1320.8(b)(3)(vi). As required by 44 U.S.C. 3507(d), VA submitted the information collections associated with §§ 17.528 and 17.643 to OMB for its review. After both final rules were published, these information collections were approved by OMB and assigned OMB control number 2900–0879. This document revises §§ 17.528 and 17.643 by adding the approved OMB control number at the end of each of those sections.

Revisions to 38 CFR 17.4600

In a document published in the FR on June 5, 2019, VA amended its medical regulations by granting eligible veterans access to urgent care from qualifying non-VA entities or providers without prior approval from VA. 84 FR 25998. Current paragraphs (c)(1)(i)(A) and (B) of § 17.4600 were incorrectly numbered as paragraphs (c)(1)(i) and (ii), respectively. We are now revising § 17.4600 to correct the numbering of paragraph (c)(1) with no substantive changes to the regulation text.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Claims, Dental health, Government contracts, Health care, Health facilities, Health professions, Health records, Reporting and recordkeeping requirements,

Scholarships and fellowships, Travel and transportation expenses, Veterans.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR part 17 as follows:

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501, and as noted in specific sections.

* * * * *

■ 2. Amend § 17.528 by revising the parenthetical information collection sentence at the end of the section to read as follows:

§ 17.528 Application.

* * * * *

(The Office of Management and Budget has approved the information collection requirement in this section under control number 2900–0879.)

■ 3. Amend § 17.643 by adding a parenthetical information collection sentence at the end of the section to read as follows:

§ 17.643 Application for the PREL.

* * * * *

(The Office of Management and Budget has approved the information collection requirement in this section under control number 2900–0879.)

§ 17.4600 [Amended]

■ 4. Amend § 17.4600 by redesignating paragraphs (c)(1)(i)(A) and (B) as paragraphs (c)(1)(i) and (ii).

[FR Doc. 2023–04144 Filed 3–1–23; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R01–RCRA–2022–0864; FRL 10508–02–R1]

Vermont: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Vermont has applied to the Environmental Protection Agency (EPA) for final authorization of revisions to its

hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The EPA has reviewed Vermont's application and has determined that these revisions satisfy all requirements needed to qualify for final authorization. Therefore, we are taking direct final action to authorize the State's changes. In the "Proposed Rules" section of this issue of the **Federal Register**, the EPA is also publishing a separate document that serves as the proposal to authorize these revisions. Unless the EPA receives written comments that oppose this authorization during the comment period, the decision to authorize Vermont's revisions to its hazardous waste program will take effect.

DATES: This final authorization will become effective on May 1, 2023, unless the EPA receives adverse written comments by April 3, 2023. If the EPA receives any such comment, the EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–RCRA–2022–0864, at <https://www.regulations.gov/>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Sharon Leitch, RCRA Waste Management, UST and Pesticides Section; Land, Chemicals and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100 (Mail code 07–1), Boston, MA 02109–3912; telephone number: (617) 918–1647; email address: leitch.sharon@epa.gov.

SUPPLEMENTARY INFORMATION:**A. Why are revisions to State programs necessary?**

States that have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask the EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, the EPA will implement those requirements and prohibitions in Vermont, including the issuance of new permits implementing those requirements, until Vermont is granted authorization to do so.

B. What decisions has the EPA made in this rule?

November 29, 2022, Vermont submitted a complete program revision application seeking authorization of revisions to its hazardous waste program. The EPA concludes that Vermont's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA, as set forth in RCRA Section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, the EPA grants final authorization to Vermont to operate its hazardous waste program with the revisions described in its authorization application, and as listed below in Section G of this document.

The Vermont Department of Environmental Conservation (VTDEC) has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of HSWA, as discussed above.

C. What is the effect of this authorization decision?

This decision serves to authorize Vermont for the revisions to its

authorized hazardous waste program described in its authorization application. These changes will become part of the authorized State hazardous waste program and will therefore be Federally enforceable. Vermont will continue to have primary enforcement authority and responsibility for its State hazardous waste program. The EPA would maintain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses and reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations for which the EPA is authorizing Vermont are already effective under state law and are not changed by this action.

D. Why wasn't there a proposed rule before this rule?

Along with this direct final rule, the EPA is publishing a separate document in the "Proposed Rules" section of this issue of the **Federal Register** that serves as the proposal to authorize Vermont's program revisions. The EPA did not publish a proposal before this rule because the EPA views this as a routine program change and does not expect comments that oppose this approval. The EPA is providing an opportunity for public comment now, as described in Section E of this document.

E. What happens if the EPA receives comments that oppose this action?

If the EPA receives comments that oppose this authorization, the EPA will withdraw this direct final rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of Vermont's program revisions on the proposal mentioned in the previous section, after considering all comments received during the comment period. The EPA will then address all such comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If the EPA receives comments that oppose only the authorization of a particular revision to Vermont's hazardous waste program, the EPA will withdraw that part of this rule, but the

authorization of the program revisions that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What has Vermont previously been authorized for?

The State of Vermont initially received Final authorization on January 7, 1985, with an effective date of January 21, 1985 (50 FR 775) to implement the RCRA hazardous waste management program. The EPA granted authorization for revisions to Vermont's regulatory program on the following dates: May 3, 1993 (58 FR 26242), effective August 6, 1993 (58 FR 31911); September 24, 1999 (64 FR 51702), effective November 23, 1999; October 26, 2000, effective December 26, 2000 (65 FR 64164); June 23, 2005 (70 FR 36350), effective on August 22, 2005; March 16, 2007 (72 FR 12568), effective May 15, 2007; December 31, 2013 (78 FR 79615), effective March 3, 2014; and April 20, 2015 (80 FR 21650), effective June 19, 2015.

G. What revisions is the EPA proposing with this proposed action?

On November 29, 2022, Vermont submitted a final complete program revision application, seeking authorization of additional revisions to its program in accordance with 40 CFR 271.21. Vermont seeks authority to administer the Federal requirements that are listed in Table 1 below. This table lists Vermont's analogous requirements that are being recognized as no less stringent than the analogous Federal requirements.

Vermont's regulatory references are to chapter 7 of the Vermont Environmental Protection Rules, the Vermont Hazardous Waste Management Regulations (VHWMR), Sub-chapters 1–10, as amended effective February 1, 2022. Vermont's statutory authority to operate its hazardous waste program is found at 10 V.S.A. section 6603(9).

The EPA proposes to determine, subject to public review and comment, that Vermont's hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. Therefore, the EPA is proposing to authorize Vermont for the following program revisions:

TABLE 1—VERMONT'S ANALOGS TO THE FEDERAL REQUIREMENTS

Federal requirement	Federal Register page and date	Analogous state authority
Checklist (CL) 228: Hazardous Waste Technical Corrections and Clarifications.	77 FR 22229; April 13, 2012.	Appendix I and 7–607.
CL 229: Conditional Exclusions for Solvent Contaminated Wipes.	78 FR 46448; July 31, 2013.	7–103 and 7–203(w). More stringent provisions: 7–203(w)(5) and 7–203(w)(7)(C). Partially broader in scope provision: 7–103, the definition of contaminated wipe includes wipes contaminated with state-only VT02 wastes.
CL 232: Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule.	79 FR 36220; June 26, 2014.	7–103; 7–912(k)(2).
CL 236: Imports and Exports of Hazardous Waste.	81 FR 85696; November 28, 2016, as amended August 29, 2017 (82 FR 41015) and August 6, 2018 (83 FR 38263).	7–103; 7–109(b)(5); 7–203(i)(1); 7–203(i)(4); 7–203(i)(5); 7–204(f)(3); 7–204(f)(4); 7–204(g)(1); 7–219(d); 7–301(g); 7–304(c); 7–402; 7–504(e)(1); 7–510(c)(1); 7–604(d); 7–703(b); 7–703(e); 7–703(h); 7–703(i); 7–703(j); 7–704(e); 7–704(g); 7–708(a)(3); 7–912(k)(1); 7–912(k)(2); 7–912(j)(2)(A); 7–912(j)(2)(B); 7–913(g); 7–914(c)(1); 7–915.
CL 237: Hazardous Waste Generator Improvements Rule.	81 FR 85732; November 28, 2016.	7–103; 7–106(a); 7–109(b)(2); 7–109(b)(4); 7–202(b); 7–202(c); 7–204(a)(1); 7–204(f); 7–214; 7–215; 7–219(d); 7–301(a); 7–301(b); 7–301(c); 7–301(g); 7–302(d); 7–302(e); 7–303; 7–304(a); 7–304(b); 7–304(c); 7–305; 7–306(a); 7–306(b); 7–306(c); 7–306(c)(1)(A); 7–306(c)(1)(D); 7–306(c)(2); 7–306(c)(2)(A) through (I); 7–306(d); 7–306(e); 7–307(a); 7–307(c); 7–307(c)(1); 7–307(c)(2); 7–307(c)(3); 7–307(c)(4); 7–307(c)(6); 7–307(c)(7); 7–307(c)(9); 7–307(c)(10); 7–307(c)(11); 7–307(c)(12); 7–307(c)(13); 7–307(e); 7–307(f); 7–308(a); 7–308(b); 7–308(c); 7–308(d); 7–309(a); 7–309(b)(1); 7–309(b)(2)(A); 7–309(b)(4); 7–309(b)(5); 7–309(b)(6); 7–309(b)(8); 7–310(a)(1); 7–310(a)(2); 7–310(b); 7–311(b)(1); 7–311(c); 7–311(f); 7–311(g); 7–311(h); 7–312(a); 7–312(b); 7–402(a); 7–402(b); 7–404(a)(5); 7–404(b); 7–502; 7–502(g); 7–502(l); 7–502(o); 7–504(e)(1); 7–504(e)(2); 7–504(e)(5); 7–510(c)(1); 7–605(a); 7–606(a); 7–702(b); 7–702(c); 7–708(a); 7–708(b); 7–708(c); 7–709; 7–901(b); 7–916(b)(2). More stringent provisions: 7–306(c), VT Very Small Quantity Generators (VSQGs) are subject to notification, container and tank management, and waste storage area design standards that are not required federally. In addition, VSQGs are limited to specified hazardous waste disposal options and are prohibited from disposing of hazardous waste in Vermont solid waste landfills; 7–306(b) a VSQG exceeding the limit for acute wastes or any other waste raises the VSQG into at least the Small Quantity Generator (SQG) category, VT did not adopt the conditions for an exemption found in 262.14(a)(3); No state analog to 262.16(c) for SQGs transporting waste over 200 miles; 7–308(b)(17)(B) Large Quantity Generators (LQGs) must submit a notification prior to commencing closure of a specific unit (<i>i.e.</i> , partial closure) or for closure of the entire facility; 7–308(b)(17)(C) an LQG may be required to submit a closure plan; 7–308(b)(17)(D) an LQG must follow specific requirements for closure; 7–308(b)(17)(E)(ii) certification of closure from an independent professional engineer may be required on a case-by-case basis; 7–308(b)(17)(F) if the generator was an LQG within five years prior to closure it must close as an LQG regardless of generator status at time of closure; 7–311(d)(2) SQGs and LQGs must maintain a log documenting weekly inspections of short-term storage areas.
CL 238: Confidentiality Determinations for Hazardous Waste Export and Import Documents.	83 FR 60894; December 26, 2017.	7–109(b)(5); 7–912(k)(2)(A); 7–912(k)(2)(B).
CL240: Safe Management of Recalled Airbags.	83 FR 61552; November 30, 2018.	7–103; 7–203(y); 7–306(c)(2)(G).
CL 241: Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine.	84 FR 5816; February 22, 2019.	7–106(a) 7–203(b); 7–203(j)(4); 7–215(c); Appendix IV; 7–301(e); 7–301(f); 7–305(d)(10); 7–306(c)(2)(I)(i); 7–306(c)(2)(I)(ii); 7–502(l); 7–916(a)(1); 7–916(a)(4); 7–1001 through 7–1011.
CL 242: Universal Waste Regulations: Addition of Aerosol Cans.	84 FR 67202; December 9, 2019.	7–103; 7–106; 7–203(s); 7–502(j)(9); 7–901(a); 7–903(b)(2); 7–910; 7–911; 7–912(c)(3)(D); 7–912(d)(3)(C)(iii); 7–912(d)(3)(C)(iv); 7–912(d)(9); 7–912(e)(10).
CL 243: Modernizing Ignitable Liquids Determinations.	85 FR 40594; July 7, 2020	7–205(a)(1); 7–205(a)(3); 7–205(a)(4); 7–205(a)(4)(A); 7–205(a)(4)(D); 7–219(d).
Special Consolidated Checklist for the Hazardous Waste Electronic Manifest Rules (Checklists 231 and 239).	79 FR 7518; February 7, 2014, and 83 FR 420; January 3, 2018.	7–103; 7–504(e)(1); 7–510(c)(1); 7–701(b); 7–701(c)(1); 7–701(c)(2); 7–702(a)(1); 7–702(a)(2); 7–703(a); 7–703(b); 7–703(c); 7–703(k)(1); 7–703(k)(2); 7–703(k)(3); 7–704(b); 7–704(c); 7–704(d).

EPA is also authorizing Vermont for the following universal waste rule provisions for postconsumer paint: 7–909; 7–911; 7–912(d)(8); and 7–912(e)(9). Since postconsumer paint is an appropriate universal waste and the rules allow the States the flexibility to add additional wastes to their list of universal wastes, EPA is therefore reauthorizing the existing universal waste regulations as they are applied to

the paint wastes. In addition, EPA is also authorizing Vermont for the other revisions to the universal waste regulations found at 7–911 and 7–912, relating to the definition of pesticide and storage container requirements, respectively.

EPA cannot delegate certain federal requirements associated with the federal manifest registry system, the electronic manifest system, and international

shipments (*i.e.*, import and export provisions). Vermont has adopted these requirements and appropriately preserved the EPA's authority to implement them (see VHWMRs 7–103; 7–109(b)(5); 7–510(c)(1); 7–702(a)(2)(B); 7–703(b); 7–704(d)(5); and 7–915).

There are several Federal rules that have been vacated, withdrawn, or superseded. As a result, authorization of these rules may be moot. However, for

purposes of completeness, these rule checklists are included here with an explanation as to the rule's status in Vermont. These checklists include: CL 216: Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthetic Gas (73 FR 57, January 2, 2008); CL 221: Expansion of RCRA Comparable Fuel Exclusion (73 FR 77954, December 19, 2008); CL 224: Withdrawal of the Emission Comparable Fuel Exclusion (75 FR 33712, June 15, 2010); and CL 234: Vacatur of the Comparable Fuels Rule and the Gasification Rule (80 FR 18777, April 8, 2015)—CLs 216, 221, and 224 have been vacated. CL 234 implements the vacatur of these provisions. Vermont did not adopt the exclusions contained in CLs 216, 221, or 224; therefore, the adoption of CL 234 in Vermont would be inconsequential. Vermont's authorized program continues to be equivalent to and no less stringent than the Federal program without having to make any conforming changes pursuant to these rule checklists.

H. Where are the revised State rules different from the Federal rules?

When revised state rules differ from the Federal rules in the RCRA state authorization process, EPA determines whether the state rules are equivalent to, more stringent than, or broader in scope than the Federal program. Pursuant to RCRA section 3009, 42 U.S.C. 6929, state programs may contain requirements that are more stringent than the Federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent states from adopting regulations that are broader in scope than the Federal program, states cannot receive federal authorization for such regulations, and they are not federally enforceable.

1. Vermont's Requirements That Are Broader in Scope

Vermont's hazardous waste program contains certain provisions that are broader than the scope of the Federal program. These broader in scope provisions are not part of the program the EPA is proposing to authorize. The EPA cannot enforce requirements that are broader in scope, although compliance with such provisions is required by State law. The Vermont provisions in this update that are broader in scope include, but are not limited to, the following: (a) 7–211 Vermont listed hazardous wastes—pesticidal wastes, identified by the Vermont hazardous waste code VT06; PFOA wastes, identified by the Vermont

hazardous waste code VT21; and PFOS wastes, identified by the Vermont hazardous waste code VT22; (b) 7–304(e), 7–306(c)(1)(C), 7–307(c)(5), and 7–308(b)(5), the fee requirements for generators; and (c) 7–702(a)(4), the VT tax on hazardous waste shipments.

2. Vermont's Requirements That Are More Stringent Than the Federal Program

Vermont's hazardous waste program contains several provisions that are more stringent than the Federal RCRA program. More stringent provisions are part of a Federally authorized program and are, therefore, Federally enforceable. Under this action, the EPA would authorize every provision in Vermont's program that is more stringent. The provisions of the proposed program revision that are more stringent are noted in Table 1. They include, but are not limited to, the following:

(a) Vermont limits the exclusion for solvent contaminated wipes to the exclusion for only reusable wipes that are transported off-site for cleaning; it does not include the federal exclusion for disposable wipes and does not allow the on-site cleaning of the wipes. In addition, Vermont also requires that generators maintain certain documentation at their site regarding the management of the wipes.

(b) Vermont regulates VSQGs more stringently by not allowing them to mix hazardous wastes with solid wastes. In addition, Vermont does not allow VSQGs to exceed quantity limits, whereas the federal regulations at 262.14(a)(3) and 262.14(a)(4) do allow this. In Vermont, VSQGs become at least an SQG if they exceed any of the quantity limits for VSQGs.

(c) Vermont has no state analog to 262.16(c) for SQGs transporting waste over 200 miles.

(d) Vermont does not have the “mixture” rule, therefore has no state analog to 262.13(f)(2) for SQG and LQG wastes mixed with solid wastes.

(e) SQGs and LQGs must maintain a log documenting weekly inspections of short-term storage areas, there is no federal analog to this requirement.

(f) LQGs are subject to closure requirements that are not required federally. LQGs must submit a “Pre-Closure Notification Form” and, based on the information provided on that form, may be required to submit a closure plan that meets specific requirements. Those requirements are found in VHWMR § 7–308(b)(17)(D). In addition, on a case-by-case basis, the certification of closure from an independent professional engineer may

be required, and if the generator was an LQG within five years prior to closure it must close as an LQG regardless of generator status at time of closure.

I. Who handles permits after the authorization takes effect?

Vermont will continue to issue permits covering all the provisions for which it is authorized and will administer the permits it issues. EPA will implement and issue permits for any HSWA requirements for which Vermont is not yet authorized in the future.

J. What is codification and will the EPA codify Vermont hazardous waste program as authorized in this rule?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. EPA is not proposing to codify the authorization of Vermont's changes at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart UU for the authorization of Vermont's program at a later date.

K. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this authorization of Vermont's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely

affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), the EPA grants a state’s application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in taking this action, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental

justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 23, 2023.

David W. Cash,

Regional Administrator, U.S. EPA Region I.

[FR Doc. 2023–04148 Filed 3–1–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2020–0058; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BE87

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for the Upper Coosa River Distinct Population Segment of Frecklebelly Madtom and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act of 1973 (Act), as amended, for the Upper Coosa River distinct population segment (DPS) of the

frecklebelly madtom (*Noturus munitus*), a fish species. We are also finalizing a rule under section 4(d) of the Act to provide for conservation of the species. In addition, we designate critical habitat for the Upper Coosa River DPS under the Act. In total, approximately 134 river miles (216 kilometers) in Georgia and Tennessee fall within the boundaries of the critical habitat designation. This rule applies the protections of the Act to this species and its designated critical habitat.

DATES: This rule is effective April 3, 2023.

ADDRESSES: This final rule is available on the internet at <https://www.regulations.gov> in Docket No. FWS–R4–ES–2020–0058 and at <https://www.fws.gov/office/alabama-ecological-services/library>. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at <https://www.regulations.gov> under Docket No. FWS–R4–ES–2020–0058.

For the critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file and are available at <https://www.fws.gov/office/alabama-ecological-services/library>, at <https://www.regulations.gov> under Docket No. FWS–R4–ES–2020–0058, and at the Alabama Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**, below). Any additional tools or supporting information that we developed for the critical habitat designation will also be available at the Service website and Field Office set out above and may also be included in the preamble and at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

William Pearson, Field Supervisor, U.S. Fish and Wildlife Service, Alabama Ecological Services Field Office, 1208–B Main Street, Daphne, AL 36526; telephone 251–441–5870. 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:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction

throughout all or a significant portion of its range) or a threatened species (likely to become endangered within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the Upper Coosa River DPS of frecklebelly madtom meets the definition of a threatened species; therefore, we are listing it as such and designating critical habitat. Both listing a species as an endangered or threatened species and designating critical habitat can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process.

What this document does. This final rule lists the Upper Coosa River DPS of frecklebelly madtom as a threatened species with a rule issued under section 4(d) of the Act (a "4(d) rule") and designates critical habitat for the DPS.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the factors driving the status of the Upper Coosa River DPS are habitat destruction and degradation caused by agriculture and developed land uses, resulting in poor water quality (Factor A).

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into

consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Previous Federal Actions

On November 19, 2020, we published a proposed rule (85 FR 74050) to list the Upper Coosa River DPS of frecklebelly madtom as a threatened species. That document includes our not-warranted finding on the listing of the frecklebelly madtom species as a whole. Please refer to the November 19, 2020, proposed rule for a detailed description of previous Federal actions concerning the frecklebelly madtom species.

Summary of Changes From the Proposed Rule

Based on information we received during the comment period for the proposed rule, we have added an exception to the final 4(d) rule to except incidental take from silviculture practices and forest management activities that use State-approved best management practices to protect water and sediment quality and stream and riparian habitat. We explain this new exception in the preamble of this rule.

Also based on information we received during the comment period for the proposed rule, we clarify that the critical habitat designation for the Upper Coosa River DPS of frecklebelly madtom does not extend beyond the bankfull width of the designated rivers.

In addition, this final rule includes several nonsubstantive, editorial corrections for clarity and accuracy.

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the frecklebelly madtom. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought peer review of the SSA report. As discussed in the proposed rule, we sent the SSA report to 10 independent peer reviewers, all of whom have expertise that includes familiarity with the frecklebelly madtom or its habitat, biological needs, or

threats. We received two responses from peer reviewers.

I. Final Listing Determination

Background

The frecklebelly madtom (*Noturus munitus*) is a small, stout catfish reaching 99 millimeters (mm) (3.9 inches (in)) in length (Etnier and Starnes 1993, p. 324) and distinctively marked with dark saddles (Suttkus and Taylor 1965, p. 171). The species inhabits the main channels and larger tributaries of large river systems in Louisiana, Mississippi, Alabama, Georgia, and Tennessee. The species has a broad but disjunct distribution across the Pearl River watershed and Mobile River Basin, with populations in the Pearl River and Bogue Chitto River in the Pearl River watershed and the Tombigbee, Alabama, Cahaba, Etowah, and Conasauga river systems in the Mobile River Basin (Piller *et al.* 2004, p. 1004; Bennett and Kuhajda 2010, pp. 507–508).

Throughout its range, the frecklebelly madtom primarily occupies streams and rivers within the Gulf Coastal Plain physiographic province; however, it also occurs in the Ridge and Valley physiographic province in the Conasauga River and Piedmont Upland physiographic province in the Etowah River (Mettee *et al.* 1996, pp. 408–409). For the frecklebelly madtom to survive and reproduce, individuals need suitable habitat that supports essential life functions at all life stages. Three elements appear to be essential to the survival and reproduction of individuals: flowing water, stable substrate, and aquatic vegetation. A thorough review of the taxonomy, life history, and ecology of the frecklebelly madtom is presented in the SSA report (version 1.2, pp. 1–17).

The Upper Coosa River DPS of the frecklebelly madtom primarily occurs within northern Georgia and extends into two counties of Tennessee within the Conasauga River and Etowah River (see figure 1, below). Please refer to our proposed rule (85 FR 74050; November 19, 2020) for a summary of the species' background information available to the Service at the time that the proposal was published.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 224) set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating

critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019). We collectively refer to these actions as the 2019 regulations.

As with the proposed rule, we are applying the 2019 regulations for this final rule because the 2019 regulations are the governing law just as they were when we completed the proposed rule. Although there was a period in the interim—between July 5, 2022, and September 21, 2022—when the 2019 regulations became vacated and the pre-2019 regulations therefore governed, the 2019 regulations are now in effect and govern listing and critical habitat decisions (*see Center for Biological Diversity v. Haaland*, No. 4:19-cv-05206–JST, Doc. 168 (N.D. Cal. July 5, 2022) (*CBD v. Haaland*) (vacating the 2019 regulations and thereby reinstating the pre-2019 regulations)); *In re: Cattlemen's Ass'n*, No. 22–70194 (9th Cir. Sept. 21, 2022) (staying the district court's order vacating the 2019 regulations until the district court resolved a pending motion to amend the order); *Center for Biological Diversity v. Haaland*, No. 4:19-cv-5206–JST, Doc. Nos. 197, 198 (N.D. Cal. Nov. 16, 2022) (granting plaintiffs' motion to amend July 5, 2022 order and granting government's motion for remand without vacatur). We have undertaken an analysis under the pre-2019 regulations and included it in the decision file for this final rule.

The Act defines an "endangered species" as a species that is in danger of extinction throughout all or a significant portion of its range, and a "threatened species" as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term "threat" to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term "threat" includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term "threat" may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an "endangered species" or a "threatened species." In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an "endangered species" or a "threatened species" only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term "foreseeable future," which appears in the statutory definition of "threatened species." Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable

future on a case-by-case basis. The term "foreseeable future" extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. "Reliable" does not mean "certain"; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The frecklebelly madtom (*Noturus munitus*) SSA report documents the results of our comprehensive biological status review for the frecklebelly madtom species as a whole, including an assessment of the potential stressors to the species (Service 2020, entire). The SSA report does not represent our decision on whether the species (or the DPS) should be listed as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report, specifically related to the DPS; the full SSA report can be found at <https://www.fws.gov/office/alabama-ecological-services/library> and at <https://www.regulations.gov> under Docket No. FWS–R4–ES–2020–0058.

To assess the frecklebelly madtom's viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the

ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the species needs, the biological condition of the Upper Coosa River DPS of frecklebelly madtom and its resources, and the threats that influence the current and future condition, in order to assess the overall viability and the risks to the viability of the Upper Coosa River DPS of frecklebelly madtom.

Species Needs and Habitat

Primary habitat for frecklebelly madtom is associated with fast moving streams often associated with rivers and their tributaries, with substrate consisting of various sizes of gravel (Suttkus and Taylor 1965, pp. 177–178; Mettee *et al.* 1996, p. 409; Vincent, 2019, unpaginated). Cover is an important habitat factor for the species, as it provides for concealment against predators (Vincent, 2019, unpaginated), foraging habitat, and nesting habitat. Areas providing firm gravel substrates, such as small pebbles and rocks, are preferred, thus muddy waterway sand and still streams are not desirable habitat for this species (Suttkus and Taylor 1965, pp. 177; Taylor 1969, pp. 183; Mettee *et al.* 1996, p. 409; Piller *et al.* 2004, p. 1004).

Delineating Representation and Resilience Units

We delineated representation units to describe the breadth of known genetic, phenotypic, and ecological diversity within the species. There is evidence of differentiation in habitat use, morphology, and genetics for areas that the frecklebelly madtom occupies, which are disconnected spatially across the landscape. In total, we identified six representation units for the frecklebelly madtom: Pearl River (A), upper Tombigbee River (B), lower Tombigbee/Alabama Rivers (C), Alabama River (D), Cahaba River (E), and upper Coosa River (F). Through the DPS analysis described in the proposed rule (85 FR 74050; November 19, 2020), we determined that the Upper Coosa River representation unit is a distinct population segment (see figure 1, below) and that the DPS meets the Act's definition of a threatened species. Any reference to the upper Coosa River representation unit in the SSA report can be understood to mean the Upper Coosa River DPS of frecklebelly madtom. The term upper Coosa River representation unit is used throughout this document (and the SSA report) but references the same geographic areas as the Upper Coosa River DPS of frecklebelly madtom.

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Frecklebelly Madtom (*Noturus munitus*) Distinct Population Segment Map

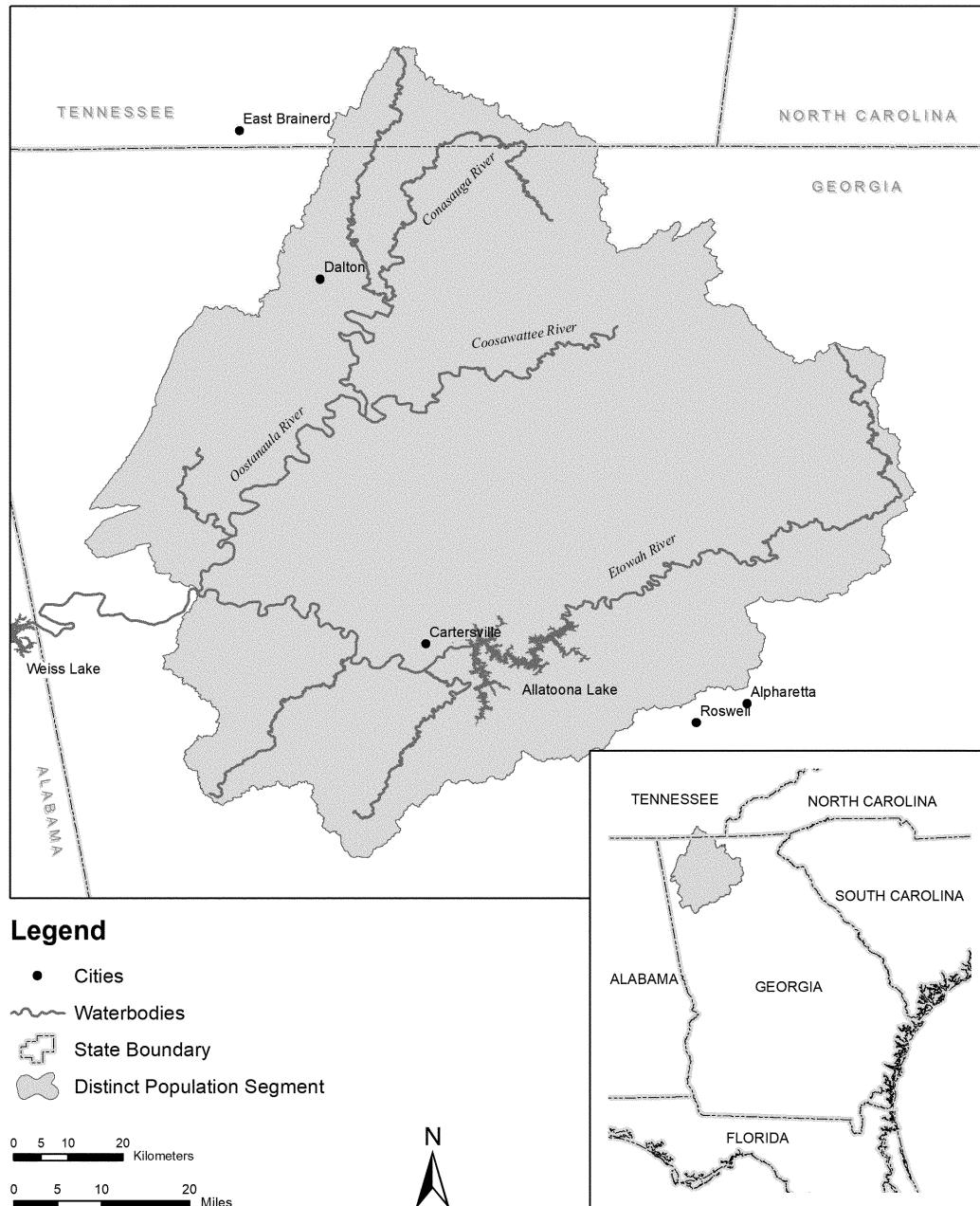


Figure 1. Rivers and streams within the Upper Coosa River DPS of the frecklebelly madtom.

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We delineated resilience units for the upper Coosa River representation unit of the frecklebelly madtom (see table 1, below). Resilience units were delineated to describe at a local scale how the species withstands stochastic events.

Resilience units were delineated as aggregations of adjacent U.S. Geological Survey Hydrological Unit Code (HUC) 10 watershed boundaries that contain a frecklebelly madtom observation and are not disconnected by dams or other

major habitat alterations that may present a barrier to movement. By using HUC 10 watersheds, we are able to delineate resilience units that can be measured and evaluated at a local scale similar to that we would expect for a

population. We identified three resilience units consisting of eight HUC 10 watersheds within the range of the Upper Coosa River DPS of frecklebelly madtom (see table 1, below).

TABLE 1—REPRESENTATION UNIT AND RESILIENCE UNITS USED TO ASSESS VIABILITY OF THE UPPER COOSA RIVER DPS OF FRECKLEBELLY MADTOM

Representation unit	Resilience units
Upper Coosa River	Conasauga River. Coosawattee River. Etowah River.

Risk Factors for Upper Coosa River DPS of Frecklebelly Madtom

We reviewed the potential risk factors (see discussion of section 4(a)(1) of the Act, above) that are affecting the frecklebelly madtom now and are expected to affect it into the future. We have determined that habitat destruction and degradation caused by agriculture and development, resulting in poor water quality (Factor A), poses the largest risk to the current and future viability of the Upper Coosa River DPS of frecklebelly madtom. Other potential stressors to the species are habitat degradation resulting from channelization, dams, and impoundments (Factor A) and climate change (Factor E). We find the species does not face significant threats from overutilization (Factor B), disease or predation (Factor C), or invasive species (Factor E). We also reviewed the regulatory mechanisms (Factor D) and conservation efforts being undertaken for the habitat in which the frecklebelly madtom occurs. A brief summary of relevant stressors is presented below; for a full description, refer to chapter 4 of the SSA report (Service 2020, entire).

Water Quality

The frecklebelly madtom, like other benthic aquatic species, is sensitive to poor water quality (Warren *et al.* 1997, p. 125) and needs clean, flowing water to survive; thus, water quality degradation is considered a threat to the species. Changes in water chemistry and flow patterns, resulting in a decrease in water quality and quantity, have detrimental effects on madtoms because they can render aquatic habitat unsuitable for occupancy.

Inputs of point (discharge from particular pipes) and nonpoint (diffuse land surface runoff) source pollution across the DPS's range are numerous and widespread. Point source pollution can be generated from inadequately

treated effluent from industrial plants, sanitary landfills, sewage treatment plants, active surface mining, drain fields from individual private homes, and others (Service 2000, pp. 14–15). Nonpoint pollution originates from agricultural activities, poultry and cattle feedlots, abandoned mine runoff, construction, failing septic tanks, and contaminated runoff from urban areas (Deutsch *et al.* 1990, entire; Service 2000, pp. 14–15). These sources contribute pollution to streams via sediments, heavy metals, fertilizers, herbicides, pesticides, animal wastes, septic tank and gray water leakage, and oils and greases. Water quality and native aquatic fauna decline as a result of this pollution through nitrification, decreases in dissolved oxygen concentration, increases in acidity and conductivity, or direct introduction of toxicants. These alterations likely have direct (*e.g.*, decreased survival and/or reproduction) and indirect (*e.g.*, loss, degradation, and fragmentation of habitat) effects. For some aquatic species, including the frecklebelly madtom, submergent vegetation provides critical spawning habitat for adults, refugia from predators, and habitat for prey of all life stages (Jude and Pappas 1992, pp. 666–667; Freeman *et al.* 2003, p. 54). Degraded water quality and the high algal biomass that result from pollutant inputs cause loss of these critical submergent plant species (Chow–Fraser *et al.* 1998, pp. 38–39) that are vital habitat for the frecklebelly madtom.

The frecklebelly madtom is intolerant to sedimentation (Shepard 2004, p. 221; MMNS 2014, p. 35), and sedimentation is a concern throughout the Upper Coosa River DPS. Researchers have documented a negative relationship between occurrence of the frecklebelly madtom and human-induced increases of sediment within Etowah River and Conasauga River (Burkhead *et al.* 1997, pp. 406–413; Shepard *et al.* 1997, pp. 15–19; Freeman *et al.* 2002, pp. 18–19; Freeman *et al.* 2017, pp. 429–430). Human-induced increases in sediment are likely a factor in local declines of the species. In addition, the frecklebelly madtom's habitat requirements make it vulnerable to activities that disturb substrate integrity. The species is restricted to habitat with pea-sized gravel, cobble, or slab-rock substrates not embedded in large amounts of silt (Bennett *et al.* 2008, p. 467; Bennett and Kuhajda 2010, p. 510), although it has also been found to occupy some stable streams with a sandy yet stable substrate. Degradation from sedimentation, physical habitat

disturbance, and contaminants threaten the habitat and water quality on which the frecklebelly madtom depends. Sedimentation from an array of land uses (*e.g.*, urbanization, agriculture, channel maintenance activities) could negatively affect the species by reducing growth rates, disease tolerance, and gill function; reducing spawning habitat, reproductive success, and egg (embryo), larva, and juvenile development; reducing food availability through reductions in prey; reducing foraging efficiency; and reducing shelter.

A wide range of current activities and land uses, including agricultural practices, construction, stormwater runoff, unpaved roads, poor forest management, utility crossings, and mining, can lead to excessive sedimentation within streams. Fine sediments not only smother streams during current ongoing activities, historical land-use practices may have substantially altered hydrological and geological processes such that sediments continue to be input into streams for several decades after those activities cease (Harding *et al.* 1998, p. 14846).

Water quality for frecklebelly madtom is particularly impacted by three processes: channel modification (*i.e.*, dredging and channelization), agriculture, and development, which are discussed further below.

Channel Modification

Dredging and channelization have led to loss of aquatic habitat in the Southeast (Neves *et al.* 1997, p. 71). Dredging and channelization projects are extensive throughout the region for flood control, navigation, sand and gravel mining, and conversion of wetlands into croplands (Neves *et al.* 1997, p. 71; Herrig and Shute 2002, pp. 542–543). Dredging and channelization modify and destroy habitat for aquatic species by destabilizing the substrate, increasing erosion and siltation, removing woody debris, decreasing habitat heterogeneity, and stirring up contaminants that settle onto the substrate (Williams *et al.* 1993, pp. 7–8; Buckner *et al.* 2002, entire; Bennett *et al.* 2008, pp. 467–468). Channelization can also lead to head cutting (an erosional process in a stream channel with a vertical cut or drop that migrates upstream over time), which causes further erosion and sedimentation (Hartfield 1993, pp. 131–141). Dredging can involve snagging (the removal of woody debris from the channel), which not only contributes to destabilization of the channel but also removes the woody debris that provides important cover and nest locations for many fish species,

including the frecklebelly madtom (Bennett *et al.* 2008, pp. 467–468).

Within the range of the Upper Coosa River DPS, important habitat of the frecklebelly madtom was permanently altered and removed by the U.S. Army Corps of Engineers when it was appropriated funding by Congress to remove obstructions from the Oostanaula and Coosawattee rivers in the 1870s (U.S. Department of War Office of Engineers 1875, pp. 792–794). However, the Conasauga River does not have large-scale human modification through damming or channelization (Bennett *et al.* 2008, p. 468), and the Etowah upstream of Allatoona River is relatively unaltered by dredging or channel modification work.

Agriculture

Agricultural practices such as traditional farming, feedlot operations, and associated land use practices can contribute pollutants to rivers. These practices can also degrade habitat by eroding stream banks, which results in alterations to stream hydrology and geomorphology. Nutrients, bacteria, pesticides, and other organic compounds are generally found in higher concentrations in agricultural areas rather than forested areas. Contaminants associated with agriculture (e.g., fertilizers, pesticides, herbicides, and animal waste) can degrade water quality and negatively impact instream habitats by causing oxygen deficiencies, excess eutrophication, and excessive algal growths, which can have a direct impact on fish community composition (Petersen *et al.* 1999, p. 6).

Areas within the current range of the Upper Coosa River DPS of frecklebelly madtom, which are predominantly agricultural, are impacted by nonpoint source sediment and agrochemical discharges altering the physical and chemical characteristics of the DPS's habitat, thus potentially impeding the frecklebelly madtom's ability to feed, seek shelter from predators, and successfully reproduce. A negative relationship between the species and nonpoint source stressors attributed to agriculture has been described particularly within the Conasauga River (Freeman *et al.* 2017, pp. 429–430). Over the past two decades, an increase in the use of agricultural chemicals and practices, such as use of glyphosate-based herbicides for weed control and land dispersion of animal waste for soil amendment, has corresponded with marked declines in populations of fish and mussel species in the Upper Conasauga River watershed in Georgia and Tennessee (Freeman *et al.* 2017, p.

429). Nutrient enrichment of streams was found to be widespread, with high levels of nitrate and phosphorus (reported at over 5 milligrams per liter and over 300 micrograms per liter, respectively, within the Conasauga River) likely associated with eutrophication, and hormone concentrations in sediments were often above those shown to cause endocrine disruption in fish, which was possibly related to the widespread application of poultry litter and manure (Lasier *et al.* 2016, entire). Estrogens, a hormone and type of endocrine disruptor that can be found in poultry litter, also have been identified as a threat to aquatic fauna in the Conasauga River system (Jacobs 2015, entire). Increased levels of estrogens can lead to decreases in spawning success and potentially population collapse within short timeframes (Kidd *et al.* 2007, p. 8899). Aquatic species declines observed in the Conasauga watershed may be at least partially due to hormones, as well as excess nutrients, herbicides, and surfactants (Freeman *et al.* 2017, p. 429).

The amount (acreage) of agricultural land is declining across the eastern United States with a net loss of 6.5 percent between 1973 and 2000 (Sayler *et al.* 2016, p. 12). As discussed below under *Future Scenarios*, within the Upper Coosa River watershed, the declining trend of agricultural land is consistent with broader trends in the eastern United States showing agricultural land declines with time (Sayler *et al.* 2016, p. 12). These agricultural lands are mostly being converted to developed and forested lands (Sayler *et al.* 2016, p. 12). Despite the declining trend, agricultural practices leading to poor water quality conditions currently influence and will continue to influence the viability of frecklebelly madtom within the Upper Coosa River DPS.

Development

Development is a significant source of water quality degradation that can reduce the survival of aquatic organisms, including the frecklebelly madtom. Urban development can stress aquatic systems in a variety of ways, including increasing the frequency and magnitude of high flows in streams; increasing sedimentation and nutrient loads; increasing contaminants and toxicity; decreasing the diversity of fish, aquatic insects, plants, and amphibians; and changing stream morphology and water chemistry (Coles *et al.* 2012, entire; CWP 2003, entire). Sources and risks of an acute or catastrophic contamination event, such as a leak from an underground storage tank or a

hazardous materials spill on a highway, increase as urbanization increases.

Urbanization has also been shown to impair stream quality by impacting riparian health (Diamond *et al.* 2002, p. 1150). Riparian impairment resulting from urbanization or agricultural land use can amplify negative effects of nonpoint source pollution within the watershed as well as impact stream quality independent of land use within the watershed. Impacts from impervious cover can be mitigated through riparian forest cover and good riparian health (Roy *et al.* 2005, p. 2318; Walsh *et al.* 2007, entire); however, the benefit of the riparian cover diminishes when impervious cover (*i.e.*, urban cover) exceeds approximately 10 percent within the watershed (Booth and Jackson 1997, p. 1084; Goetz *et al.* 2003, p. 205).

Currently, larger population centers, such as the city of Atlanta, Georgia, contribute substantial runoff to the watersheds occupied by the Upper Coosa River DPS of frecklebelly madtom. In the future, urbanization is predicted to increase within the Upper Coosa River DPS of frecklebelly madtom (see *Future Scenarios*, below). The Etowah River watershed, upstream of Lake Allatoona in Georgia, is expected to experience additional urbanization (Albanese *et al.* 2018, p. 39). Conservation concerns in the Etowah River watershed have focused on potential effects of this predicted urban growth on imperiled fishes (Burkhead *et al.* 1997, pp. 959–968; Wenger *et al.* 2010, pp. 11–21), and previous analyses show negative correlations between occurrence of native fishes and increases in impervious cover associated with urban development (Wenger *et al.* 2008, p. 1260). In the Etowah Basin in Georgia, models indicated that urbanization lowered the richness and density of fish species and led to predictable changes in species composition. Darters, sculpin, minnows, and endemic species declined along the urban gradient, whereas sunfishes persisted and became the dominant group (Walters *et al.* 2005, pp. 10–11). In the future, we anticipate increased development to amplify as a population-level factor influencing the viability of frecklebelly madtom within the Upper Coosa River DPS.

Impoundments

Impoundment of rivers is a stressor to aquatic species in the Southeast (Benz and Collins 1997, pp. 22–23, 63, 91, 205, 273, 291, 397, 399, 401–406, 446; Buckner *et al.* 2002, pp. 10–11). Dams modify habitat conditions and aquatic communities both upstream and

downstream of an impoundment (Winston *et al.* 1991, pp. 103–104; Mulholland and Lenat 1992, pp. 193–231; Soballe *et al.* 1992, pp. 421–474). Upstream of dams, habitat is flooded, and in-channel conditions change from flowing to still water, with increased depth, decreased levels of dissolved oxygen, and increased sedimentation. Sedimentation alters substrate conditions by filling in interstitial spaces between rocks, which provide habitat for many species (Neves *et al.* 1997, pp. 63–64), including the frecklebelly madtom. Downstream of dams, flow regime fluctuates with resulting fluctuations in water temperature and dissolved oxygen levels, the substrate is scoured, and downstream tributaries are eroded (Neves *et al.* 1997, pp. 63–64; Schuster 1997, p. 273; Buckner *et al.* 2002, p. 11). Negative “tailwater” effects on habitat can extend many kilometers downstream (Neves *et al.* 1997, p. 63). Dams fragment habitat for aquatic species by blocking corridors for migration and dispersal, resulting in population isolation and heightened susceptibility to extinction (Neves *et al.* 1997, p. 63). Dams also preclude the ability of aquatic organisms to escape from polluted waters and accidental spills (Buckner *et al.* 2002, p. 10).

Damming of streams and springs is also extensive throughout the Southeast and occurs within the large river habitats of the Upper Coosa River DPS of frecklebelly madtom, specifically Allatoona Dam on the Etowah River and Carters Dam on the Coosawattee River (Etnier 1997, pp. 88–89; Morse *et al.* 1997, pp. 22–23; Shute *et al.* 1997, pp. 458–459; Bennett *et al.* 2008, p. 467). Many streams have both small ponds in their headwaters and large reservoirs in their lower reaches (Morse *et al.* 1997, p. 23). Small streams on private lands are regularly dammed to create ponds for cattle, irrigation, recreation, and fishing, with significant ecological effects due to the sheer abundance of these structures (Morse *et al.* 1997, pp. 22–23). In addition, small headwater streams are increasingly being dammed in the Southeast to supply water for municipalities (Buckner *et al.* 2002, p. 11).

Dams are known to have caused the extirpation and extinction of many southeastern species, and existing and proposed dams pose an ongoing threat to many aquatic species (Folkerts 1997, p. 11; Neves *et al.* 1997, p. 63; Ricciardi and Rasmussen 1999, p. 1222; Service 2000, p. 15; Buckner *et al.* 2002, p. 11; Olden 2016, pp. 112–122), including the frecklebelly madtom. For instance, the construction of 10 lock and dam

structures on the Tenn-Tom Waterway, which artificially connects the Tennessee River to the Gulf of Mexico, led to the extirpation of many species, including the frecklebelly madtom, from the main river channel (Bennett *et al.* 2008, p. 467). The construction of one dam on the Etowah River may have affected the Upper Coosa River DPS of frecklebelly madtom and reduced the extent of available habitat, since the species is dependent on large-river gravel shoal substrate (Bennett *et al.* 2008, p. 470).

Climate Change

In the southeastern United States, several climate change models have projected more frequent drought, more extreme heat (resulting in increases in air and water temperatures), increased heavy precipitation events (*e.g.*, flooding), more intense storms (*e.g.*, frequency of major hurricanes increases), and rising sea level and accompanying storm surge (IPCC 2013, entire). When taking into account future climate projections for temperature and precipitation where the frecklebelly madtom occurs, warming is expected to be greatest in the summer, which is predicted to increase drought frequency. Nevertheless, annual mean precipitation is expected to increase slightly, leading to a slight increase in flooding events (Alder and Hostetler 2013, unpaginated; IPCC 2013, entire; USGS 2020, unpaginated). Changes in climate may affect ecosystem processes and communities by altering the abiotic conditions experienced by biotic assemblages, resulting in potential effects on community composition and individual species interactions (DeWan *et al.* 2010, p. 7).

The frequency, duration, and intensity of droughts are likely to increase in the southeastern United States as a result of global climate change (Konrad *et al.* 2013, p. 34), which could negatively affect stream flows in the region. Stream flow is strongly correlated with important physical and chemical parameters that limit the distribution and abundance of riverine species (Power *et al.* 1995, entire; Resh *et al.* 1988, pp. 438–439) and regulates the ecological integrity of flowing water systems (Poff *et al.* 1997, p. 770).

To understand how climate change is projected to affect areas where frecklebelly madtom occurs, we used the National Climate Change Viewer (NCCV), a climate-visualization tool developed by the U.S. Geological Survey (USGS), to generate future climate projections across the range of the species. The NCCV is a web-based

tool for visualizing and assessing projected changes in climate and water balance at watershed, State, and county scales (USGS 2020, unpaginated). To evaluate the effects of climate change in the future, we used projections from representative concentration pathway (RCP) 4.5 and RCP 8.5 to characterize projected future changes in climate and water resources, averaged for the South-Atlantic Gulf Region encompassing the Upper Coosa River DPS of the frecklebelly madtom (Service 2020, pp. 27–31). The projections estimate changes in mean annual values for maximum air temperature, minimum air temperature, monthly precipitation, and monthly runoff, among other factors, from historical (1981–2010) to future (2050–2074) time series.

Within the Upper Coosa River DPS of the frecklebelly madtom, the NCCV projects that, under the RCP 4.5 scenario, maximum air temperature will increase by 1.9 degrees Celsius (°C) (3.4 degrees Fahrenheit (°F)), minimum air temperature will increase by 1.8 °C (3.2 °F), precipitation will increase by 5.36 millimeters (0.2 inches) per month, and runoff will remain the same in the 2050–2074 time period (USGS 2020, unpaginated). Under the more extreme RCP 8.5 scenario, the NCCV projects that maximum air temperature will increase by 2.8 °C (5 °F), minimum air temperature will increase by 2.7 °C (4.9 °F), precipitation will increase by 5.36 millimeters (0.2 inches) per month, and runoff will remain the same in the 2050–2074 time period (USGS 2020, unpaginated). These estimates indicate that, despite projected minimal increases in annual precipitation, anticipated increases in maximum and minimum air temperatures will likely offset those gains. Based on these projections, the frecklebelly madtom will on average be exposed to increased air temperatures in the Upper Coosa River watershed, despite limited increases in precipitation; however, these projections are not a one-to-one air to stream water temperature comparison.

Despite the recognition of climate effects on ecosystem processes, there is uncertainty within each model and model ensembles about what the exact climate future will be, and there is uncertainty in how the ecosystems and species will respond. Although there are several potential risks associated with long-term climate change as described above, there is uncertainty regarding how the frecklebelly madtom will respond to these risks. The species occupies some tributaries throughout its range, but the frecklebelly madtom has a preference for habitat in larger rivers

and this may provide a buffer to changes induced by climate change, particularly from issues associated with drought. Therefore, we do not consider climate change to be a primary risk factor for the species at this time.

Methods To Assess Current Condition

We assessed the current resiliency (ability of populations to withstand stochastic events) within the Upper Coosa River DPS of frecklebelly madtom by considering occurrence data throughout the DPS's range. We used occurrence data to estimate range extent and range geometry (*i.e.*, number of named streams with occurrences). These metrics can be useful for evaluating resiliency, as larger areas of occupied habitat and multiple occupied streams (more complex ranges) are more robust to stochastic events (*i.e.*, a single, more localized event would be unlikely to negatively affect the entire population or unit if many and larger reaches of streams were occupied). We categorized current resiliency into high, moderate, low, or likely extirpated conditions, based on our evaluation of total number of occurrences, the number of occupied stream reaches, the length of discrete stream reaches, and an estimate of the maximum occupied stream reach within each resilience unit, in addition to information within available literature (Service 2020, pp. 34–53).

Environmental DNA (eDNA, which is DNA that is shed into the environment by an organism during its life) belonging to the frecklebelly madtom was collected in all three resilience units of the Upper Coosa River DPS (Freeman and Bumpers 2018, entire). Within the Coosawattee River, eDNA is the only evidence of the species' presence within the period of record (1950–2019). Collecting and analyzing water samples for eDNA provides a means of rapidly surveying aquatic habitats to help identify potentially occupied sites for a species. However, uncertainty of these data remains regarding the origin and fate of the individuals that shed the DNA and the length of time the eDNA persists in the environment. For the purposes of this analysis, we used eDNA data as evidence to support our conclusion that the probability of the species being present in a particular unit is greater than zero. As described above, we used occurrence data to assess resiliency. If units are known only from eDNA data, an unknown resiliency was determined since we have no occurrence information from traditional surveys.

Representation for the Upper Coosa River DPS of the frecklebelly madtom is assessed as the number and ecological

setting of populations or resilience units, with resilience units of moderate or high providing greater contribution to the overall representation.

Representation of the Upper Coosa River DPS is assessed as low since only the Etowah River meaningfully contributes to this attribute. A full description of the results can be found in our proposed listing rule for the Upper Coosa River DPS of the frecklebelly madtom (85 FR 74050; November 19, 2020). Similarly, we assessed redundancy (ability of species to withstand catastrophic events) by evaluating the number and distribution of populations or resilience units, with resilience units of moderate or high providing greater contribution to the overall redundancy throughout the DPS's range. Similar to representation, redundancy of the DPS is also assessed as low since only the Etowah River meaningfully contributes to this attribute. Results can be found in our November 19, 2020, proposed rule.

Current Condition of the Upper Coosa River DPS of Frecklebelly Madtom

The known historical range for the Upper Coosa River DPS of frecklebelly madtom includes the Etowah River in northern Georgia and the Conasauga River in northern Georgia and southeastern Tennessee. Currently, within the upper Coosa River representation unit, one resilience unit (Conasauga River) was estimated to have low resiliency, one to have moderate resiliency (Etowah River), and one to have unknown resiliency (Coosawattee River).

In the Conasauga River, the number of occurrences, occupied reaches, and occupied reach length has declined drastically in the Conasauga River. Additionally, no tributaries are known to support this species. This drastic decline has been noted since the late 1990s (Shepard *et al.* 1997, p. 22) and supported by current occupancy modeling effort (Freeman *et al.* 2017, p. 424). Further, fish assemblage and abundance from the 1990s–2000s documented declines in several fish species, including the frecklebelly madtom, and after 2000, the frecklebelly madtom was no longer detected in surveys (Freeman *et al.* 2003, pp. 569–570; Bennett *et al.* 2008, p. 466). These surveys indicate a reduced resiliency in the Conasauga River, because the best available occurrence data present a transition from a measurable population of the frecklebelly madtom to an unmeasurable one. Despite a 20-year lapse since the last observation of the frecklebelly madtom, the current presence of the species in the Conasauga River is supported by eDNA that was

collected in 2017 and 2018 (Freeman and Bumpers 2018, entire), as described above. Furthermore, the Conasauga River has not experienced the same type of habitat modifications as other rivers that have caused localized extirpation of the species (dams, impoundments, and channelization), and the species has been observed more recently in river surveys than in river sections where it is considered extirpated. Therefore, we determined that the species remains present in the Conasauga River but with low resiliency to stochastic events, as estimated from the occurrence data. The number of occurrences of frecklebelly madtom appears to have declined in the Etowah River from the 1998–2008 time period as has the number of occupied stream reaches and their total length. However, a concerted fish survey effort was in progress during 1998–2008 time period in the upper Coosa River watershed (Freeman *et al.* 2003, entire). Therefore, while there are fewer occurrences of the frecklebelly madtom in the current time period, we cannot determine that this represents a decline in the species or a decline in effort in the Etowah River. Based on recent work that quantified occupancy of frecklebelly madtom and found it to be relatively consistent in the Etowah River (Freeman *et al.* 2017, p. 428), it is reasonable to conclude that the species' populations have been stable. The frecklebelly madtom is largely confined to the main stem of the Etowah River. However, some of the highest quality habitat for the frecklebelly madtom in this river can be found flowing through the Dawson Forest Wildlife Management Area (Shepard *et al.* 1997, p. 21), a state managed property. Approximately 19 km of the Etowah River flows through or is adjacent (at least one river bank) to property owned by the GADNR, which represents approximately 19% of the maximum known range extent of the frecklebelly madtom in the Etowah River. Therefore, this river system is believed to currently be afforded some protection from encroaching developments. Due to the apparent stability of the range extent in this unit but historically low abundances (Bennett *et al.* 2008, p. 465), its relatively simple range geometry, and exposure to threats from development, this unit was assessed as having moderate resiliency. No occurrence data is available for the Coosawattee River unit. However, environmental DNA for the frecklebelly madtom was found in portions of it. In the Coosawattee River, there were 5 positive environmental DNA assays, and occupancy probability was estimated as 0.49–0.99 (Figure 5.9;

Freeman and Bumpers 2018, p. 9). Due to the lack of observations in this watershed and a history of alteration from dams and channelization, we consider it to have an unknown resiliency.

Regulatory Mechanisms and Conservation Efforts

The frecklebelly madtom is recognized as a species of concern in all States where it occurs and is protected by State statute in four States where it occurs. This species is listed as endangered by the State of Georgia (GADNR 2015, p. 74) and threatened by the State of Tennessee (TWRA 2015, appendix C). In general, the protections provided to the frecklebelly madtom by Georgia and Tennessee prohibit direct exploitation of the species without a permit within those States.

Beginning in 2017, the Private John Allen National Fish Hatchery partnered with the Mississippi Department of Wildlife Fisheries and Parks to collect individuals of frecklebelly madtom within that State to study marking techniques, establish captive husbandry methods, and conduct life-history studies. This effort has led to successful propagation of the species, documented important components of the species' life history, and collected data that can be used to develop long-term, captive-propagation efforts, although no individuals have been released. While the efforts occur outside of the range of the Upper Coosa River DPS of frecklebelly madtom, species propagation efforts may be beneficial to the conservation of the DPS.

Throughout the range of the species, portions of occupied rivers and surrounding lands are owned and managed by State and Federal entities that prioritize conservation as a management objective. Generally, these entities help to maintain the natural ecosystem functioning of a river by managing terrestrial areas in a more natural state and limiting disturbance adjacent to rivers. However, properties managed by the U.S. Forest Service, and the Dawson Forest Wildlife Management Area (WMA) managed by the Georgia Department of Natural Resources, are known to specifically consider and manage for the conservation of aquatic species and their habitats. It is expected that the Upper Coosa River DPS of frecklebelly madtom will be positively affected by management on these lands. These conservation lands and the adjacent rivers occupied by the Upper Coosa River DPS of frecklebelly madtom include portions of the Conasauga River within the Cherokee National Forest

(U.S. Department of Agriculture (USDA) U.S. Forest Service) in Georgia, and portions of the Etowah River within the Dawson Forest WMA (Georgia Department of Natural Resources) in Georgia. In addition, the Etowah River catchment area upstream of habitat occupied by the frecklebelly madtom and managed by the Chattahoochee-Oconee National Forest (USDA U.S. Forest Service) is expected to benefit the species by providing good water quality to lower river reaches.

The Natural Resources Conservation Service (NRCS), USDA, designated the Conasauga River as a Working Lands for Wildlife (WLFW) landscape in 2017 (USDA 2023, unpaginated), and will provide additional funds and workforce to improve water quality and aquatic habitat in the watershed. The project will provide technical and financial assistance to help landowners improve water quality and help producers plan and implement a variety of conservation activities or practices that benefit aquatic species. The Upper Coosa River DPS of frecklebelly madtom will likely benefit from water quality improvements in portions of the Conasauga River that are affected by agricultural practices implemented through the WLFW project.

Synergistic and Cumulative Effects

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

In addition to impacting frecklebelly madtom individually, it is possible that several of the risk factors summarized above are acting synergistically or cumulatively on the DPS. The combined impact of multiple stressors is likely more harmful than a single stressor acting alone. The dual stressors of

climate change and direct human impact have the potential to affect aquatic ecosystems by altering stream flows and nutrient cycles, eliminating habitats, and changing community structure (Moore *et al.* 1997, p. 942). Increased water temperatures and a reduction in stream flow are the climate change effects that are most likely to affect stream communities (Poff *et al.* 1997, entire), and each of these variables is strongly influenced by land use patterns. For example, in agricultural areas, lower precipitation may trigger increased irrigation, resulting in reduced stream flow (Hatfield *et al.* 2008, pp. 41–43). In forested areas, trees influence instream temperatures through the direct effects of shading. Reductions in temperature by vegetative cover may be particularly important in low-order streams, where canopy vegetation significantly reduces the magnitude and variation of the stream temperature compared with that of clear-cut areas (Ringler and Hall 1975, pp. 111–121).

Future Scenarios

To evaluate the future viability of the frecklebelly madtom and address uncertainty associated with the degree and extent of potential future stressors and their impacts to the madtom, we analyzed three future scenarios and assessed the resiliency, representation, and redundancy of the madtom for each scenario. We devised these scenarios by identifying information on the following primary threats that are anticipated to affect the frecklebelly madtom in the future: agriculture and developed land use. A full description of the results can be found in our proposed listing rule for the Upper Coosa River DPS of the frecklebelly madtom (85 FR 74050; November 19, 2020).

We considered projected changes in agricultural and developed land uses in assessing future resiliency of each resilience unit for the Upper Coosa River DPS of frecklebelly madtom. We assessed these land uses to understand the future impacts to habitat degradation and destruction resulting from poor water quality, a primary threat to the Upper Coosa River DPS of frecklebelly madtom. The three scenarios capture the range of variability in the changing human population footprint on the landscape and how frecklebelly madtom populations will respond to these changing conditions. All three scenarios were projected out to the year 2050 (*i.e.*, 30 years), because we have good confidence in our ability to forecast patterns in land-use change and understand how these land uses will interact with the frecklebelly madtom

and its habitat over this time period given the species' life span.

In our development of future scenarios, we used projected trends in land use change from two models, the National Land Cover Database (NLCD) and the Slope, Land use, Excluded, Urban, Transportation and Hillshade (SLEUTH) model (Jantz *et al.* 2010, entire). Future projections for agricultural land use were developed from NLCD data by calculating a 15-year trend in agricultural land use change between 2001 and 2016 for each resilience unit and converting that to an annual rate of agricultural land use change for each resilience unit. We used the annual rate of agricultural land use change to project changes to 30 years from the present. The annual rate of agricultural land use change was held constant for each resilience unit across all scenarios; however, the rate of change in agricultural area varied among the resilience units we evaluated in our analysis. We found an overall decline in the amount of land used for agriculture in the Upper Coosa River

watershed. This result is consistent with broader trends that show the amount of agricultural land is declining with time in the eastern United States (Sayler *et al.* 2016, p. 12).

For our future developed land use projections, we used the SLEUTH datasets from the year 2050 (closest to 30 years in the future) and examined development across resilience units. We then developed three scenarios that varied development probabilities: (1) low development, (2) moderate development, and (3) high development. For the low development scenario, we considered all areas predicted to be developed at a greater than 90 percent probability (*i.e.*, only including areas that are almost certain to be developed, and therefore including the least amount of total area to be developed); the moderate development scenario considered all areas to be developed at a greater than 50 percent probability; and the high development scenario considered all areas to be developed at a greater than 10 percent probability (*i.e.*, including the majority of areas with

any potential to be developed, and therefore the most amount of area to be developed). The results of the future projections for agriculture and developed land use were used to estimate a composite land use score, and then using a rule set, we categorized future resiliency into high, moderate, low, unknown, or likely extirpated conditions.

In the low development scenario (Scenario 1), the Upper Coosa River DPS of frecklebelly madtom was projected to have one unit with moderate resiliency, one unit with low resiliency, and one unit with unknown resiliency (see table 2, below). In terms of projected change from current condition, the Etowah River resilience unit is projected to become more developed, although the percent of developed land does not reach a point where a change in resiliency is anticipated. All other units are projected to retain their current resiliency under the low development scenario.

TABLE 2—FUTURE RESILIENCY OF THE UPPER COOSA RIVER DPS OF FRECKLEBELLY MADTOM RESILIENCY UNITS UNDER THREE FUTURE SCENARIOS

Representation units	Resilience units	Current	Scenario 1	Scenario 2	Scenario 3
Upper Coosa River (F)	Conasauga River (F1)	Low	Low	Low	Likely Extirpated.
	Coosawattee River (F2)	Unknown *	Unknown *	Unknown *	Unknown *.
	Etowah River (F3)	Moderate ...	Moderate ...	Low	Low.

* Resiliency determined as unknown since units are known only from eDNA data.

In the moderate development scenario (Scenario 2), the Upper Coosa River DPS of frecklebelly madtom was projected to have two units with low resiliency and one unit with unknown resiliency (see table 2, above). In terms of projected change from current condition, the Etowah River resilience unit is projected to become substantially more developed under this scenario, and, therefore, this unit is projected to decrease in resiliency from moderate to low. All other units are projected to retain their current resiliency.

In the high development scenario (Scenario 3), the Upper Coosa River DPS of frecklebelly madtom was projected to have one unit with low resiliency, one unit that is likely extirpated, and one unit with unknown resiliency (see table 2, above). In terms of projected change from current condition, the Etowah River resilience unit is projected to become substantially more developed under this scenario; therefore, this unit is projected to decrease in resiliency from moderate to low. The Conasauga River resilience unit is projected to decrease in resiliency from low to being

likely extirpated as a result of high levels of both agriculture and developed land uses.

In summary, within the Upper Coosa River representation unit, the Etowah River resilience unit is projected to become more developed by 2050 under all scenarios; therefore, in the moderate and high development scenarios, the resiliency is projected to decrease from moderate to low, making the unit more vulnerable to stochastic events. The high level of development projected within riparian areas of the Etowah River unit will lead to an increase in impervious area, which could lead to further decreases in water quality and impact the viability of frecklebelly madtom. In addition, although the agricultural trend projects a decrease, the amount of land in agricultural use is still projected to remain relatively high. High levels of agriculture and developed land use projections in this unit drive the projected low resiliency by the year 2050. In the Conasauga River resilience unit, developed land use under the high development scenario is projected to increase, and agriculture

and developed land use are projected to be at relatively high levels by 2050. However, the Conasauga River resilience unit currently has low resiliency, and this projected increase in development is anticipated to further impact resiliency, resulting in likely extirpation of the frecklebelly madtom from this unit.

Finally, the presence of frecklebelly madtom in the Coosawattee River resilience unit is based on recent positive eDNA samples, and these units have been assessed as having an unknown resiliency. In the Coosawattee River resilience unit, there is projected to be relatively high amounts of agricultural and developed land. If the species is present there, this land use pattern could represent a threat to the individuals occupying the unit.

In the Upper Coosa River representation unit, two resilience units are projected to decrease in resiliency under the moderate and high scenarios. Therefore, frecklebelly madtom in these units are at an increased risk of extirpation from a catastrophic event.

Summary of Comments and Recommendations

In the November 19, 2020, proposed rule (85 FR 74050), we requested that all interested parties submit written comments on the proposal by January 19, 2021. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspapers notices inviting general public comment were published in the Chattanooga Times Free Press on November 20, 2020, and in the Dalton Citizen on November 27, 2020, and on December 4, 11, and 18, 2020. We did not receive any requests for a public hearing. All substantive information we received during the comment period has either been incorporated directly into this final determination or is addressed below.

Peer Reviewer Comments

As discussed in Supporting Documents above, we received comments on our SSA report from two peer reviewers. The frecklebelly madtom (*Noturus munitus*) SSA report documents the results of our comprehensive biological status review for the frecklebelly madtom species as a whole. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the information contained in the SSA report. The peer reviewers provided additional information, clarifications, and suggestions to improve the final SSA report. Peer reviewer comments on the SSA report are addressed in the following summary and/or incorporated into the SSA report, as appropriate.

Comment (1): One reviewer thought that our method to produce a composite land-use threat classification should be adjusted such that the classification score would be equivalent to the lowest score of its constituent components rather than calculating a composite score that is an average of its constituents, unless there is reason to justify assessing otherwise.

Our response: Our stated goals for categorizing land-use threats endeavored to avoid overestimating a negative relationship between the species and land-use practices because, although this relationship is expected to exist, the magnitude of this relationship is uncertain without species-specific studies. Therefore, we did not change how we calculated the composite land-use threat classification that is the average of its constituents.

Comment (2): One reviewer commented that our future conditions

projections should more explicitly consider other factors of change beyond land use and specified that impoundments and channelization should be incorporated.

Our response: The threats of impoundments and channelization were not included in the future conditions due to the high amount of uncertainty regarding their implementation and operation in the future landscape. At this time, we have no information to indicate that new dams will be constructed or that impoundments will be created in the future within the range of the Upper Coosa River DPS of frecklebelly madtom. However, dams, impoundments, channelization, and channel maintenance are considered as factors that contribute to current resiliency, which help to inform future resiliency predictions.

Comment (3): One reviewer commented that our third “rule” in our rule set to estimate future resilience described in section 6.1 of the SSA report did not implement the same conservative approach described elsewhere in our methods.

Our response: Our third “rule” reads: “If composite land use score dropped from good to fair, we adjusted the resiliency down to moderate if the population is currently considered high; if the population is currently considered moderate, no adjustment was made to future resilience.” Elsewhere in the SSA report, we described an approach to avoid overestimating a negative response of the frecklebelly madtom to changes in land cover and land use. The best available science supports our interpretation that a fair land use score aligns with a moderate population resiliency as discussed in the SSA report (Service 2020, pp. 43–46). Furthermore, a predicted decline in the composite land use score from good to fair is not likely to cause substantial declines, indicating low resiliency, as demonstrated by two resilience units that currently have a “fair” land use score and are also currently classified as having “good” (Bogue Chitto unit) or “moderate” (Etowah River unit) resiliency. However, as described in our discussion of factors that influence viability of the species, many of the stressors to the Upper Coosa River DPS originate from land-use practices. Therefore, we determined it is likely that changes in land-use practices that cause the land-use score to change from good to fair would negatively affect abundance and distribution of populations to the point that a resilience classification of “moderate” would more effectively describe the resilience unit.

Comment (4): In the draft of the SSA provided for peer review, we considered resiliency units that were only known from eDNA data to have a “low” resiliency. One reviewer provided additional information and literature regarding uncertainty with eDNA surveying methods and recommended that we should be more conservative in interpreting results from studies that primarily surveyed for eDNA.

Our response: Based on the information provided, we agree with the reviewer that the eDNA data we received should be interpreted more conservatively. We included the citations provided by the reviewer and considered resilience units where only eDNA was available to support presence of the species to have an “unknown” current resiliency in version 1.2 of the SSA and in this final rule.

State Agency Comments

We received comments from one State agency, the Georgia Forestry Commission (GFC). Because we received several comments regarding forestry considerations, we have integrated GFC comments and responses under *Public Comments*, below.

Public Comments

We received input from five public commenters on the proposed rule. One commenter was supportive of the proposal to list the Upper Coosa River DPS of frecklebelly madtom as threatened and to designate critical habitat. Four commenters offered neither support nor opposition to the proposed rule. We did not receive any comments in opposition of the proposed rule. We note the SSA report, a list of literature referenced, the public comments, and the peer reviewer reports, all of which helped inform this listing decision, are available to the public on <https://www.regulations.gov> under Docket No. FWS–R4–ES–2020–0058.

Comment (5): Three commenters responded directly to our request for comments on whether we should add a provision to except incidental take resulting from silvicultural practices and forest management activities that implement State-approved best management practices (BMPs) and comply with forest practice guidelines related to water quality standards. All three commenters were supportive of inclusion of such a provision and provided information on the effectiveness of BMPs to maintain water quality conditions that support aquatic organisms, high implementation rates of BMPs nationally and within the range of the Upper Coosa River DPS of

frecklebelly madtom, and high compliance rates. One commenter (GFC) provided information on BMP development for the State of Georgia and a summary of data from the State's most recent BMP compliance survey, conducted in 2019, which found high percentages of BMP implementation and compliance. Two commenters provided information on BMP compliance assurances that are provided through forest certification programs such as Sustainable Forestry Initiative, American Tree Farm System, and Forest Stewardship Council.

Our response: We recognize that silvicultural operations are widely implemented in accordance with State-approved BMPs (as reviewed by Cristan *et al.* 2018, entire), and the adherence to these BMPs broadly protects water quality, particularly related to sedimentation (as reviewed by Cristan *et al.* 2016, entire; Warrington *et al.* 2017, entire; and Schilling *et al.* 2021, entire). Based on the information provided, we agree that silvicultural practices and forest management activities that implement State-approved BMPs and comply with forest practice guidelines related to water quality standards can maintain favorable habitat conditions for the species and that adding a provision to except incidental take associated with these activities can encourage cooperation by landowners and other affected parties in implementing conservation measures. Therefore, we incorporated such a provision into this rule.

Comment (6): One commenter recommended that the description of designated critical habitat be clarified to state that critical habitat is limited to the bankfull width of the designated streams.

Our response: The critical habitat proposed for designation was not intended to include adjacent terrestrial components, and in the proposed rule, we stated that critical habitat included river habitat up to the "bank full height." We agree that the term "bankfull width" better describes the lateral dimension of the stream. Therefore, we have revised the description of the critical habitat designation to clarify that it does not extend beyond the bankfull width of the designated rivers.

Comment (7): One commenter recommended we include a discussion of not only the ability of forest management to retain adequate conditions but also to improve forest conditions, which may rebound to the benefit of species.

Our response: When used and properly implemented, BMPs can offer

a substantial improvement to water quality compared to forestry operations where BMPs are not properly implemented. As noted in our response to *Comment (5)*, above, we identify normal silvicultural practices that are carried out in accordance with State-approved BMPs as an action that can maintain favorable habitat conditions for the frecklebelly madtom, and we have added a provision to except from prohibitions incidental take that may occur from such activities. In this rule, we identified BMPs designed to reduce sedimentation, erosion, and bank-side destruction and retention of sufficient canopy cover along stream banks as examples of activities that could ameliorate threats to physical or biological features essential to the conservation of the frecklebelly madtom. In addition, as previously noted, we recognize that silvicultural operations are widely implemented in accordance with State-approved BMPs (as reviewed by Cristan *et al.* 2018, entire), and the adherence to these BMPs broadly protects water quality, particularly related to sedimentation (as reviewed by Cristan *et al.* 2016, entire; Warrington *et al.* 2017, entire; and Schilling *et al.* 2021, entire), to an extent that does not impair the DPS's conservation.

Distinct Population Segment (DPS) Analysis

Please see our proposed rule (85 FR 74050; November 19, 2020) for the full description of our DPS analysis. We did not receive substantive additional information during the open comment period regarding whether or not the Upper Coosa River DPS of the frecklebelly madtom is a valid DPS.

Determination of Status for the Upper Coosa River DPS of Frecklebelly Madtom

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an "endangered species" as a species that is in danger of extinction throughout all or a significant portion of its range, and a "threatened species" as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or

curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Upper Coosa River DPS of the frecklebelly madtom. We considered whether the Upper Coosa River DPS of the frecklebelly madtom is presently in danger of extinction throughout all of its range. The Upper Coosa River representation unit faces ongoing and future threats from habitat destruction and degradation caused by agriculture and developed land uses that result in poor water quality. Occurrence records in the Etowah River resilience unit are considered similar to historical occurrence records and occupancy did not decline between two sample periods over a fourteen-year period in the 2000s (Freeman *et al.* 2017, pg. 427). Declines from historical conditions in frecklebelly madtom occurrences and occupancy in the Conasauga River resilience unit have been recorded and individuals of the species have not been directly observed in the Conasauga River since 2000. Evidence of frecklebelly madtom presence was first reported from the Coosawattee River from eDNA collected in 2018. Until eDNA for the species was recorded from this river, the frecklebelly madtom was not expected to occur there, given that the history of physical modification to improve navigation upstream, as well as hydropeaking at Carters Dam, has negatively affected small-bodied, riffle-dwelling fish species (Freeman *et al.* 2011, pp. 10–11). Our analysis of future conditions in the SSA indicates that the frecklebelly madtom will likely continue to persist into the future, albeit at reduced resiliency under some scenarios (Service 2020, pp. 80–101). Therefore, it is not likely that the current threats, or the cumulative effects of those threats, will result in the extirpation of the DPS and we conclude that the DPS is not currently in danger of extinction throughout all of its range.

In the future, projected urbanization and continued agricultural activities will continue to impact the Upper Coosa River DPS and its habitat by negatively affecting water quality (Factor A). Our

future scenarios project the Etowah River and Conasauga River units in the Upper Coosa River representation unit to have low resiliency or to become extirpated by the year 2050, and this would substantially increase the risk of extirpation of the Upper Coosa River representation unit from the aforementioned threats, as well as a catastrophic or stochastic event, within the foreseeable future. In our consideration of foreseeable future, we evaluated how far into the future we could reliably predict the threats to this unit, as well as the frecklebelly madtom's response to those threats. Based on the modeling and scenarios (agriculture and developed land-use projections to 2050) evaluated, we considered our ability to make reliable predictions in the future and the uncertainty in how and to what degree the unit could respond to those risk factors in this timeframe. We determined a foreseeable future of 30 years for the Upper Coosa River representation unit. Based on this information, we find the Upper Coosa River DPS of the frecklebelly madtom is likely to become endangered within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity v. Everson*, 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), vacated the aspect of the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (Final Policy; 79 FR 37578; July 1, 2014) that provided that the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species (DPS) is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the "significance" question or the "status" question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do

not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Everson*, we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.*, endangered). In undertaking this analysis for the Upper Coosa River DPS of the frecklebelly madtom, we chose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify portions of the range where the species may be endangered. We considered whether the threats acting on the Upper Coosa River DPS are geographically concentrated in any portion of the range at a biologically meaningful scale. We examine the following threats that were considered to be primary factors driving current resiliency of the Upper Coosa River DPS: habitat destruction and degradation caused by agriculture and developed land uses resulting in poor water quality (Factor A).

Habitat destruction and degradation from agriculture and developed land uses resulting in poor water quality are occurring throughout the range of the Upper Coosa River DPS. In the Conasauga River resilience unit, current development and agriculture comprises 8.0 percent and 21.3 percent of the watershed, respectively (Service 2020, pp. 66–69). In the Coosawattee River resilience unit, current development and agriculture comprises 6.6 percent and 27.2 percent of the watershed, respectively (Service 2020, pp. 66–69). Lastly, current development and agriculture comprises 14.8 percent and 10.4 percent of the Etowah River resilience unit (Service 2020, pp. 66–69). For the three resilience units assessed within the DPS, approximately 25 to 33 percent of each unit is currently impacted by agricultural and developed land uses. Therefore, we found no concentration of threats in any portion of the Upper Coosa River DPS's range at a biologically meaningful scale. However, we identified one portion, the Conasauga River resilience unit, which currently has low resiliency and where the frecklebelly madtom has not been observed, despite repeated surveys, in at least 20 years. Environmental DNA surveys have detected the frecklebelly madtom in the Conasauga River resilience unit, leading us to determine the species remains present there. However, the lack of recent occurrence data coupled with projections that this unit will become extirpated within the foreseeable future led us to find there is substantial information that the

Conasauga River resilience unit may be endangered.

We then proceeded to consider whether this portion of the range (*i.e.*, the Conasauga River resilience unit) is significant. For purposes of this analysis, the Service is examining for significant portions of the range by applying any reasonable definition of "significant." We asked whether any portions of the range may be biologically meaningful in terms of the resiliency, redundancy, or representation of the entity being evaluated. This approach is consistent with the Act, our implementing regulations, our policies, and case law.

The Upper Coosa River representation unit occurs in the Ridge and Valley (Conasauga River resilience unit) and Piedmont Upland (Etowah River resilience unit) physiographic provinces. The Conasauga River resilience unit occurs in the Ridge and Valley province, which contains a series of valleys (lowlands) and ridges (mountains) through the Appalachians (Fenneman 1928, p. 296). The Etowah River resilience unit occurs in the Piedmont province, which contains lowlands (plains) and highlands (plateaus) with isolated mountains (Fenneman 1928, p. 293). These two resilience units may occur in two physiographic provinces; however, the geography in both similarly represents environmental and physical conditions of lowlands and highlands associated with higher elevations. Frecklebelly madtoms collected in both the Conasauga River and Etowah River resilience units are strongly associated with river weed (*Podostemum* spp.) used for cover and shelter. Neither unit acts as a refugia or an important spawning ground for the DPS. In addition, the Conasauga River resilience unit watershed is experiencing similar impacts from development and agricultural land use to the Etowah River resilience unit. Because the Upper Coosa River DPS of the frecklebelly madtom occurs in rivers with similar physical and environmental conditions, and the Conasauga River resilience unit portion is experiencing similar water quality impacts as the remainder of the DPS's range, there is no unique observable environmental contribution by this portion that would make it a significant portion of the range of the Upper Coosa River DPS.

Overall, there is little evidence to indicate that the Conasauga River portion of the range has higher quality or higher value habitat or any other special importance to the species' conservation in the Upper Coosa River DPS. We considered if the Conasauga

River portion contributes to biological significance in any way listed above and did not find this portion to be prominent or noteworthy in a manner that would suggest it is a significant portion of the DPS's range. Thus, based on the best available information, we find that this portion of the DPS's range is not significant. Therefore, no portion of the Upper Coosa River DPS's range provides a basis for determining that it is in danger of extinction in a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This does not conflict with the courts' holdings in *Desert Survivors v. U.S. Department of the Interior*, 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity v. Jewell*, 248 F. Supp. 3d 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not apply the aspects of the Final Policy's definition of "significant" that those court decisions held were invalid.

Determination of Status

Based on the best available scientific and commercial information as presented in the SSA report and this finding, we find that the Upper Coosa River representation unit is likely to become endangered within the foreseeable future throughout all of its range. Therefore, we are listing the Upper Coosa River DPS of the frecklebelly madtom as a threatened species throughout all of its range in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that

they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened ("downlisting") or removal from protected status ("delisting"), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (<https://www.fws.gov/program/endangered-species>), or from our Alabama Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Following publication of this final rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State

programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Georgia and Tennessee will be eligible for Federal funds to implement management actions that promote the protection or recovery of the Upper Coosa River DPS of the frecklebelly madtom. Information on our grant programs that are available to aid species recovery can be found at: <https://www.fws.gov/service/financial-assistance>.

Please let us know if you are interested in participating in recovery efforts for the Upper Coosa River DPS. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**, above).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the range of the Upper Coosa River DPS of the frecklebelly madtom habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered, or on private lands seeking funding by Federal agencies, which may include, but are not limited to, the USDA U.S. Forest Service, USDA Farm Service Agency, USDA Natural Resources Conservation Service, and Federal Emergency Disaster Service; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of

section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a final listing on proposed and ongoing activities within the range of a listed species. The discussion below regarding protective regulations under section 4(d) of the Act complies with our policy.

II. Final Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened. The U.S. Supreme Court has noted that statutory language like “necessary and advisable” demonstrates a large degree of deference to the agency (see *Webster v. Doe*, 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary’s discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife or include a limited taking prohibition (see *Alsea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, “once an animal is on the

threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species” (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising our authority under section 4(d), we have developed a rule that is designed to address the specific threats and conservation needs for the Upper Coosa River DPS of the frecklebelly madtom. Although the statute does not require us to make a “necessary and advisable” finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the Upper Coosa River DPS of frecklebelly madtom. As discussed above under Summary of Biological Status and Threats, we have concluded that the Upper Coosa River DPS is likely to become in danger of extinction within the foreseeable future primarily due to habitat destruction and degradation from agriculture and developed land uses that result in poor water quality. The provisions of this 4(d) rule will promote conservation of the Upper Coosa River DPS by encouraging management of the landscape in ways that meet both watershed and riparian management purposes and the conservation needs of the Upper Coosa River DPS. The provisions of this rule are one of many tools that we will use to promote the conservation of the Upper Coosa River DPS.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or

that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

This obligation does not change in any way for a threatened species with a species-specific 4(d) rule. Actions that result in a determination by a Federal agency of “not likely to adversely affect” continue to require the Service’s written concurrence and actions that are “likely to adversely affect” a species require formal consultation and the formulation of a biological opinion.

Provisions of the 4(d) Rule

This 4(d) rule will provide for the conservation of the Upper Coosa River DPS by prohibiting the following activities, except as otherwise authorized or permitted: importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce. We also include several exceptions to these prohibitions, which, along with the prohibitions, are set forth under Regulation Promulgation, below.

Under the Act, “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulation at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Protecting the Upper Coosa River DPS of the frecklebelly madtom from direct forms of take, such as physical injury or killing, whether incidental or intentional, will help preserve and recover the remaining populations of the DPS. Therefore, we prohibit intentional take of frecklebelly madtom, including, but not limited to, capturing, handling, trapping, collecting, or other activities. Also, as discussed above under Summary of Biological Status and Threats, habitat destruction and degradation from agriculture and developed land uses are affecting the status of the Upper Coosa River DPS. Across the DPS’s range, stream and water quality have been degraded physically by sedimentation, pollution, contaminants, impoundments,

channelization, destruction of riparian habitat, and loss of riparian vegetation due to agriculture activities and development within the watershed and riparian areas. Other habitat or hydrological alteration, such as ditching, draining, stream diversion, or diversion or alteration of surface or ground water flow into or out of the stream, will impact the habitat of the DPS. Therefore, we prohibit actions that result in the incidental take of the Upper Coosa River DPS by destroying, altering, or degrading the habitat in the manner described above. Regulating these activities will help conserve the DPS slow the rate of population decline, and decrease synergistic, negative effects from other stressors.

Exceptions to Prohibitions

In addition to certain statutory exceptions from prohibitions, which are found in sections 9 and 10 of the Act, the 4(d) rule includes the following exceptions to the prohibitions:

Permitted Activities

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the Act. The Act also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

Activities Not Requiring a Permit

We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Service in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Service shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a

cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, will be able to conduct activities designed to conserve the Upper Coosa River DPS that may result in otherwise prohibited take without additional authorization.

In this rule, we allow take of the individuals of the Upper Coosa River DPS without a permit by any employee or agent of the Service or a State conservation agency designated by his agency for such purposes and when acting in the course of his official duties if such action is necessary to aid a sick, injured or orphaned specimen; dispose of a dead specimen; or salvage a dead specimen which may be useful for scientific study. In addition, Federal and State law enforcement officers may possess, deliver, carry, transport, or ship specimens taken in violation of the Act as necessary.

Channel Restoration, Streambank Stabilization, and Other Activities

Channel restoration is used as a technique to restore degraded, physically unstable streams back to natural, physically stable, ecologically functioning streams. When done correctly, these projects reduce, ameliorate, or fix unnatural erosion, head cutting, and/or sedimentation. Thus, channel restoration projects result in geomorphically stable stream channels that maintain the appropriate lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation and include stable riffle-run-pool complexes that consist of silt-free gravel, coarse sand, cobble, boulders, woody structure, and river weed (*Podostemum* spp.). This provision of the 4(d) rule for channel restoration will promote conservation of the Upper Coosa River DPS by excepting incidental take resulting from activities that improve channel conditions and restore degraded, physically unstable streams or stream segments. We anticipate these activities will advance ecological conditions within a watershed to a more natural state that will benefit the frecklebelly madtom.

Streambank stabilization is used as a habitat restoration technique to restore degraded and eroded streambanks back to natively vegetated, stable streambanks. When done correctly, these projects reduce bank erosion and instream sedimentation, resulting in improved habitat conditions for aquatic species. Therefore, we will allow streambanks to be stabilized using the following bioengineering methods: native live stakes (live, vegetative

cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or native brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). All methods must use plant species native to the region where the project is being conducted. These methods must not include the sole use of quarried rock (rip-rap) or the use of rock baskets or gabion structures, but they could be used in conjunction with the above bioengineering methods. This provision of the 4(d) rule for streambank stabilization will promote conservation of the Upper Coosa River DPS by excepting from the prohibition incidental take resulting from activities that will improve habitat conditions by reducing bank erosion and instream sedimentation.

Improving watershed, riparian, and habitat conditions within the range of the Upper Coosa River DPS will provide for the conservation of the DPS and will likely increase resiliency throughout. Activities that would benefit the DPS, if they do not alter habitats known to be used by the DPS beyond its tolerances, are implemented with a primary objective of improving environmental conditions to support the aquatic biodiversity of flowing water habitats. This provision of the 4(d) rule for other activities will promote conservation of the Upper Coosa River DPS by excepting from the prohibition incidental take resulting from activities as described above.

Silviculture and Forest Management Under State-Approved Best Management Practices

We are excepting incidental take resulting from silviculture and forest management activities that use State-approved BMPs to protect water and sediment quality and stream and riparian habitat. Best management practices are designed to reduce sedimentation, erosion, and bank destruction, thereby protecting instream habitat for the species. We recognize that silvicultural operations are widely implemented in accordance with State-approved BMPs (as reviewed by Cristan *et al.* 2018, entire), and the adherence to these BMPs broadly protects water quality, particularly related to sedimentation (as reviewed by Cristan *et al.* 2016, entire; Warrington *et al.* 2017, entire; and Schilling *et al.* 2021, entire). This provision of the 4(d) rule for silviculture and forest management activities will promote conservation of

the Upper Coosa River DPS by excepting from the prohibition incidental take resulting from activities that use State-approved BMPs.

Relation of 4(d) Rule to Available Conservation Measures

Nothing in this 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the Upper Coosa River DPS. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service, where appropriate.

III. Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.*, range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.*, migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and

transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement "reasonable and prudent alternatives" to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information

Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in the 4(d) rule. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this DPS.

Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species.

As discussed earlier in this document, there is currently no imminent threat of take attributed to collection or vandalism identified under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. In our SSA and listing determination for the Upper Coosa River DPS of the frecklebelly madtom, we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to the Upper Coosa River DPS and that those threats in some way can be addressed by section 7(a)(2) consultation measures. The DPS occurs wholly in the jurisdiction of the United States, and we are able to identify areas that meet the definition of critical habitat. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met and because there are no other circumstances the Secretary has identified for which this designation of critical habitat would be not prudent, we have determined that the designation of critical habitat is prudent for the Upper Coosa River DPS.

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the Upper Coosa River DPS of the frecklebelly madtom is determinable. We reviewed the available information pertaining to the biological needs of the Upper Coosa River DPS and habitat characteristics where this DPS is located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the Upper Coosa River DPS.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR

424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define “physical or biological features essential to the conservation of the species” as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

The Upper Coosa River DPS is a population segment of the frecklebelly madtom and occurs in the upper Coosa River system in the Piedmont Upland

physiographic province in Georgia and the Ridge and Valley physiographic province in Georgia and Tennessee. The primary habitat features that influence the resiliency of the Upper Coosa River DPS include flowing water, suitable water quality, substrate, cover, and habitat connectivity. These features are essential to the survival and reproduction of individuals at all life stages.

As stated above, the frecklebelly madtom occurs in small to large, swift-flowing rivers consisting of stable riffle-run pool complexes and with a substrate that consists of silt-free gravel, coarse sand, cobble, and boulders. The species needs unimpounded flowing water to successfully reproduce and maintain populations. In addition, streams must have an adequate flow to maintain instream habitats and connectivity of streams with the floodplain, which is important to allow nutrient and sediment exchange for habitat maintenance. Stream reaches with suitable habitat must be large enough and have connectivity to support enough frecklebelly madtoms to ensure individuals can find a mate and reproduce (Service 2020, p. 17). Cover is an important component of suitable habitat for the frecklebelly madtom and provides shelter from predators, space to forage, and space to nest. The species is often found in or near aquatic vegetation, such as river weed (*Podostemum* spp.), woody structures, and under large, flat rocks. In addition, nesting sites for madtoms are typically cavities under natural material (rocks, logs, empty mussel shells). Thus, small to large flowing rivers with appropriate substrate, cover, and connectivity are important for the growth, reproduction, and survival of the frecklebelly madtom.

The frecklebelly madtom, like other benthic species, is sensitive to poor water quality (Warren *et al.* 1997, p. 125) and needs clean, flowing water to survive. Changes in water chemistry and flow patterns, resulting in a decrease in water quality and quantity, have detrimental effects on madtom ecology, because they can render aquatic habitat unsuitable for occupancy. In addition, the frecklebelly madtom is intolerant of excessive sedimentation (Shepard 2004, p. 221). The minimum and maximum standards of water quality and quantity conditions that are conducive to the presence of frecklebelly madtom are not well known. However, muddy waterways, lentic streams (still water), and poor water quality conditions are not desirable for maintaining suitable habitat for the species. Therefore, appropriate water and sediment quality are necessary to sustain growth,

reproduction, and viability of the frecklebelly madtom and are essential to the conservation of the species.

The species is an opportunistic insectivore feeding on a variety of aquatic insects and larvae, including caddisflies, mayflies, blackflies, and midges (Miller 1984, p. 9). Seasonal changes found in diet probably reflect

differences in prey availability (Miller 1984, p. 11). Therefore, a diverse and available aquatic macroinvertebrate assemblage is important to the growth and survival of the frecklebelly madtom.

More detail of the habitat and life-history needs of the frecklebelly madtom and a thorough review are available in our proposed rule (85 FR

74050; November 19, 2020) and in the SSA report (Service 2020, entire; available on <https://www.regulations.gov> under Docket No. FWS-R4-ES-2020-0058). A summary of the resource needs of the Upper Coosa River DPS is provided below in table 3.

TABLE 3—RESOURCE NEEDS FOR THE UPPER COOSA RIVER DPS OF THE FRECKLEBELLY MADTOM TO COMPLETE EACH LIFE STAGE

Life stage	Resources needed
Fertilized eggs	Flowing water with good water quality; cavities for shelter; parental care.
Larvae	Flowing water with good water quality; low predation, disease, and environmental stress; adequate food availability.
Juveniles	Flowing water with good water quality; low predation, disease, and environmental stress; structure (vegetation, rock, substrate) for shelter and forage; adequate food availability.
Adults	Flowing water with adequate water quality; structure (vegetation, rock, substrate) for shelter, forage, and nesting; cavities for nesting; appropriate male to female demographics; adequate food availability.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of Upper Coosa River DPS of the frecklebelly madtom from studies of the species' habitat, ecology, and life history as described above. Additional information can be found in the SSA report (Service 2020, entire; available on <https://www.regulations.gov> under Docket No. FWS-R4-ES-2020-0058). We have determined that the following physical or biological features are essential to the conservation of Upper Coosa River DPS of the frecklebelly madtom:

(1) Geomorphically stable, medium to large streams with:

(a) Stable stream channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation; and

(b) Banks with intact riparian cover to maintain stream morphology and reduce erosion and sediment inputs.

(2) Connected instream habitats that:

(a) Include stable riffle-run pool complexes;

(b) Have abundant cobble, boulders, and woody structures, or other suitable cover used for nesting and river weed (*Podostemum* spp.) that is free of silt.

(3) Adequate flows, or a hydrologic flow regime (which includes the severity, frequency, duration, and seasonality of discharge over time), necessary to maintain instream habitats and to maintain connectivity of streams with the floodplain, allowing the exchange of nutrients and sediment for maintenance of the fish's habitat, food availability, and ample oxygenated flow for spawning and nesting habitat.

(4) Appropriate water and sediment quality (including, but not limited to, conductivity; hardness; turbidity; temperature; pH; ammonia; heavy metals; pesticides; animal waste products; and nitrogen, phosphorus, and potassium fertilizers) necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages.

(5) Diversity and availability of aquatic macroinvertebrate prey items, which include larval midges, mayflies, caddisflies, dragonflies, and beetles.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of the Upper Coosa River DPS may require special management considerations or protections to reduce the following threats: (1) Urbanization of the landscape, including (but not limited to) land conversion for urban and commercial use, infrastructure (roads, bridges, utilities), and urban water uses (water supply reservoirs, wastewater treatment); (2) nutrient pollution from agricultural activities that impact water quantity and quality; (3) significant alteration of water quality; (4) culvert and pipe installation that creates barriers to movement; (5) other watershed and floodplain disturbances that release sediments or nutrients into the water or fill suitable spawning habitat; and (6) creation of reservoirs that convert permanently flowing

streams and/or streams that hold water into lake or pond-like (lentic) environments.

Management activities that could ameliorate these threats include, but are not limited to, use of best management practices (BMPs) designed to reduce sedimentation, erosion, and bank-side destruction; protection of riparian corridors and suitable spawning habitat; retention of sufficient canopy cover along banks; moderation of surface and ground water withdrawals to maintain natural flow regimes; increased use of stormwater management and reduction of stormwater flows into the stream systems; placement of culverts or bridges that accommodate fish passage; and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. To determine and select appropriate occupied areas that contain the physical or biological features essential to the conservation of the species or areas otherwise essential for the conservation of the Upper Coosa River DPS of the frecklebelly madtom, we developed a conservation strategy

for the DPS. The goal of the conservation strategy for the Upper Coosa River DPS of the frecklebelly madtom is to recover the DPS to the point where the protections of the Act are no longer necessary. The role of critical habitat in achieving this conservation goal is to identify the specific areas within the Upper Coosa River DPS's range that provide essential physical or biological features, without which rangewide resiliency, redundancy, and representation could not be achieved. We anticipate that recovery will require continued protection of existing resilience units and habitats that contribute to the viability of the DPS, as well as ensuring there are adequate numbers of fish in stable units and that at least one sufficiently resilient unit occurs in each of the physiographic provinces (Piedmont Upland and Ridge and Valley). This will help to ensure that catastrophic events, such as floods, cannot simultaneously affect all known resilience units of the DPS. Recovery considerations, such as maintaining existing genetic diversity and striving for representation of both physiographic provinces in the DPS's current range, were considered.

In developing our conservation strategy for determining which areas to include as critical habitat for the Upper Coosa River DPS, we focused on the existing resilience units and habitats that are presently contributing to the viability of the species or historical units in which resiliency can be improved such that they contribute to the viability of the species. In summary, we identified streams and rivers that are both: (1) Currently occupied streams and rivers within the known historical range of the Upper Coosa River DPS and (2) those areas that have retained the physical or biological features identified earlier that will allow for the maintenance and expansion of existing populations. For the purposes of the critical habitat designation, and for areas within the geographic area occupied by the species at the time of listing, we determined a unit to be occupied if it contains a recent (*i.e.*, observed in the past 11 years (since 2009)) observation (collection) or eDNA record that supports the presence of the species. Within those areas, we delineated the boundaries of critical habitat units using the following process:

We evaluated habitat suitability of stream and river channels within the geographical area occupied at the time of listing, and retained for further consideration those streams that contain one or more of the physical and

biological features to support life-history functions essential to conservation of the Upper Coosa River DPS. We determined the end points of river units by evaluating the presence or absence of appropriate physical and biological features. Our upstream cutoff points for each stream are located approximately where the physiographic province that the frecklebelly madtom occupies begins (where the Conasauga River flows out of the Blue Ridge and into the Ridge and Valley physiographic province and where the Etowah River flows out of the Blue Ridge and into the Piedmont Upland physiographic province) and selected downstream cutoff points that omit areas where habitat conditions are less favorable for the species (*i.e.*, do not contain the physical or biological features essential to the conservation of the DPS).

Based on this analysis, the following rivers meet criteria for areas occupied by the species at the time of listing: Conasauga River, Coosawattee River, and Etowah River. These areas include the two rivers, Conasauga River and Etowah River, known to have been occupied by the DPS historically. Environmental DNA of the frecklebelly madtom was detected in the Conasauga River in 2017 and 2018, which meets the criteria for consideration as an area occupied by the species at the time of listing. In the Etowah River, occurrence data and eDNA records from 2018 are available. These two areas meet our conservation strategy for the frecklebelly madtom. Designating critical habitat of streams in these two occupied resilience units of the DPS, which occur in both physiographic provinces and currently contribute to (or are historical units in which resiliency can be improved to contribute to) the species' viability, will help protect, and eventually reduce the risk of extirpation, of the DPS.

The designation does not include the Coosawattee River, which is not part of the known historical range of the species. Environmental DNA of the frecklebelly madtom was detected in the Coosawattee River in 2018, which meets the criteria for consideration as an area occupied by the species at the time of listing. However, since the Coosawattee River is not part of the known historical range of the frecklebelly madtom, this area does not meet our conservation strategy for designating critical habitat for the species. The conservation strategy focused on areas within the historical known range of the species. In addition, since the species has never been directly observed in this river despite multiple surveys over time, using the best available information, we determined this area is not a historical

unit in which resiliency can be improved to contribute to the species' viability. Lastly, we determined that sufficient areas (Conasauga River and Etowah River) to provide for the conservation of the species already have been identified within this final designation. We did not receive information during the public comment period that supported designating as critical habitat areas not included in the proposed units (see Critical Habitat Designation, below).

We are not designating any areas outside the geographical area occupied by the Upper Coosa River DPS because we did not identify any unoccupied areas that are essential for the conservation of the species. The protection of the Conasauga River and Etowah River will sufficiently reduce the risk of extinction. Sources of data for this designation of critical habitat include multiple databases maintained by universities and State agencies in Tennessee and Georgia, as well as numerous survey reports on streams throughout the DPS's range. Other sources of available information on habitat requirements for this species include studies conducted at occupied sites and published in peer-reviewed articles, agency reports, and data collected during monitoring efforts (Shepard *et al.* 1997, entire; Bennett *et al.* 2008, entire; Bennett and Kuhajda 2010, entire; Albanese *et al.* 2018, entire; Service 2020, entire). Observation and eDNA records were compiled and provided to us by State partners during the SSA analysis.

When determining critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the Upper Coosa River DPS. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action will affect the physical or biological features in the adjacent critical habitat.

We are designating as critical habitat areas that we have determined are occupied at the time of listing (*i.e.*, currently occupied) and that contain

one or more of the physical or biological features that are essential to support life-history processes of the species. Units are designated based on one or more of the physical or biological features being present to support the Upper Coosa River DPS's life-history processes. Unit 1 contains only some of the physical or biological features necessary to support the Upper Coosa River DPS's particular use of that habitat. Unit 2 contains all of the identified physical or biological features and supports multiple life-history processes.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Regulation Promulgation. We include more detailed

information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on <https://www.regulations.gov> at Docket No. FWS-R4-ES-2020-0058 and on our internet site at <https://www.fws.gov/southeast/>.

Final Critical Habitat Designation

We are designating approximately 134 river miles (mi) (216 river kilometers (km)) in two units as critical habitat for the Upper Coosa River DPS of the frecklebelly madtom. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Upper Coosa River DPS.

The two units are: (1) Conasauga River Unit and (2) Etowah River Unit. Table 4, below, shows the critical habitat units, land ownership, and the approximate river miles of each unit. Per State regulations (Tennessee Code Annotated section 69–1–101 and Georgia Code section 52–1–31), navigable waters are considered public rights-of-way. Lands beneath the navigable waters included in this final rule are owned by the States of Tennessee or Georgia. Ownership of lands beneath nonnavigable waters included in this rule are determined by riparian land ownership. The riparian land adjacent to the designated critical habitat is 85 percent private, 6 percent local government, 5 percent State, and 4 percent Federal lands.

TABLE 4—CRITICAL HABITAT UNITS FOR THE UPPER COOSA RIVER DPS OF THE FRECKLEBELLY MADTOM

Critical habitat unit	Riparian ownership surrounding units	River miles (kilometers)
1. Conasauga River	Private, State, Federal	51.5 (83)
2. Etowah River	Private, Local, State	82.5 (133)
Total .....	.....	134 (216)

Note: Lengths may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Upper Coosa River DPS, below.

Unit 1: Conasauga River

Unit 1 consists of approximately 51.5 river mi (83 km) of the Conasauga River beginning at the mouth of Coahulla Creek in Whitfield and Murray Counties, Georgia, and continuing upstream through Bradley County, Tennessee, to the mouth of Graham Branch in Polk County, Tennessee. Unit 1 does not extend beyond the bankfull width of the river. Frecklebelly madtom occupies all river reaches in this unit. Unit 1 contains some of the physical or biological features essential to the conservation of the DPS. Unit 1 possesses those characteristics, as described above under *Summary of Essential Physical or Biological Features*, of essential physical or biological features (1), (2), (3), and (5). Essential physical or biological feature (4) is degraded in this unit, but with appropriate management and restoration actions, this physical or biological feature can be restored.

Special management considerations or protection may be required within Unit 1 to alleviate impacts from stressors that have led to the degradation of the habitat, including

sedimentation, pollutant input, excess nutrient input, development, and unstable stream banks. Surrounding land-use practices, including agricultural runoff, agricultural ditching, and erosion, have led to high levels of sedimentation, siltation, contamination, and nutrient-loading, as well as destabilized stream banks. Special management considerations related to agricultural and developed areas that will benefit the habitat in this unit include, but are not limited to, riparian buffer restoration, reduced surface and groundwater withdrawals, increased open space in the watershed, and treating wastewater to the highest level practicable.

Unit 2: Etowah River

Unit 2 consists of approximately 82.5 river mi (133 km) of the Etowah River beginning at its confluence with Shoal Creek in Cherokee County, Georgia, and continuing upstream through Forsyth and Dawson Counties to approximately 0.5 miles upstream of the Jay Bridge Road crossing over the Etowah River in Lumpkin County, Georgia. Unit 2 does not extend beyond the bankfull width of the river. Frecklebelly madtom occupies all river reaches in this unit. Unit 2 contains all of the physical or biological features essential to the conservation of the DPS.

Special management considerations or protection may be required within Unit 2 to alleviate impacts from stressors that are anticipated to amplify degradation of the habitat, including sedimentation, pollutant input, excess nutrient input, development, and unstable stream banks. Increased development, including urban development and runoff, dam construction and use, and paved and unpaved roads, in the surrounding watershed and riparian area has led to higher levels of sedimentation, siltation, contamination, and nutrient-loading, as well as destabilized stream banks. Special management considerations related to agricultural and developed areas that will benefit the habitat in this unit include, but are not limited to, riparian buffer restoration, reduced surface and ground water withdrawals, increased open space in the watershed, and implementing highest levels of treatment of wastewater practicable.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or

adverse modification of designated critical habitat of such species. We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define “reasonable and prudent alternatives” (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency’s legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director’s opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinstate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency’s discretionary involvement or control is authorized by law) and, subsequent to the previous consultation: (a) If the amount or extent of taking specified in the incidental take statement is exceeded; (b) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (d) if a new species is listed or critical habitat designated that may be affected by the identified action.

In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinstate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the “Adverse Modification” Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that

designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that we may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would alter the minimum flow or existing flow regime. Such activities could include, but are not limited to, impoundment, channelization, water diversion, water withdrawal, hydropower generation, and flood control. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the Upper Coosa River DPS by altering flows to levels that would adversely affect the Upper Coosa River DPS’s ability to complete its life cycle.

(2) Actions that would significantly alter water chemistry or quality. Such activities could include, but are not limited to, release of chemicals or biological pollutants into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water conditions to levels that are beyond the tolerances of the Upper Coosa River DPS and result in direct or cumulative adverse effects to individuals and their life cycles.

(3) Actions that would significantly increase sediment deposition within the stream channel. Such activities could include, but are not limited to, excessive sedimentation from livestock grazing, road construction, channel alteration, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the Upper Coosa River DPS by increasing the sediment deposition to levels that would adversely affect the DPS’s ability to complete its life cycle.

(4) Actions that would significantly increase eutrophication (the addition of excessive nutrients that are typically limited in aquatic environments, such as nitrogen and phosphorus that cause phytoplankton to proliferate). Such activities could include, but are not limited to, release of excessive nutrients into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could result in excessive nutrients and algae filling streams and reducing habitat, degrading water quality from excessive nutrients

and algae decay, and decreasing oxygen levels below the tolerances of the DPS.

(5) Actions that would significantly alter channel morphology or geometry, or decrease connectivity. Such activities could include, but are not limited to, channelization, impoundment, road and bridge construction, mining, dredging, and destruction of riparian vegetation. These activities may lead to changes in water flows and levels that would degrade or eliminate the Upper Coosa River DPS and its habitats. These actions could also lead to increased sedimentation and degradation in water quality to levels beyond the tolerances of the DPS.

(6) Actions that result in the introduction, spread, or augmentation of nonnative aquatic species in occupied stream segments, or in stream segments that are hydrologically connected to occupied stream segments, or introduction of other species that compete with or prey on the Upper Coosa River DPS. Possible actions could include, but are not limited to, stocking of nonnative fishes and crayfishes, or other related actions. These activities could introduce parasites or disease; result in direct predation or direct competition; or affect the growth, reproduction, and survival of the DPS.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act Improvement Act of 1997 (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. There are no DoD lands within this final critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion

decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act, 81 FR 7226 (Feb. 11, 2016) (2016 Policy) both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled "The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act" (M-37016). We explain each decision to exclude areas, as well as decisions not to exclude, to demonstrate that the decision is reasonable.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. The Secretary may exclude any particular area if she determines that the benefits of such exclusion outweigh the benefits of including such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. In this final rule, we are not excluding any areas from the critical habitat designation.

Exclusions Based on Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. In order to consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which, together with our narrative and interpretation of effects, we consider our economic analysis of the critical habitat designation and related factors (IEC 2020, entire). The analysis, dated June 23, 2020, was made available for public review from November 19, 2020, through January 19, 2021 (85 FR 74050). The economic analysis addressed probable economic impacts of critical

habitat designation for the Upper Coosa River DPS of frecklebelly madtom. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Additional information relevant to the probable incremental economic impacts of critical habitat designation for the Upper Coosa River DPS of frecklebelly madtom is summarized below and available in the screening analysis for the DPS (IEC 2020, entire), available at <https://www.regulations.gov>.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the designation of critical habitat for the Upper Coosa River DPS, first we identified, in the IEM dated June 23, 2020, probable incremental economic impacts associated with the following categories of activities: (1) Federal lands management (U.S. Forest Service and U.S. Army Corps of Engineers); (2) agriculture; (3) development; (4) roadway and bridgeway construction; (5) dredging, dams, and diversions; (6) flood control and hydropower; (7) wastewater and chemical discharge; (8) pesticide use; (9) recreation; (10) conservation and restoration; and (11) transportation and utilities. We considered each industry or category individually. Additionally, we considered whether these activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where individuals from the Upper Coosa River DPS are found, Federal agencies are required to

ensure that their actions are not likely to jeopardize the continued existence of the DPS under section 7 consultation procedures. With this critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat will be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.*, difference between the jeopardy and adverse modification standards) for the Upper Coosa River DPS's critical habitat. Because the designation of critical habitat for the Upper Coosa River DPS is being finalized concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the Upper Coosa River DPS would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this designation of critical habitat.

The final critical habitat designation for the Upper Coosa River DPS totals approximately 134 river miles (mi) (216 river kilometers (km)) in two occupied units in Georgia and Tennessee. In these areas, any actions that may affect the species will also affect critical habitat because all designated habitat is occupied. Thus, it is unlikely that any additional conservation efforts will be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the Upper Coosa River DPS. Therefore, the only additional costs that are expected in all of the critical habitat designation are administrative costs. These costs are due to additional consultation analysis requiring time and resources by both the Federal action agency and the Service. However, these costs are not expected to reach the

threshold of "significant" under E.O. 12866. We anticipate a maximum of 10 section 7 consultations annually at a total incremental cost of less than \$11,000 per year.

In our November 19, 2020 proposed rule (85 FR 74050), we solicited data and comments from the public on the draft economic analysis, as well as all aspects of the proposed rule and our required determinations. We did not receive any additional information on economic impacts during that public comment period to determine whether any specific areas should be excluded from this final critical habitat designation under the authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on Impacts on National Security and Homeland Security

In preparing this rule, we have determined that the lands within the designation of critical habitat for the Upper Coosa River DPS are not owned or managed by the DoD or the Department of Homeland Security, and, therefore, we anticipate no impact on national security or homeland security. We did not receive any additional information during the November 19, 2020, proposed rule's public comment period on the impacts of the designation on national security or homeland security that would support excluding any specific areas from this final critical habitat designation under authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19, as well as the 2016 Policy.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security as discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements (SHAs), or candidate conservation agreements with assurances (CCAAs), or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also

consider any State, local, social, or other impacts that might occur because of the designation.

In preparing this rule, we have determined that there are currently no HCPs or other management plans for the Upper Coosa River DPS, and the final designation does not include any Tribal lands or trust resources. Therefore, we anticipate no impact on Tribal lands, partnerships, or HCPs from this final critical habitat designation. We did not receive any additional information during the public comment period for the proposed rule regarding other relevant impacts to support excluding any specific areas from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19, as well as the 2016 Policy.

As discussed above, we did not identify impacts on national security, economic, or any other relevant impacts as a result of this designation. Accordingly, the Secretary is not exercising her discretion to exclude any areas from the critical habitat designation.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order 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 rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996

(SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

Under the RFA, as amended, and following recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat.

Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities will be directly regulated by this rulemaking, the Service certifies that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule, we reviewed and evaluated all information submitted during the comment period on the November 19, 2020, proposed rule (85 FR 74050) that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The Office of Management and Budget (OMB) provides guidance for implementing this Executive Order, outlining nine outcomes (criteria) that may constitute “a significant adverse effect” when compared with the regulatory action under consideration. The economic analysis finds that none of these criteria are relevant to this analysis, and therefore, we did not find that this critical habitat designation will significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose

an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or Tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or Tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement

programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments, because it will not produce a Federal mandate of \$100 million or greater in any year, that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments and, as such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Upper Coosa River DPS in a takings implications assessment. The Act does not authorize us to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the designation of critical habitat for Upper Coosa River DPS, and it concludes that this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for

States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat essential to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act will be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this final rule identifies the physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) is not required. We may not conduct or sponsor, and

you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995)).

Government-to-Government Relationship With Tribes

In accordance with the President’s memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior’s manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have identified no Tribal interests that would be affected by the listing of the Upper Coosa River DPS of the frecklebelly madtom. We have also determined that no Tribal lands fall within the boundaries of the critical habitat designation for the Upper Coosa River DPS, so no Tribal lands will be affected by the designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Alabama Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Fish and

Wildlife Service's Species Assessment Team and the Alabama Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the

Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

■ 2. Amend § 17.11, in paragraph (h), by adding an entry for “Madtom, frecklebelly [Upper Coosa River DPS]” to the List of Endangered and Threatened Wildlife in alphabetical order under FISHERIES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
FISHES				
*	*	*	*	*
Madtom, frecklebelly [Upper Coosa River DPS].	<i>Noturus munitus</i> .	Upper Coosa River Basin (GA, TN).	T	88 FR [Insert Federal Register page where the document begins]; 3/2/2023; 50 CFR 17.44(ff); ^{4d} 50 CFR 17.95(e). ^{CH}
*	*	*	*	*

■ 3. Amend § 17.44 by adding paragraph (ff) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(ff) Upper Coosa River DPS of the frecklebelly madtom (*Noturus munitus*).

(1) *Prohibitions*. The following prohibitions that apply to endangered wildlife also apply to the Upper Coosa River DPS. Except as provided under paragraph (ff)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this DPS:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of a commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(2) *Exceptions from prohibitions*. In regard to this DPS, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (c)(4) for endangered wildlife.

(iii) Take, as set forth at § 17.31(b).

(iv) Take incidental to an otherwise lawful activity caused by:

(A) Channel restoration projects that create natural, physically stable, ecologically functioning streams. These projects can be accomplished using a variety of methods, but the desired outcome is a natural channel with geomorphically stable stream channels that maintain the appropriate lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation and include stable riffle-run-pool complexes that consist of silt-free gravel, coarse sand, cobble, boulders, woody structure, and river weed (*Podostemum* spp.).

(B) Streambank stabilization projects that use bioengineering methods to replace pre-existing, bare, eroding stream banks with natively vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the DPS. Stream banks may be stabilized using native live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), native live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or native brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Stream banks must not be stabilized solely through the use of quarried rock (rip-rap) or the use of rock baskets or gabion structures.

(C) Projects carried out in the DPS's range under the Working Lands for Wildlife program of the Natural Resources Conservation Service, U.S. Department of Agriculture, or similar projects conducted by the U.S. Fish and Wildlife Service's Partners for Fish and Wildlife Program or the Environmental Protection Agency's 319 Grant Program, that are implemented with a primary objective of improving environmental conditions to support the native, aquatic biodiversity of flowing water habitats.

(D) Silviculture practices and forest management activities that implement State-approved best management practices to protect water and sediment quality and stream and riparian habitat.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

■ 4. Amend § 17.95, in paragraph (e), by adding an entry for “Frecklebelly Madtom [Upper Coosa River DPS] (*Noturus munitus*)” after the entry for “Chucky Madtom (*Noturus crypticus*)”, to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes*.

* * * * *

Frecklebelly Madtom [Upper Coosa River DPS] (*Noturus munitus*)

(1) Critical habitat units are depicted for Bradley and Polk Counties, Tennessee, and Cherokee, Dawson,

Forsyth, Lumpkin, Murray, and Whitfield Counties, Georgia, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the Upper Coosa River distinct population segment (DPS) consist of the following components:

(i) Geomorphically stable, medium to large streams with:

(A) Stable stream channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation; and

(B) Banks with intact riparian cover to maintain stream morphology and reduce erosion and sediment inputs.

(ii) Connected instream habitats that:

(A) Include stable riffle-run-pool complexes;

(B) Consist of silt-free gravel, coarse sand, cobble, boulders, woody structure, and river weed (*Podostemum* spp.); and

(C) Have abundant cobble, boulders, woody structure, or other suitable cover used for nesting.

(iii) Adequate flows, or a hydrologic flow regime (which includes the severity, frequency, duration, and

seasonality of discharge over time), necessary to maintain instream habitats and to maintain connectivity of streams with the floodplain, allowing the exchange of nutrients and sediment for maintenance of the fish's habitat, food availability, and ample oxygenated flow for spawning and nesting habitat.

(iv) Appropriate water and sediment quality (including, but not limited to, conductivity; hardness; turbidity; temperature; pH; ammonia; heavy metals; pesticides; animal waste products; and nitrogen, phosphorus, and potassium fertilizers) necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages.

(v) Diversity and availability of aquatic macroinvertebrate prey items, which include larval midges, mayflies, caddisflies, dragonflies, and beetles.

(3) Critical habitat does not include humanmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on April 3, 2023.

(4) Data layers defining map units were selected from the U.S. Geological

Survey National Hydrological Dataset—High Resolution (1:24,000 scale; Geographic Coordinate System North American 1983 coordinates) using mapping software. The selected river reaches were informed by species occurrence data. All layers use Universal Transverse Mercator (UTM) Zone 16N coordinates. We also used the mapping software to calculate the length of the units. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at <https://www.fws.gov/about/region/southeast>, at <https://www.regulations.gov> at Docket No. FWS-R4-ES-2020-0058, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

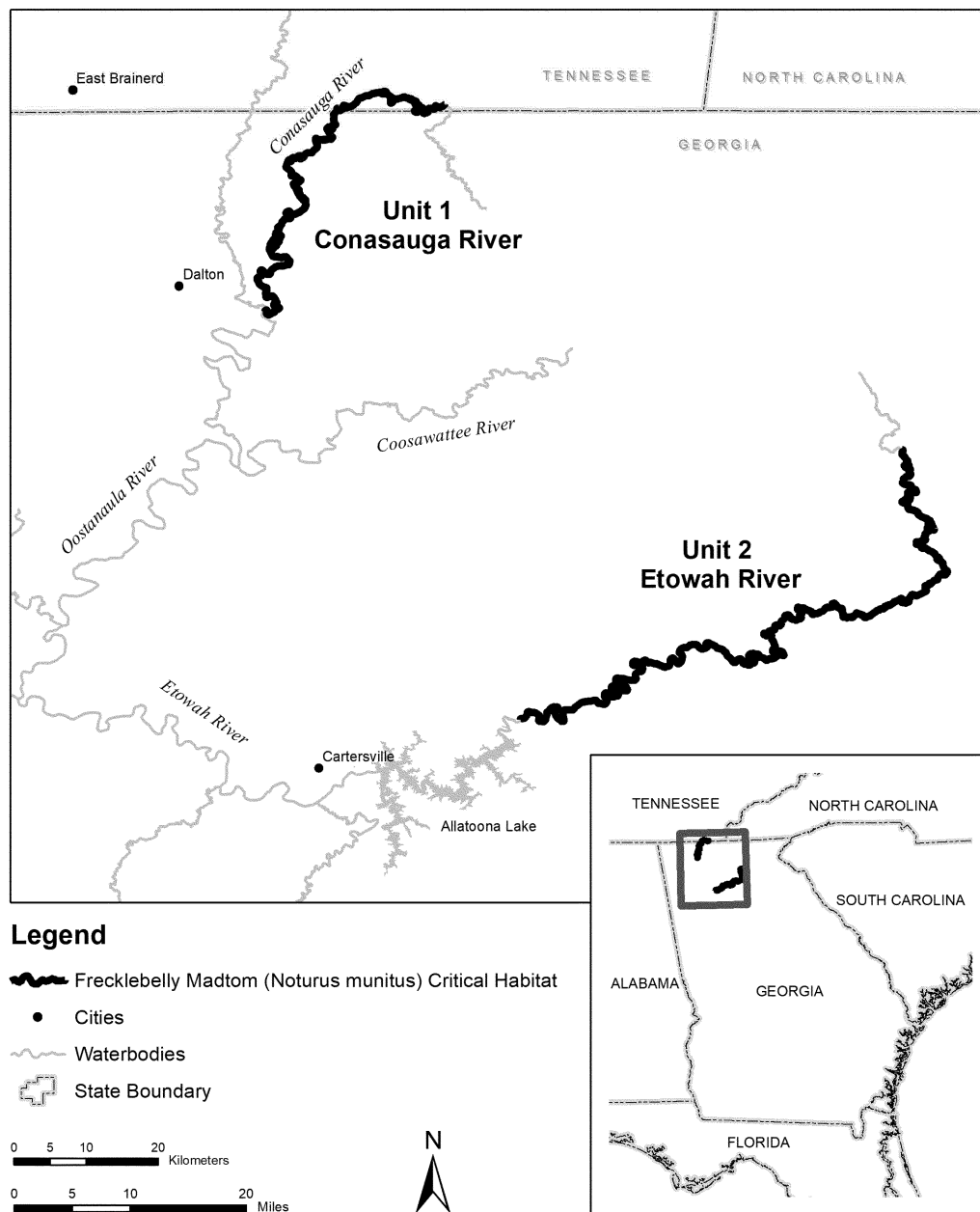
(5) Index map follows:

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Figure 1 to Frecklebelly Madtom [Upper
Coosa River DPS] (*Noturus munitus*)
paragraph (5)

Frecklebelly Madtom (*Noturus munitus*) Critical Habitat Index Map

Cherokee, Dawson, Forsyth, Lumpkin, Murray, Whitfield Counties Georgia, Bradley, Polk Counties Tennessee



(6) Unit 1: Conasauga River; Bradley and Polk Counties, Tennessee, and Murray and Whitfield Counties, Georgia.

(i) Unit 1 consists of 51.5 river miles (83 kilometers) of the Conasauga River

beginning at the mouth of Coahulla Creek in Murray and Whitfield Counties, Georgia, and continuing upstream through Bradley County, Tennessee, to the mouth of Graham Branch in Polk County, Tennessee. Unit

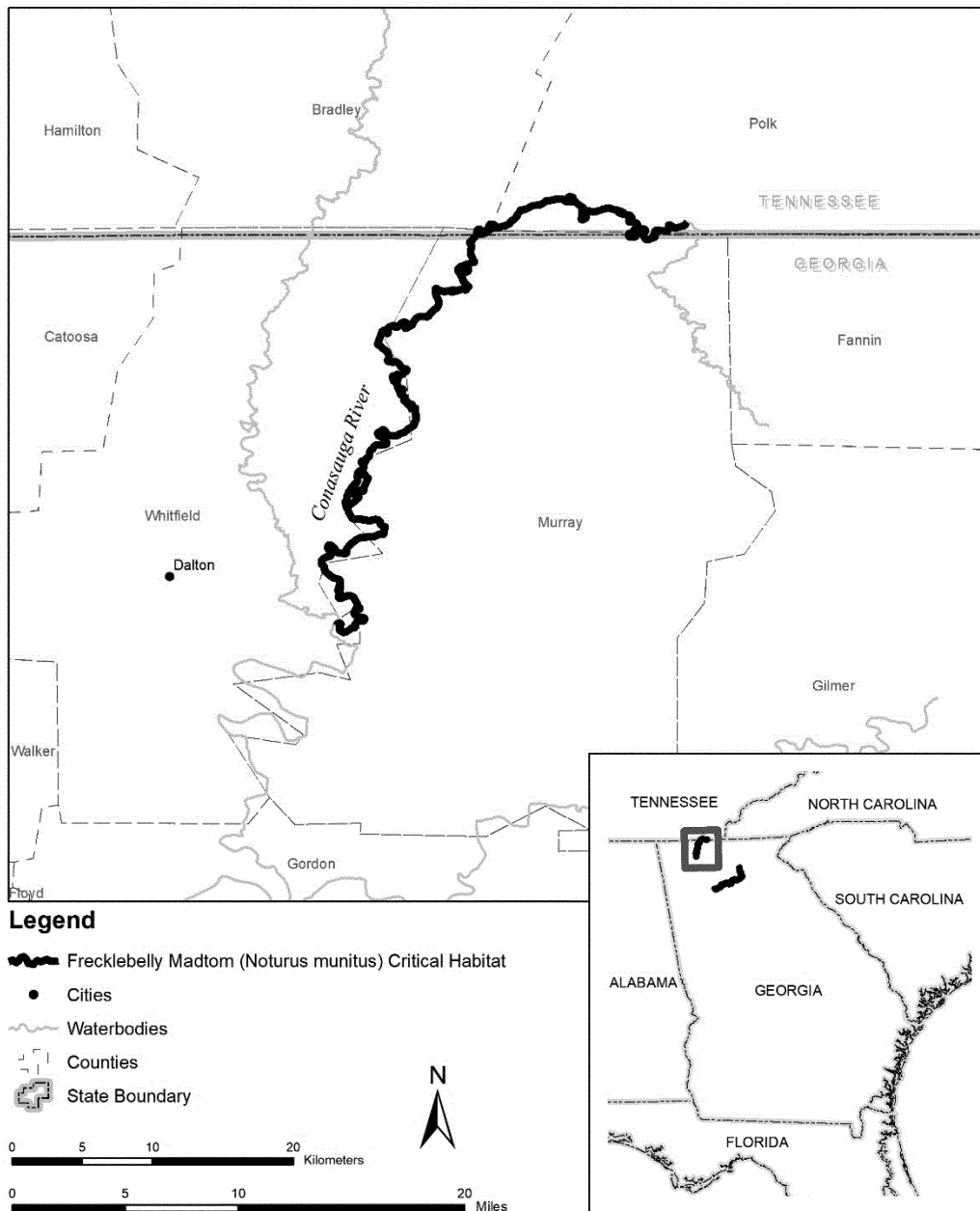
1 does not extend beyond the bankfull width of the river.

(ii) Map of Unit 1 follows:

Figure 2 to Frecklebelly Madtom [Upper
Coosa River DPS] (*Noturus munitus*)
paragraph (6)(ii)

**Frecklebelly Madtom (*Noturus munitus*)
Critical Habitat Unit 1: Conasauga River**

Murray and Whitfield Counties, Georgia; Bradley and Polk Counties, Tennessee



(7) Unit 2: Etowah River, Cherokee, Dawson, Forsyth, and Lumpkin Counties, Georgia.

(i) Unit 2 consists of 82.5 river miles (133 kilometers) of the Etowah River

beginning at its confluence with Shoal Creek in Cherokee County, Georgia, and continuing upstream through Forsyth and Dawson Counties to approximately 0.5 miles upstream of the Jay Bridge

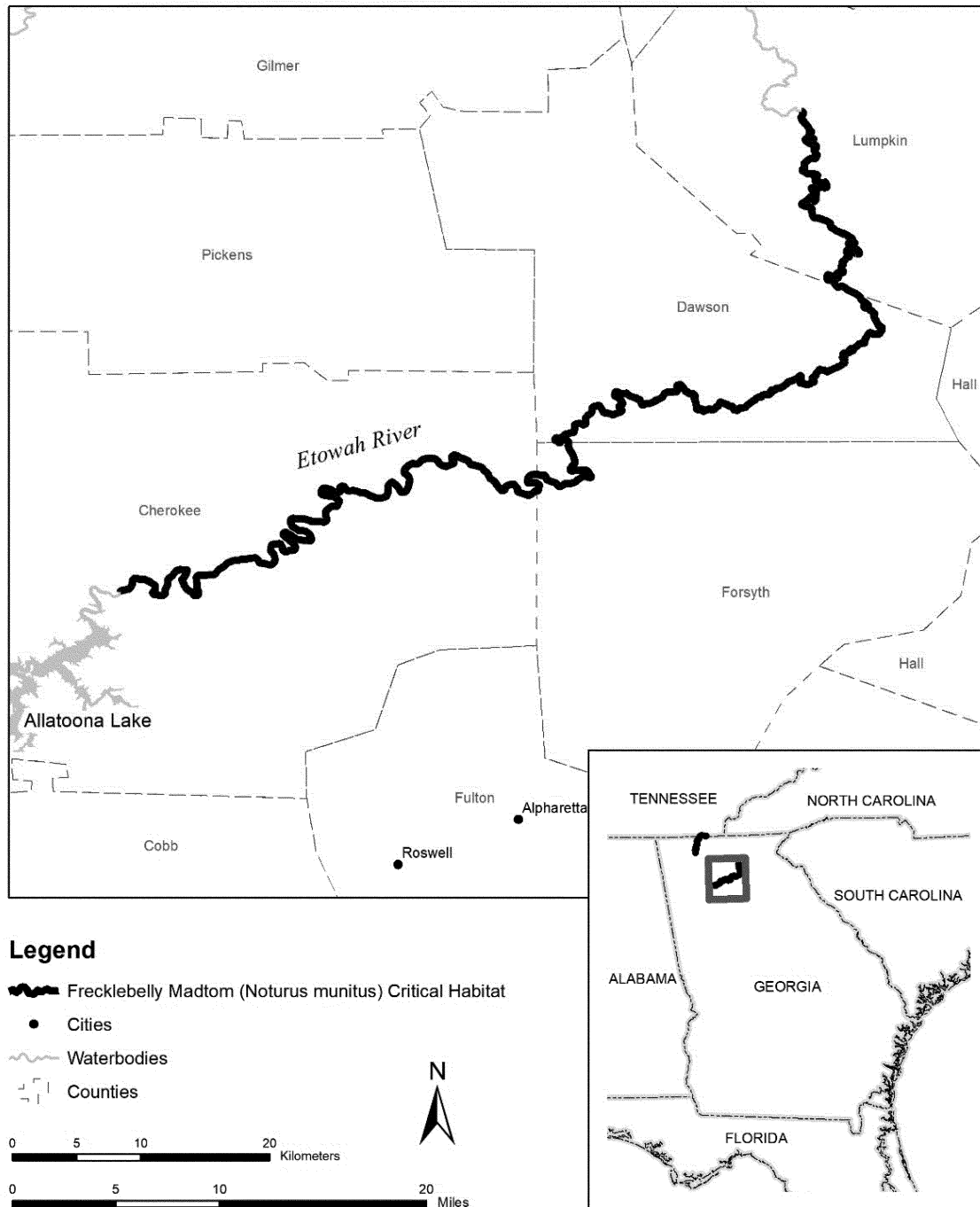
Road crossing over the Etowah River in Lumpkin County, Georgia. Unit 2 does not extend beyond the bankfull width of the river.

(ii) Map of Unit 2 follows:

Figure 3 to Frecklebelly Madtom [Upper
Coosa River DPS] (*Noturus munitus*)
paragraph (7)(ii)

**Frecklebelly Madtom (*Noturus munitus*)
Critical Habitat Unit 2: Etowah River**

Cherokee, Dawson, Forsyth, and Lumpkin Counties, Georgia



* * * * *

Wendi Weber,
*Acting Director, U.S. Fish and Wildlife
Service.*
[FR Doc. 2023-03875 Filed 3-1-23; 8:45 am]
BILLING CODE 4333-15-C

Proposed Rules

Federal Register

Vol. 88, No. 41

Thursday, March 2, 2023

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 Parts 21, 25, and 29

[Docket No. FAA-2023-0515]

Draft Policy Statement Regarding Submission of Outline of New and Changed Systems at the Beginning of the Type Certificate Amendment Process for Transport Category Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notification of availability; request for comments.

SUMMARY: As required by the Aircraft Certification, Safety, and Accountability Act, a draft policy statement would revise FAA procedures in order to require applicants for amendments to type certificates (TCs) for transport category aircraft to disclose, in a single document at the beginning of the certification process, all new systems and intended changes to existing systems known to the applicant.

DATES: Comments on the draft policy statement must be received on or before April 3, 2023.

ADDRESSES: Send comments with the subject line, "Outline of New and Changed Systems for Transport Category Aircraft" identified by docket number FAA-2023-0515, using the following method:

Federal eRegulations Portal: Go to <https://www.regulations.gov> and follow the online instructions for sending your comments electronically.

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

Hand Delivery of Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9

a.m., and 5 p.m., Monday through Friday, except Federal holidays.

Fax: Fax comments to Docket

Operations at 202-493-2251.

Privacy: In addition to the final policy statement, the FAA will post all comments it receives, without change, to <https://www.regulations.gov/>, including any personal information the commenter provides. DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477-19478), as well as at <https://DocketsInfo.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Sue McCormick, Strategic Policy Systems Standards Section, AIR-619, Strategic Policy Management Branch, Policy and Innovation Division, Aircraft Certification Service, by email at susan.mccormick@faa.gov, or by phone at (206) 231-3242.

SUPPLEMENTARY INFORMATION:

Discussion

Section 105(c) of the Aircraft Certification, Safety, and Accountability Act, Public Law 116-260 (the Act) requires the FAA to revise its procedures in order to require applicants for amendments to TCs for transport category aircraft to disclose, in a single document at the beginning of the certification process, all new systems and intended changes to existing systems known to the applicant. Transport category aircraft are transport category airplanes and transport category rotorcraft. The FAA would issue a policy statement to implement section 105(c), and a draft of the policy statement may be examined in the docket and at <https://www.faa.gov/aircraft/draft/docs/>.

Comments Invited

The FAA invites the public to submit comments on the draft policy statement, as specified in the **ADDRESSES** section of this notification. Commenters should include the subject line, "Outline of New and Changed Systems for Transport Category Aircraft," and the docket number on all comments submitted to the FAA. The most helpful comments will reference a specific recommendation, explain the reason for any recommended change, and include supporting information. The FAA will consider all comments received on or before the closing date, before issuing the final policy statement. The FAA will

also consider late-filed comments, if it is possible to do so without incurring expense or delay.

Issued in Washington, DC, on February 24, 2023.

James D. Foltz,

Acting Manager, Strategic Policy Management Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2023-04233 Filed 3-1-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No.: FAA-2022-1544; Notice No. 23-04]

RIN 2120-AJ99

System Safety Assessments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This action extends the comment period for the NPRM titled "System Safety Assessments," that was published on December 8, 2022. In that document, the FAA proposed to amend certain airworthiness regulations to standardize the criteria for conducting safety assessments for systems, including flight controls and powerplants, installed on transport category airplanes. With this action, the FAA seeks to reduce risk associated with airplane accidents and incidents that have occurred in service, and reduce risk associated with new technology in flight control systems. The intended effect of this proposed action is to improve aviation safety by making system safety assessment (SSA) certification requirements more comprehensive and consistent. The FAA is extending the comment period closing date to allow commenters additional time to analyze the proposed rule and prepare a response.

DATES: The comment period for the NPRM published on December 8, 2022, at 87 FR 75424, and scheduled to close on March 8, 2023, is extended until April 24, 2023.

ADDRESSES: Send comments identified by docket number FAA-2022-1544 using any of the following methods:

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

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Suzanne Masterson, Strategic Policy Transport Section, AIR–614, Strategic Policy Management Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax (206) 231–3211; email Suzanne.Masterson@faa.gov.

SUPPLEMENTARY INFORMATION:

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. 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 send only one copy of written

comments, or if comments are filed electronically, commenters should submit only one time.

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

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the internet by—

1. Searching the Federal eRulemaking Portal at www.regulations.gov;
2. Visiting the FAA's Regulations and Policies web page at www.faa.gov/regulations_policies/; or
3. Accessing the Government Printing Office's web page at www.GovInfo.com.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the internet through the Federal eRulemaking Portal referenced in item (1) above.

Background

On December 8, 2023, the FAA published an NPRM titled “System Safety Assessments,” in the **Federal Register** (87 FR 75424; Notice No. 23–04). In the NPRM, the FAA proposed to amend certain airworthiness regulations to standardize the criteria for conducting safety assessments for systems, including flight controls and powerplants, installed on transport category airplanes. With this action, the FAA seeks to reduce risk associated with airplane accidents and incidents that have occurred in service, and reduce risk associated with new technology in flight control systems. The intended effect of this proposed action is to improve aviation safety by making system safety assessment (SSA) certification requirements more comprehensive and consistent. Commenters were instructed to provide

comments on or before March 8, 2023 (*i.e.*, 90 days from the date of publication of the NPRM).

Since publication, the FAA has received several requests to extend the comment period by an additional ninety (90) days. The commenters generally requested more time to review the proposed rule and associated guidance documents, and to develop comments and recommendations.

Extension of Comment Period

The FAA partially grants the petitioners' requests for an extension of the comment period. The FAA recognizes the complex and technical nature of the proposed rule, and finds that an extension would help commenters craft complete and helpful responses. However, under the circumstances, the FAA finds that an additional forty-five (45) days will provide sufficient opportunity for the public to comment. Therefore, the comment period for Notice No. 23–04 is extended until April 24, 2023.

The FAA does not plan to grant any additional requests to further extend the comment period for this rulemaking.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on February 24, 2023.

Brandon Roberts,

Executive Director, Office of Rulemaking, Federal Aviation Administration.

[FR Doc. 2023–04265 Filed 3–1–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2023–0002; Notice No. 221]

RIN 1513–AC78

Proposed Establishment of the Crystal Springs of Napa Valley Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the approximately 4,000-acre “Crystal Springs of Napa Valley” American viticultural area (AVA) in Napa County, California. The proposed AVA is located entirely within the existing North Coast AVA and also entirely within the Napa Valley AVA. TTB designates viticultural areas to

allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on these proposals.

DATES: TTB must receive your comments on or before May 1, 2023.

ADDRESSES: You may electronically submit comments to TTB on this proposal and view copies of this document, its supporting materials, and any comments TTB receives on it within Docket No. TTB–2023–0002 as posted on *Regulations.gov* (<https://www.regulations.gov>), the Federal e-rulemaking portal. Please see the “Public Participation” section of this document below for full details on how to comment on this proposal via *Regulations.gov* or U.S. mail, and for full details on how to obtain copies of this document, its supporting materials, and any comments related to this proposal.

FOR FURTHER INFORMATION CONTACT:

Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of

American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine’s geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to establish or modify AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon;
- If the proposed AVA is to be established within, or overlapping, an existing AVA, an explanation that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition; and

- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Petition To Establish the Crystal Springs of Napa Valley AVA

TTB received a petition from Steven Burgess, president of Burgess Cellars, Inc., proposing to establish the “Crystal Springs of Napa Valley” AVA. Mr. Burgess submitted the petition on behalf of local vineyard owners and winemakers. The proposed AVA is located in Napa County, California, and is entirely within the existing North Coast AVA (27 CFR 9.30) and also entirely within the existing Napa Valley AVA (27 CFR 9.23). Within the proposed AVA, there are approximately 30 commercial vineyards which cover a total of approximately 230 acres. The distinguishing feature of the proposed Crystal Springs of Napa Valley AVA is its topography.

Proposed Crystal Springs of Napa Valley AVA

Name Evidence

Although the region of the proposed Crystal Springs of Napa Valley is typically referred to simply as “Crystal Springs,” the petitioner added the phrase “of Napa Valley” to distinguish the proposed AVA from the numerous locations in the United States that are also known as “Crystal Springs.” The proposed Crystal Springs of Napa Valley AVA takes its name from the many hillside springs in the region. In the 1800’s, the Crystal Springs Rural Health Retreat was built within the proposed AVA as a sanitarium promoting various types of water treatments. Today, a modern hospital sits on the former sanitarium site. One of the buildings on the hospital campus is called Crystal Springs Manor.¹ The petition also included several additional examples of current use of the term “Crystal Springs” within the proposed AVA. For example, Crystal Springs Road and North Fork Crystal Springs Road both run through the proposed AVA. A vineyard within the proposed AVA is known as Crystal Springs Vineyard.² An article about biking in the region of the proposed AVA lists the “Silverado–Howell Mountain–Crystal Springs–Franz Valley–Ida Clayton” route.³ A 2016 article in the *Napa Valley Register* about a conflict between residents in the proposed AVA and the owner of a winery was titled, “Crystal Springs neighbors trying to stop Woodbridge’s

¹ <https://adventisthealth.org/documents/sthelenia/SHH398ParkingMapDirections.pdf>.

² <https://www.vascocellars.com/crystal-springs>.

³ <https://ridewithgps.com/routes/14490907>.

winery project”.⁴ Finally, a real estate video for an estate in the proposed AVA is titled “North Crystal Springs Estate, Napa Valley”.⁵

Boundary Evidence

The proposed Crystal Springs of Napa Valley AVA is located in the northern portion of Napa County along a portion of the western face of the Vaca Range. It borders the established Calistoga (27 CFR 9.209), St. Helena (27 CFR 9.149), and Howell Mountain (27 CFR 9.94) AVAs, but does not overlap them. The northern boundary of the proposed Crystal Springs of Napa Valley primarily follows the 1,400-foot elevation contour and separates the proposed AVA from the established Howell Mountain AVA. The proposed eastern boundary follows a road known locally as Old Howell Mountain Road, which separates the west-to-southwest-facing slopes of the proposed AVA from slopes that have a more easterly-to-northeasterly exposure. The proposed southern boundary follows the 400-foot elevation contour to separate the proposed AVA from the lower elevations of the valley floor and from the established St. Helena AVA. The proposed western boundary primarily follows the 880-foot elevation contour and separates the proposed AVA from the established Calistoga AVA.

The petition states that, because topography is the distinguishing feature of the proposed AVA, the proposed Crystal Springs of Napa Valley AVA would include all elevations within the aforementioned boundary that are at or below 1,400 feet. The petition notes that there is a small region in the southeastern portion of the proposed AVA along Crestmont Drive where elevations exceed 1,400 feet. According to the petition, although this region is within the physical boundaries of the proposed AVA, it should not be considered part of the proposed AVA due to its higher elevations, which are more similar to those of the neighboring Howell Mountain AVA. The petition also states that this region does not currently have any vineyards and is unlikely to have any in the future because it is primarily a residential area

with rocky outcroppings that are unsuitable for commercial viticulture. Because the petitioner was unable to draw a contiguous boundary that physically excludes this region, the proposed regulatory text states that any elevations above 1,400 feet within the boundary of the proposed AVA are not considered to be part of the proposed AVA.

Distinguishing Feature

According to the petition, the distinguishing feature of the proposed Crystal Springs of Napa Valley AVA is its topography. The petition describes the proposed AVA as an “all hillside” region with no flat areas along the western face of the Vaca Range. Slopes are generally west-to-southwesterly facing, and slope angles range from 15 to 40 percent. Elevations in the proposed AVA range from 400 to 1,400 feet. According to the petition, the reason for limiting the proposed AVA to this range of elevations is that the 400-foot contour generally marks the transition point between the foothills of the Vaca Range and the floor of the Napa Valley. Additionally, the 1,400-foot contour along the northern boundary of the proposed AVA coincides with the southern boundary of the established Howell Mountain AVA.

To the north of the proposed AVA, the elevations rise up to 2,200 feet within the established Howell Mountain AVA, according to T.D. ATF-163, which established the AVA. The topography of the Howell Mountain AVA contains hillsides, like the proposed Crystal Springs of Napa Valley AVA, but also has a rolling, plateau-like feature at the summit. The region to the east of the proposed AVA has elevation similar to those of the proposed AVA, but the slopes have a more easterly-to-northeasterly exposure. South and west of the proposed AVA are the established St. Helena and Calistoga AVAs, which have lower elevations and include the flat lands along the floor of the Napa Valley. The petition describes slope angles within the established St. Helena AVA as mostly less than 5 percent, while the established Calistoga AVA is described as having “a multitude of * * * slopes, from steep mountains to benchlands to fans, to flat valley floors to riparian habitats.”

According to the petition, the topography of the proposed Crystal Springs of Napa Valley AVA has a major

effect on viticulture. For instance, the western and southwestern aspects of the slopes within the proposed AVA receive larger amounts of solar radiation than slopes with northern or eastern aspects, allowing grapes to mature easily each growing season. Additionally, the petition states that the soils within the proposed AVA are shallower than the soils in the neighboring valleys because natural weathering processes have moved the soils downhill and into the valleys. However, the petition states that the most significant effect of topography is on the climate of the proposed AVA.

The petition states that the topography of the proposed AVA contributes to a frost-free and reliable growing period for grapes grown in the proposed AVA. First, the petition notes that cold air does not remain on the hillsides of the proposed AVA. Instead, cold air flows downhill and pools in the lower elevations of the floor of the Napa Valley, including the neighboring St. Helena and Calistoga AVAs, making frost more common in those regions. The petition states that due to the threat of frost on the valley floor, vineyards within the established Calistoga and Saint Helena AVAs require frost protection measures such as orchard fans, heaters, sprinklers, or misters. By contrast, vineyards in the proposed Crystal Springs of Napa Valley AVA do not require frost protection.

Additionally, because elevations within the proposed AVA are below 1,400 feet, the region is not as susceptible to frost caused by adiabatic cooling, also known as elevation cooling. According to the petition, adiabatic cooling can lower temperatures by 3 to 6 degrees per 1,000 feet of elevation. As a result, higher elevations such as the adjacent Howell Mountain AVA are at a higher risk for damaging frosts. In fact, the petition notes that the use of frost protection measures in vineyards within the Howell Mountain AVA commonly continues into June. By contrast, the proposed Crystal Springs of Napa Valley AVA does not have frost concerns during the bud break period.

Summary of Distinguishing Features

The following table summarizes the topographical differences between the proposed Crystal Springs of Napa Valley AVA and the surrounding regions.

⁴ https://napavalleyregister.com/community/star/news/local/business/crystal-springs-neighbors-trying-to-stop-woodbridges-winery-project/article_45268603-62c5-5ac8-b66e-ac96d837cea1.html.

⁵ <https://www.youtube.com/watch?v=mWekW4t4Ypo>.

TOPOGRAPHIC FEATURES OF PROPOSED AVA AND SURROUNDING REGIONS

Region	Topographic features
Proposed Crystal Springs of Napa Valley AVA ..	Located on hillsides with no flat areas; elevations between 400 and 1,400 feet; west-to-south-west slope aspects; slope angles between 15 and 40 percent.
Howell Mountain AVA (North)	Elevations between 1,400 and 2,200 feet; rolling, plateau-like topography at summit.
St. Helena and Calistoga AVAs (South and West).	Both AVAs include elevations below 400 feet along the floor of the Napa Valley; slope angles in St. Helena AVA are mostly less than 5 degrees; Calistoga AVA has a variety of slope angles, including flat valley floors.
East	Similar elevations to proposed AVA, but slopes have easterly-to-northeasterly slope aspects.

Comparison of the Proposed Crystal Springs of Napa Valley AVA to the Existing North Coast AVA

The North Coast AVA was established by T.D. ATF-145, published in the **Federal Register** on September 21, 1983 (48 FR 42973). The primary distinguishing feature of the North Coast AVA is its climate, which is “influenced by intrusions of cooler, damper marine air and fog.” The North Coast AVA includes four Winkler Regions of cumulative heat units: Regions I through IV.⁶ T.D. ATF-145 describes the topography of the North Coast AVA as “flat valleys and tillable hillsides surrounded by mountains.” According to the proposed Crystal Springs of Napa Valley petition, elevations within the North Coast AVA range from sea level to over 4,000 feet.

The proposed Crystal Springs of Napa Valley AVA shares some of the general viticultural features of the larger North Coast AVA. For instance, the proposed AVA has a topography of hillsides, similar to other regions within the North Coast AVA. The proposed AVA has a marine-influenced climate that is classified as low Region IV, which is within the range of the North Coast AVA. However, due to its much smaller size, the proposed AVA lacks the variety of topographic features and climate regions of the larger, multi-county North Coast AVA. For example, the proposed AVA is a hillside-only region and lacks the flat valleys that are found within the North Coast AVA. Additionally, the proposed AVA lacks the cooler Winkler regions found elsewhere in the North Coast AVA.

⁶ See Albert J. Winkler, *General Viticulture* (Berkeley: University of California Press, 1974), pages 61–64. In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual Growing Degree Days (GDDs), defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees F, the minimum temperature required for grapevine growth. The Winkler scale regions are as follows: Region Ia: 1,500–2,000 GDDs; Region Ib: 2,000–2,500 GDDs; Region II: 2,500–3,000 GDDs; Region III: 3,000–3,500 GDDs; Region IV: 3,500–4,000 GDDs; Region V: 4,000–4,900 GDDs.

Comparison of the Proposed Crystal Springs of Napa Valley AVA to the Existing Napa Valley AVA

The Napa Valley AVA was established by T.D. ATF-79, published in the **Federal Register** on January 28, 1981 (46 FR 9061). According to the proposed Crystal Springs of Napa Valley AVA petition, the established Napa Valley AVA is a geographically diverse region which includes alluvial fans, riparian habitat, hillsides, and high mountains. Elevations range from below 400 feet to over 4,000 feet within the Napa Valley AVA. The established AVA also has a marine-influenced climate that includes three Winkler Regions: Regions II, III, and IV.

The proposed Crystal Springs of Napa Valley AVA shares some of the general viticultural features of the Napa Valley AVA. For instance, the proposed AVA also has a marine-influenced climate and hillside topography. However, due to its smaller size, the proposed AVA has a more uniform topography, lacking the alluvial fans, riparian habitats, and high mountain peaks of the larger Napa Valley AVA. Additionally, the proposed AVA lacks the cooler Winkler Regions II and III.

TTB Determination

TTB concludes that the petition to establish the approximately 4,000-acre “Crystal Springs of Napa Valley” AVA merits consideration and public comment, as invited in this document.

Boundary Description

See the narrative boundary descriptions of the petitioned-for AVA in the proposed regulatory text published at the end of this document.

Maps

The petitioner provided the required maps, and they are listed below in the proposed regulatory text. You may also view the proposed Crystal Springs of Napa Valley AVA boundary on the AVA Map Explorer on the TTB website, at <https://www.ttb.gov/wine/ava-map-explorer>.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

If TTB establishes this proposed AVA, its name, “Crystal Springs of Napa Valley,” will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using “Crystal Springs of Napa Valley” in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the viticultural area's name “Crystal Springs of Napa Valley.” TTB is not proposing to make “Crystal Springs,” standing alone, a term of viticultural significance due to the number of locations in the United States and elsewhere that are known as “Crystal Springs.”

The approval of the proposed Crystal Springs of Napa Valley AVA would not affect any existing AVA, and any bottlers using “North Coast” or “Napa Valley” as appellations of origin or in a brand name for wines made from grapes grown within the Crystal Springs of Napa Valley AVA would not be affected by the establishment of this new AVA.

If approved, the establishment of the proposed Crystal Springs of Napa Valley AVA would allow vintners to use “Crystal Springs of Napa Valley,” “North Coast,” or “Napa Valley” as appellations of origin for wines made from grapes grown within the proposed AVA, if the wines meet the eligibility requirements for the appellation.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether TTB should establish the proposed Crystal Springs of Napa Valley AVA. TTB is interested in receiving comments on the sufficiency and accuracy of the name, boundary, topography, and other information submitted in support of the AVA petition. In addition, because the proposed Crystal Springs of Napa Valley AVA would be within the existing North Coast and Napa Valley AVAs, TTB is interested in comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the existing AVAs. TTB is also interested in comments on whether the geographic features of the proposed AVA are so distinguishable from one or both of the established AVAs that the proposed Crystal Springs of Napa Valley AVA should not be part of either established AVA. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Crystal Springs of Napa Valley AVA on wine labels that include the term “Crystal Springs of Napa Valley” as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed area names and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the proposed AVA.

Submitting Comments

You may submit comments on this notice by using one of the following methods:

- *Federal e-Rulemaking Portal*: You may send comments via the online comment form posted with this notice

within Docket No. TTB–2023–0002 on “*Regulations.gov*,” the Federal e-rulemaking portal, at <https://www.regulations.gov>. A direct link to that docket is available under Notice No. 221 on the TTB website at <https://www.ttb.gov/wine/wine-rulemaking.shtml>. Supplemental files may be attached to comments submitted via *Regulations.gov*. For complete instructions on how to use *Regulations.gov*, visit the site and click on the “Help” tab.

- *U.S. Mail*: You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 221 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity’s name, as well as your name and position title. If you comment via *Regulations.gov*, please enter the entity’s name in the “Organization” blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity’s comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality and Disclosure of Comments

All submitted comments and attachments are part of the rulemaking record and are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that is inappropriate for disclosure.

TTB will post, and you may view, copies of this document, the related petition and selected supporting materials, and any comments TTB receives about this proposal within the related *Regulations.gov* docket. In general, TTB will post comments as submitted, and it will not redact any

identifying or contact information from the body of a comment or attachment.

Please contact TTB’s Regulations and Rulings division by email using the web form available at <https://www.ttb.gov/contact-rrd>, or by telephone at 202–453–2265, if you have any questions about commenting on this proposal or to request copies of this document, the related petition and its supporting materials, or any comments received.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor’s efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

- 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Add § 9.____ to subpart C to read as follows:

§ 9.____ Crystal Springs of Napa Valley.

(a) *Name*. The name of the viticultural area described in this section is “Crystal Springs of Napa Valley”. For purposes of part 4 of this chapter, “Crystal Springs of Napa Valley” is a term of viticultural significance.

(b) *Approved maps*. The two United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the viticultural area are titled:

- (1) Saint Helena, CA, 2015; and
- (2) Calistoga, CA, 2015.

(c) *Boundary*. The Crystal Springs of Napa Valley viticultural area is located

in Napa County, California. Within the boundary description that follows, the viticultural area encompasses all areas at or below 1,400 feet. The boundary of the Crystal Springs of Napa Valley viticultural area is as described as follows:

(1) The beginning point is on the Saint Helena map at the intersection of Howell Mountain Road and White Cottage Road. From the beginning point, proceed southeasterly along Howell Mountain Road to its intersection with the 400-foot elevation contour near Big Rock Road; then

(2) Proceed northwesterly along the 400-foot elevation contour to its intersection with an unnamed road (an extension of a road known locally as the North Fork of Crystal Springs Road); then

(3) Proceed northerly along the unimproved dirt road approximately 2,700 feet to its intersection with the 880-foot elevation contour; then

(4) Proceed northwesterly along the meandering 880-foot elevation contour, crossing onto the Calistoga map, and continuing along the elevation contour to its intersection with Biter Creek; then

(5) Proceed northerly (upstream) along Biter Creek to its intersection with the 1,400-foot elevation contour; then

(6) Proceed southeasterly along the meandering 1,400-foot elevation contour, crossing onto the Saint Helena map, to the intersection of the elevation contour with White Cottage Road; then

(7) Proceed easterly along White Cottage Road for approximately 130 feet, returning to the beginning point.

Signed: February 22, 2023.

Mary G. Ryan,
Administrator.

Approved: February 23, 2023.

Thomas C. West, Jr.,
Deputy Assistant Secretary (Tax Policy).

[FR Doc. 2023–04190 Filed 3–1–23; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R01–RCRA–2022–0864; FRL–10508–01–R1]

Vermont: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Vermont has applied to the Environmental Protection Agency (EPA)

for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The EPA proposes to grant final authorization to Vermont for these revisions by a direct final rule, which can be found in the “Rules and Regulations” section of this issue of the **Federal Register**. We have explained the reasons for this authorization in the preamble to the direct final rule. Unless EPA receives written comments that oppose this authorization during the comment period, the direct final rule will become effective on the date it establishes, and the EPA will not take further action on this proposed rule.

DATES: Send your written comments by April 3, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–RCRA–2022–0864, at <https://www.regulations.gov/>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Sharon Leitch, RCRA Waste Management and Lead Branch; Land, Chemicals and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100 (Mail code 07–1), Boston, MA 02109–3912; phone: (617) 918–1647; email: leitch.sharon@epa.gov.

SUPPLEMENTARY INFORMATION: In the “Rules and Regulations” section of this issue of the **Federal Register**, the EPA is authorizing the revisions by a direct final rule. The EPA did not make a proposal prior to the direct final rule because we believe this action is not controversial and do not expect comments that oppose it. We have

explained the reasons for this authorization in the preamble to the direct final rule. Unless the EPA receives adverse written comments that oppose this authorization during the comment period, the direct final rule will become effective on the date it establishes, and the EPA will not take further action on this proposal. If the EPA receives comments that oppose this action, we will withdraw the direct final rule and it will not take effect. The EPA will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you should do so at this time. For additional information, please see the direct final rule published in the “Rules and Regulations” section of this issue of the **Federal Register**.

Authority: This proposed action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 23, 2023.

David W. Cash,

Regional Administrator, U.S. EPA Region I.

[FR Doc. 2023–04147 Filed 3–1–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BM00

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 54

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

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

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 54 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Gulf) (Amendment 54) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce, Amendment 54 would revise Gulf greater amberjack sector allocations and catch limits. The purposes of Amendment 54 are to end overfishing of Gulf greater amberjack and to update catch limits to be

consistent with the best scientific information available.

DATES: Written comments on Amendment 54 must be received on or before May 1, 2023.

ADDRESSES: You may submit comments on Amendment 54 identified by “NOAA-NMFS-2023-0007” by either 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-2023-0007”, in the Search box. Click the “Comment” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit all written comments to Kelli O'Donnell, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

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 www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 54, which includes an environment assessment, a fishery impact statement, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/amendment-54-modifications-greater-amberjack-catch-limits-sector-allocation-and-rebuilding>.

FOR FURTHER INFORMATION CONTACT:

Kelli O'Donnell, telephone: 727-824-5305, or email: Kelli.ODonnell@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or FMP amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

The FMP being revised by Amendment 54 was prepared by the Council and Amendment 54, if approved, would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

All weights in this notice are in round weight.

Background

Under the FMP, the Council manages fishing for Gulf greater amberjack in Federal waters from the Texas/Mexico border to the Councils' jurisdictional boundary west of the Dry Tortugas, Florida. The Gulf greater amberjack stock annual catch limit (ACL) is set equal to the acceptable biological catch (ABC), and is allocated 27 percent to the commercial and 73 percent to the recreational sector.

Greater amberjack has been under a rebuilding plan since 2003. This rebuilding plan was implemented with Secretarial Amendment 2 and was expected to rebuild the stock by 2010 (68 FR 39898, July 3, 2003). In 2006, Southeast Data Assessment and Review (SEDAR) 9 assessment showed that the greater amberjack stock was not recovering as previously projected. The stock continued to be overfished and was experiencing overfishing. The Council developed Amendment 30A to end overfishing and rebuild the stock by 2010, consistent with the time frame of the original rebuilding plan. In 2010, the SEDAR 9 Update was completed and indicated that the stock remained overfished and was continuing to experience overfishing. In response, the Council developed Amendment 35 to the FMP (77 FR 67574, December 13, 2012). The management measures implemented in Amendment 35 were expected to end overfishing; however, it could not be determined if the stock would meet its rebuilding schedule until a new benchmark assessment was completed. In 2014, the SEDAR 33 benchmark stock assessment was completed and showed that greater amberjack remained overfished, was experiencing overfishing as of 2012, and did not meet the rebuilding timeline established in Secretarial Amendment 2. In 2015, the Council developed a framework action that further reduced the sector ACLs and ACTs in an effort to end overfishing and rebuild the stock by the end of 2019 (80 FR 75432, December 2, 2015). In 2016, the SEDAR 33 Update assessment was completed and showed that greater amberjack was still overfished and undergoing overfishing as of 2015 and the stock would not be rebuilt by 2019 as previously projected. In 2017, NMFS

notified that Council that the stock was not making adequate progress towards rebuilding and the Council developed a framework action to modify the rebuilding time and the catch levels. The framework action, which was implemented in 2018, reduced the sector ACLs and ACTs in an effort to end overfishing and rebuild the stock by 2027 (82 FR 61485, December 28, 2017). In 2020, SEDAR 70 was completed and indicated that the Gulf greater amberjack stock continued to be overfished and undergoing overfishing, but could rebuild by 2027 with reduced yields. NMFS notified that Council that the stock was not making adequate progress towards rebuilding in 2021 and the Council began work on Amendment 54 to revise the greater amberjack catch limits to end overfishing and meet the 2027 rebuilding timeline.

The current commercial and recreational allocation of the Gulf greater amberjack stock ACL (73 percent recreational; 27 percent commercial) is based on average landings from 1981–2004 (73 FR 38139, July 3, 2008). Recreational landings estimates during 1981–2004 were generated using the Marine Recreational Fisheries Statistics Survey (MRFSS), the predecessor of the current Marine Recreational Information Program (MRIP). The current overfishing limit (OFL) and ABC are 2,167,000 lb (982,935 kg) and 1,794,000 lb (813,745 kg), respectively. These catch limits are based on the results of the SEDAR 33 Update stock assessment, which included recreational landings estimates generated using the MRIP Coastal Household Survey (CHTS). MRIP replaced CHTS with the Fishing Effort Survey (FES) in 2018. As explained in Amendment 54, total recreational fishing effort estimates generated from MRIP–FES are generally higher than both the MRFSS and MRIP–CHTS estimates because MRIP–FES is designed to more accurately measure fishing effort. Had MRIP–FES data been available when the current Gulf greater amberjack OFL and ABC were established, the OFL would have been 3,480,000 lb (1,578,501 kg) and the ABC would have been 2,930,000 (1,329,026 kg).

The current commercial and recreational sector ACLs are 484,380 lb (219,711 kg) and 1,309,620 lb (594,034 kg), respectively. The current commercial and recreational ACTs are 421,411 lb (191,149 kg) and 1,086,985 lb (493,048 kg), respectively. These ACLs and ACTs were implemented through a framework action to the FMP in 2018 (82 FR 61485, December 28, 2017) and are based in part on MRIP–CHTS data. To establish the ACTs the Council used

its ACL/ACT Control Rule, which looked at multiple factors for fishing years 2013 to 2016 to determine the appropriate buffer between the ACLs and ACTs. The current commercial ACT buffer is 13 percent below the commercial ACL. The current recreational ACT buffer is 17 percent below the recreational ACL.

The SEDAR 70 assessment included updated recreational landings estimates based on MRIP-FES. In January 2021, the Council's SSC reviewed SEDAR 70 and recommended new catch levels that would end overfishing of Gulf greater amberjack under the current allocation, on the current rebuilding timeline, and allow harvest to increase over time. However, because these catch recommendations assumed status quo sector allocation, the Council requested that the SEFSC provide alternative catch level projections based on sector allocation alternatives that used MRIP-FES data and several different time series: the same time series used in Amendment 30A (1981–2004); a time series that begins when commercial greater amberjack landings were identified by species and ends prior to the implementation of the current sector allocations, sector catch limits, and AMs (1993–2007); and a time series that begins when commercial greater amberjack landings were identified by species and ends with the most recent data available at the time the alternatives were developed (1993–2019). All of the resulting catch limits represent a substantial reduction in the allowable harvest when compared to the current OFL and ABC.

Actions Contained in Amendment 54

For Gulf greater amberjack, Amendment 54 would revise the OFL, ABC, sector allocations, and sector ACLs and ACTs. As explained above, the current catch limits were derived in part using MRIP-CHTS data and the proposed catch limits were derived in part using MRIP-FES data.

OFL and ABC

As previously explained, the current OFL and ABC for Gulf greater amberjack of 2,167,000 lb (982,935 kg) and 1,794,000 lb (813,745 kg), respectively. The catch levels recommended by the SSC would increase the allowable

harvest each year through the end of the rebuilding plan in 2027. However, the Council determined that because the greater amberjack stock has not rebuilt as expected under the current and previous rebuilding plans a more cautious approach is necessary. Therefore, Amendment 54 would specify a constant catch OFL and ABC. The new OFL would be 2,033,000 lb (922,153 kg). The new ABC would be 505,000 lb (229,064 kg).

ACLs and Sector Allocations

The current sector allocation of the stock ACL (equal to the ABC) is 27 percent to the commercial sector and 73 percent to the recreational sector. The current ACLs for Gulf greater amberjack are 484,380 lb (219,711 kg) for the commercial sector and 1,309,620 lb (594,034 kg) for the recreational sector.

The Council considered several sector allocation alternatives: maintaining the current allocation percentages, and using the various time series reviewed by the SSC to adjust the allocation to reflect the most recent understanding of historical landings. The Council recognized that all of these alternatives are reasonably calculated to promote conservation of the greater amberjack stock because they would modify the allowable harvest consistent with the result of SEDAR 70 and the SSC's recommendations, which is expected to allow the stock to rebuild by 2027. In considering the fairness and equity of the allocation alternatives, the Council recognized that maintaining the current percentages would disproportionately impact on the recreational sector given the transition to MRIP-FES and that maintaining the current time series updated with MRIP-FES data would disproportionately impact the commercial sector by failing to account for the fact that commercial landing of greater amberjack prior to 1993 may not have been properly identified. The Council decided to adjust the allocation using the 1993–2019 time series because this represents the longest time series during which commercial greater amberjack landings have been identified by species. Therefore, Amendment 54 would revise the Gulf greater amberjack sector allocation to 20 percent commercial and 80 percent recreational, and set the commercial ACL at 101,000

lb (45,813 kg) and the recreational ACL at 404,000 lb (183,251 kg).

ACTs

The current ACTs are 421,411 (191,149 kg) for the commercial sector (13 percent buffer) and 1,086,985 lb (493,048 kg) for the recreational sector (17 percent buffer). Amendment 54 would update the calculation for determining the ACTs using the Council's ACL/ACT Control Rule for years 2016–2019. Under this control rule, the calculated ACT buffer commercial sector buffer is reduced to 7 percent and the buffer for the recreational sector remains at 17 percent. The proposed commercial ACT is 93,930 lb (42,606 kg) and the proposed recreational ACT is 335,320 lb (152,099 kg).

Proposed Rule for Amendment 54

A proposed rule to implement Amendment 54 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council has submitted Amendment 54 for Secretarial review, approval, and implementation. Comments on Amendment 54 must be received by May 1, 2023. Comments received during the respective comment periods, whether specifically directed to Amendment 54 or the proposed rule will be considered by NMFS in the decision to approve, disapprove, or partially approve Amendment 54. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: February 24, 2023.

Kelly Denit,

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

[FR Doc. 2023–04219 Filed 3–1–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 88, No. 41

Thursday, March 2, 2023

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

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 3, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Specified Risk Materials.

OMB Control Number: 0583–0129.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) The statutes mandate that FSIS protect the public by ensuring that meat products are safe, wholesome, and properly labeled and packaged. FSIS requires that official establishments that slaughter cattle and or process carcasses or parts of cattle develop written procedures for the removal, segregation, and disposition of specified risk materials (SRMs). FSIS requires that establishments maintain daily records sufficient to document the implementation and monitoring of their procedures for the removal, segregation, and disposition of SRMs, and any corrective actions taken to ensure that such procedures are effective.

Need and Use of the Information: FSIS will collect information from establishments to ensure meat and meat products distributed in commerce for use as human food do not contain SMRs.

Description of Respondents: Business or other for-profit.

Number of Respondents: 3,512.

Frequency of Responses:

Recordkeeping; Reporting: On occasion.

Total Burden Hours: 123,916.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–04329 Filed 3–1–23; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2023–0015]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Cooperative Agricultural Pest Survey

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the Cooperative Agricultural Pest Survey.

DATES: We will consider all comments that we receive on or before May 1, 2023.

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

- *Federal eRulemaking Portal:* Go to www.regulations.gov. Enter APHIS–2023–0015 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2023–0015, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

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

FOR FURTHER INFORMATION CONTACT: For information on the Cooperative Agricultural Pest Survey, contact Mr. John Crowe, National Policy Manager for Pest Detection, Plant Protection and Quarantine, APHIS, 4700 River Road, Riverdale, MD 20737; (301) 851–2108; john.f.crowe@usda.gov. For information on the information collection reporting process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483; joseph.moxey@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Cooperative Agricultural Pest Survey.

OMB Control Number: 0579–0010.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized, either independently or in cooperation with the States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests and noxious weeds that are new to or not widely distributed within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS).

To carry out this mission, APHIS' Plant Protection and Quarantine (PPQ) program has joined forces with the States and other agencies to create a program called the Cooperative Agricultural Pest Survey (CAPS). The CAPS program coordinates efforts through cooperative agreements with the States and other agencies to collect and manage data on plant pests, noxious weeds, and biological control agents, which may be used to control plant pests or noxious weeds.

This program allows the States and PPQ to conduct surveillance activities to detect and measure the presence of exotic plant pests and weeds and to input surveillance data into a uniform national system. Among other things, this allows APHIS to obtain a more comprehensive picture of plant pest conditions in the United States.

The CAPS program involves certain information collection activities, such as cooperative agreements with workplans and various financial and disclosure forms associated with developing the agreement, pest detection surveys with data entry, and a form for determination of specimens.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection

technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.259 hours per response.

Respondents: State, university, and Tribal cooperators participating in CAPS.

Estimated annual number of respondents: 55.

Estimated annual number of responses per respondent: 258.

Estimated annual number of responses: 14,176.

Estimated total annual burden on respondents: 3,669 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 27th day of February 2023.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023-04337 Filed 3-1-23; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on Contaminants in Food

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S. Codex Office is sponsoring a public meeting on March 27, 2023, from 1:00 p.m. to 4:00 p.m. EDT. The objective of the public meeting is to provide information and receive public comments on agenda items and draft U.S. positions to be discussed at the 16th Session of the Codex Committee on Contaminants in Foods (CCCF) of the Codex Alimentarius Commission, in Utrecht, Netherlands on April 18–21 (in person) and April 26, 2023 (virtual report adoption). The U.S. Manager for Codex Alimentarius and the Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 16th Session of the CCCF and to address items on the agenda.

DATES: The public meeting is scheduled for March 27, 2023, from 1:00 p.m. to 4:00 p.m. EDT via Video Teleconference only.

ADDRESSES: Documents related to the 16th Session of the CCCF will be accessible via the internet at the following address: <https://www.fao.org/fao-who-codexalimentarius/meetings/detail/en/?meeting=CCCF&session=16>.

Dr. Lauren Posnick Robin, U.S. Delegate to the 16th Session of the CCCF, invites interested U.S. parties to submit their comments electronically to the following email address: Quynh-Anh Nguyen, quynh-anh.nguyen@fda.hhs.gov. Emailed comments should state in the title that they relate to activities of the 16th Session of the CCCF.

Registration: Attendees may register to attend the public meeting here: <https://fda.zoomgov.com/meeting/register/vJltf-qrrTotHHFHSSnbirJ1PZMFJrvaoUI>.

After registering, you will receive a confirmation email containing information about joining the meeting.

For further information about the 16th session of CCCF, contact U.S. Delegate, Dr. Lauren Posnick Robin, lauren.robin@fda.hhs.gov.

For further Information about the public meeting, contact: U.S. Codex Office, uscodex@usda.gov, or Quynh-Anh Nguyen, quynh-anh.nguyen@fda.hhs.gov, Phone (240) 402-2028.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Codex Committee on Contaminants in Foods (CCCF) is responsible for:

(a) Establishing or endorsing permitted maximum levels and where necessary, revising existing guideline levels, for contaminants and naturally occurring toxicants in food and feed;

(b) Preparing priority lists of contaminants and naturally occurring toxicants for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives (JEFCA).

(c) Considering and elaborating methods of analysis and sampling for the determination of contaminants and

naturally occurring toxicants in food and feed;

(d) Considering and elaborating standards or codes of practice for related subjects; and

(e) Considering other matters assigned to it by the Commission in relation to contaminants and naturally occurring toxicants in food and feed.

The Committee is hosted by the Netherlands. The United States attends the CCCF as a member country of Codex.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 16th Session of the CCCF will be discussed during the public meeting:

- Matters referred to CCCF by the Codex Alimentarius Commission and/or its subsidiary bodies.

- Matters of interest arising from FAO and WHO (including JECFA).

- Matters of interest arising from other international organizations.

- Maximum levels for lead in certain food categories.

- Code of practice for prevention and reduction of mycotoxin contamination in cassava and cassava-based products.

- Sampling plans for total aflatoxins in certain cereals and cereal-based products including foods for infants and young children.

- Maximum level for total aflatoxins in ready-to-eat peanuts and associated sampling plan.

- Maximum levels for total aflatoxins and ochratoxin A in nutmeg, dried chili and paprika, ginger, pepper and turmeric and associated sampling plans.

- Discussion Paper on Ciguatoxins.

- Discussion Paper on Pyrrolizidine alkaloids.

- Guidance on data analysis for development of maximum levels and for improved data collection.

- Forward work-plan for CCCF.

- Review of staple food-contaminant combinations for future work of CCCF.

- Review of Codex standards for contaminants.

- Follow-up Work to the Outcomes of JECFA Evaluations and FAO/WHO Expert Consultations.

- Priority list of contaminants and naturally occurring toxicants proposed for evaluation by JECFA.

- Other business and future work.

Public Meeting

At the March 27, 2023 public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to quynh-anh.nguyen@fda.hhs.gov.

fda.hhs.gov. Emailed comments should state in the title that they relate to activities of the 16th Session of the CCCF.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA Codex web page located at: <http://www.usda.gov/codex>, a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at <https://www.usda.gov/oascr/filing-program-discrimination-complaint-usda-customer>, or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email. Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250-9410; Fax: (202) 690-7442; Email: program.intake@usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

Done at Washington, DC, on February 24, 2023.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2023-04236 Filed 3-1-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket #: RUS-22-ELECTRIC-0059]

Notice of Funding Opportunity (NOFO) for Section 313A Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes for Fiscal Year (FY) 2023

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Funding Opportunity (NOFO).

SUMMARY: The Rural Utilities Service (RUS or the Agency), a Rural Development agency of the United States Department of Agriculture (USDA), announces the acceptance of applications under the Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes Program (the 313A Program) for Fiscal Year (FY) 2023. This notice is being issued in order to allow applicants sufficient time to prepare and submit their applications and give the Agency time to process applications within FY 2023. Based on FY 2023 appropriated funding, the Agency announces that \$900 million will be available for FY 2023. The purpose of the 313A Program is to guarantee loans to selected applicants as a Guaranteed Lender. Successful applications will be selected by the Agency for funding and subsequently awarded to the extent that funding may ultimately be made available through apportionment. All applicants are responsible for any expenses incurred in developing their applications.

DATES: Completed applications must be electronically received by RUS no later than 5:00 p.m. Eastern Time (ET) May 1, 2023. Applicants intending to submit applications must have their applications received by the closing deadline.

ADDRESSES: Completed applications must be submitted electronically to Amy McWilliams, Program Advisor, Electric Program, RUS at amy.mcwilliams@usda.gov.

FOR FURTHER INFORMATION CONTACT: Amy McWilliams, Program Advisor, Rural Utilities Service, USDA, 1400 Independence Avenue SW, Mail Stop 1560, Room 4121-South, Washington, DC 20250-1560, by email at amy.mcwilliams@usda.gov, or call (202) 205-8663. Persons with disabilities that require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name:
Rural Utilities Service.

Funding Opportunity Title:
Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes for Fiscal Year (FY) 2023.

Announcement Type: Notice of Funding Opportunity.

Assistance Listing: 10.850.

Dates: Completed applications must be received by RUS no later than 5:00 p.m. Eastern Time (ET) May 1, 2023.

Rural Development Key Priorities: The Agency encourages applicants to consider projects that will advance the following key priorities:

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

A. Program Description

1. *Purpose of the Program.* The purpose of the 313A Program is to guarantee loans to selected applicants (each referred to as the “Guaranteed Lender” in this NOFO). The proceeds of the guaranteed loans are to be used (a) to make utility infrastructure loans or (b) to refinance bonds or notes issued for such purposes to a borrower that has at any time received, or is eligible to receive, a loan under the Rural Electrification Act of 1936, as amended (RE Act). Each applicant must provide a statement on how it proposes to use the proceeds of the guaranteed bonds, and the financial benefit it anticipates deriving from participating in the program pursuant to 7 CFR 1720.6(a)(3), or its equivalent in any subsequent regulation. Objectives may include, but are not limited to the annual savings to be realized by the ultimate borrower(s) as a result of the applicant’s use of lower cost loan funds provided by the Federal Financing Bank (FFB) and guaranteed by RUS.

The Agriculture Improvement Act of 2018 (2018 Farm Bill) modified the 313A Program by amending the RE Act to allow proceeds of guaranteed bonds awarded under this NOFO to be used to make broadband loans, or to refinance broadband loans made to a borrower that has received, or is eligible to receive, a broadband loan under title VI of the RE Act.

The 2018 Farm Bill has also modified the 313A Program to allow the proceeds

of guaranteed loans made under this NOFO to be used by the Guaranteed Lender to fund projects for the generation of electricity.

2. *Statutory and Regulatory Authority.* The 313A Program is authorized by section 313A of the Rural Electrification Act of 1936, as amended (7 U.S.C. 940c–1), and is implemented by regulations located at 7 CFR part 1720. The Administrator of RUS (the Administrator) has been delegated responsibility for administering the 313A Program.

3. *Definitions.* The definitions applicable to this NOFO are currently published at 7 CFR 1720.3.

4. *Application of Awards.* RUS will review and evaluate applications received in response to this NOFO based on the regulations at 7 CFR 1720.7, and as provided in this NOFO.

B. Federal Award Information

Type of Awards: Guaranteed Loans.
Fiscal Year Funds: FY 2023.

Available Funds: \$900,000,000. Should additional funding become available this fiscal year, RUS reserves the right to increase the total funds available under this notice.

Award Amounts: RUS anticipates making multiple guarantees under this NOFO. The number, amount, and terms of awards under this NOFO will depend in part on the number of eligible applications and the amount of funds requested. In determining whether to make an award, RUS will take overall program policy objectives into account.

Anticipated Award Date: Awards will be made on or before September 29, 2023, but no earlier than May 1, 2023.

Performance Period: The RE Act provides that loans guaranteed under this program cannot exceed 30 years in length.

Renewal or Supplemental Awards: N/A.

Type of Assistance Instrument: The type of assistance is in the form of an RUS FFB Guaranteed Loan and is supported by a perfected lien on collateral sufficient to provide for full loan security.

C. Eligibility Information

1. *Eligible Applicants.* To be eligible to participate in the 313A Program or receive a guarantee, a Guaranteed Lender must meet the eligibility criteria specified in 7 CFR 1720.5.

2. *Cost Sharing or Matching.* There is no requirement for cost sharing or matching; however, borrowers must provide sufficient unencumbered collateral to secure loan guarantees made under this program.

3. *Other.* Applications will only be accepted from lenders that serve rural

areas as defined in 7 CFR 1710.2(a). For initial loans to a borrower made after June 18, 2008, the “rural” character of an area is determined at the time of the initial loan to furnish or improve service in the area.

D. Application and Submission Information

1. Address to Request Application Package.

All applications must be prepared and submitted in accordance with this NOFO and

7 CFR part 1720 (<https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XVII/part-1720>).

2. Content and Form of Application Submission.

In addition to the required application specified in 7 CFR 1720.6, all applicants must submit the following additional required documents and materials:

a. Restrictions on Lobbying:

Applicants must comply with the requirements relating to restrictions on lobbying activities. (See 2 CFR part 418.) This form is available at <https://www.gsa.gov/forms-library/disclosure-lobbying-activities>.

b. Uniform Relocation Act assurance statement:

Applicants must comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. (See 7 CFR 1710.124.) This form is available at <https://www.rd.usda.gov/resources/directives/electric-sample-documents>.

c. Federal debt delinquency requirements:

This report indicates whether the applicants are delinquent on any Federal debt (See 7 CFR 1710.126 and 7 CFR 1710.501(a)(13)). This form (the Federal Debt Delinquency Certification) is available at <https://www.rd.usda.gov/directives/federal-debt-delinquency-certification>.

d. Form RD 400–4, Assurance Agreement:

Applicants must submit a non-discrimination assurance commitment to comply with certain regulations on non-discrimination in program services and benefits and on equal employment opportunity as set forth in 7 CFR part 15, and 12 CFR part 202, 7 CFR part 1901, subpart E, DR 4300–003, DR 4330–0300, DR 4330–005. This form is available at <https://www.rd.usda.gov/directives/compliance-assurance-rd-form-400-4-nov-2017>.

e. Articles of Incorporation and Bylaws:

See 7 CFR 1710.501(b)(1). These are required if either document has been amended since the last loan application

was submitted to RUS, or if this is the applicant's first application for a loan under the RE Act.

f. Pro forma financial statements including cash flow projections and assumptions:

Each applicant must include five-year pro forma income statements, balance sheets and cash flow projections or business plans and clearly state the assumptions that underlie the projections, demonstrating that there is reasonable assurance that the applicant will be able to repay the guaranteed loan in accordance with its terms (See 7 CFR 1720.6(a)(4)).

g. Pending litigation statement:

A statement from the applicant's counsel listing any pending litigation, including levels of related insurance coverage and the potential effect on the applicant, must be submitted to RUS.

3. System for Awards Management and Unique Entity Identifier.

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

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

c. Applicant must ensure it completes the Financial Assistance General Certifications and Representations in SAM.

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

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

4. Submission Dates and Times. To be considered, applications must be submitted no later than 5:00 p.m. Eastern Time (ET) May 1, 2023.

5. Funding Restrictions.

Funds from loans guaranteed under this program may only be used in accordance with this notice, the program regulations and the RE Act.

6. Other Submission Requirements. Such other application documents and submissions deemed necessary by the Secretary for evaluation of applications.

E. Application Review Information

1. Criteria.

Each application will be reviewed by the Secretary to determine whether it is eligible under 7 CFR 1720.5, the information required under 7 CFR 1720.6 is complete, and the proposed guaranteed bond complies with applicable statutes and regulations. The Secretary can at any time reject an application that fails to meet these requirements.

2. Review and Selection Process.

Applications will be subject to a substantive review, on a competitive basis, by the Administrator based upon the evaluation factors listed in 7 CFR 1720.7(b). The Administrator may limit the number of guarantees made to a maximum of five per year, to ensure a sufficient examination is conducted of applicant requests. RUS will notify the applicant in writing of the Administrator's approval or denial of an application. Approvals for guarantees will be conditioned upon compliance with 7 CFR 1720.4 and 7 CFR 1720.6. The Administrator reserves the discretion to approve an application for an amount that was less than requested.

Before a guarantee decision is made by the Administrator, the Administrator shall request that FFB review the rating agency determination required by 7 CFR 1720.5(b)(2) as to whether the bond or note to be issued would receive an investment grade rating without regard to the guarantee.

F. Federal Award Administration Information

1. Federal Award Notices

RUS will send a commitment letter to an applicant once the guaranteed loan has been approved. Applicants must accept and commit to all terms and conditions of the guaranteed loan which are requested by RUS and FFB before the loan guarantee award can be obligated.

The requirements under 7 CFR 1720.8 must be met by the applicant prior to the endorsement of a guarantee by the Administrator. Each Guaranteed Lender will be required to enter into a Guarantee Agreement with RUS that contains the provisions described in 7 CFR 1720.8 (Issuance of the Guarantee), 7 CFR 1720.9 (Guarantee Agreement),

and 7 CFR 1720.12 (Reporting Requirements). The Guarantee Agreement will also obligate the Guaranteed Lender to pay, on an annual basis, a guarantee fee equal to 30 basis points (0.30 percent) of the outstanding principal amount of the guaranteed loan (See 7 CFR 1720.10).

2. Administrative and National Policy Requirements-

Applicants must accept and commit to all terms and conditions of the guaranteed loan which are requested by RUS and FFB as follows:

a. Compliance conditions.

In addition to the standard conditions placed on the 313A Program or conditions requested by RUS to ensure loan security and statutory compliance, applicants must comply with the following conditions:

(1) Each Guaranteed Lender selected under the 313A Program will be required to post collateral for the benefit of RUS in an amount at least equal to the aggregate amount of loan advances made to the Guaranteed Lender under the 313A Program.

(2) The pledged collateral (the Pledged Collateral) shall consist of outstanding notes or bonds payable to the Guaranteed Lender (the Eligible Instruments) and shall be placed on deposit with a collateral agent for the benefit of RUS. To be deemed Eligible Instruments that can be pledged as collateral, the notes or bonds to be pledged (i) cannot be classified as non-performing, impaired, or restructured under generally accepted accounting principles; special mention loans as defined by the Office of the Comptroller of the Currency; or any other elevated risk categories used by the Guaranteed Lender, (ii) must be free and clear of all liens other than the lien created for the benefit of RUS, (iii) cannot be comprised of more than 30 percent of bonds or notes from generation and transmission borrowers, (iv) cannot have more than 5 percent of bonds and notes be from any one particular borrower and (v) cannot be unsecured notes.

(3) The Guaranteed Lender will be required to place a lien on the Pledged Collateral in favor of RUS (as secured party) at the time that the Pledged Collateral is deposited with the collateral agent. RUS will have the right, in its sole discretion, within 14 business days of the Guaranteed Lender's written request to pledge Pledged Collateral, to reject any of the Pledged Instruments and require the Guaranteed Lender to substitute other Pledged Instruments as collateral with the collateral agent. Prior to receiving any advances under the 313A Program, the Guaranteed Lender

will be required to enter into a pledge agreement, satisfactory to RUS, with a banking institution serving as collateral agent.

(4) The Guaranteed Lender will be required to agree not to take any action that would have the effect of reducing the value of the pledged collateral below the level described above.

(5) Applicants must certify to the RUS, the portion of their loan portfolio that is:

- i. Refinanced RUS debt;
- ii. Debt of borrowers for whom both RUS and the applicants have outstanding loans;
- and
- iii. Debt of borrowers for whom both RUS and the applicant have outstanding concurrent loans pursuant to Section 307 of the RE Act, and the amount of Eligible Loans.

b. *Schedule of Loan Repayment:* The amortization method for the repayment of the guaranteed loan shall be repaid by the Guaranteed Lender: (i) in periodic installments of principal and interest, (ii) in periodic installments of interest and, at the end of the term of the bond or note, as applicable, by the repayment of the outstanding principal, or (iii) through a combination of the methods described in (i) and (ii) above. The amortization method will be agreed to by RUS and the Guaranteed Lender.

3. Compliance with Federal Laws.

Applicants must comply with all applicable Federal laws and regulations.

a. This loan guarantee will be subject to the provisions contained in the appropriations act for FY 2023, once enacted by Congress. Prior appropriations acts have included prohibitions against RUS making awards to applicants having corporate felony convictions within the past 24 months or to applicants having corporate federal tax delinquencies. It is possible that such provisions will be included in the appropriations act for FY 2023.

b. An authorized official within your organization must execute, date, and return the loan commitment letter to RUS within, no later than 14 calendar days from the date of the letter, otherwise the commitment will be voided.

4. Reporting.

Guaranteed Lenders are required to comply with the financial reporting requirements and Pledged Collateral review and certification requirements set forth in 7 CFR 1720.12.

G. Federal Awarding Agency Contact(s)

For general questions about this announcement, please contact your USDA Rural Development contact

provided in the **ADDRESSES** section of this notice.

H. Other Information

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), OMB must approve all “collection of information” as a requirement for “answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *” (44 U.S.C. 3502(3)(A)). RUS has concluded that the reporting requirements contained in this funding announcement will involve less than 10 persons and do not require approval under the provisions of the Act.

National Environmental Policy Act

In accordance with 7 CFR 1970.53(a)(7), any proceeds to be used to refinance bonds or notes previously issued by the Guaranteed Lender for RE Act purposes are classified as categorical exclusions. However, for any new projects using 313A Program funds, applicants must consult with RUS and comply with the Agency regulations at 7 CFR part 1970.

Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25 (<https://www.ecfr.gov/current/title-2/part-25>), must be registered in SAM and have a UEI number as stated in Section D.3 of this notice. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170 (<https://www.ecfr.gov/current/title-2/part-170>).

Civil Rights Act

All loan guarantees made under this notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A (eCFRT:: 7 CFR part 15 subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of title VI of the Civil Rights Act of 1964) and section 504 of the Rehabilitation Act of 1973, title VIII of the Civil Rights Act of 1968, title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

Nondiscrimination Statement

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions

participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident. Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form, which can be obtained online at <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation.

The completed AD-3027 form or letter must be submitted to USDA by:

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

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

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

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Andrew Berke,

Administrator, Rural Utilities Service, USDA Rural Development.

[FR Doc. 2023-04222 Filed 3-1-23; 8:45 am]

BILLING CODE 3410-15-P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD**Agency Information Collection Activities; Proposals, Submissions, and Approvals: CSB Accidental Release Reporting Form**

AGENCY: U.S. Chemical Safety and Hazard Investigation Board (CSB).

ACTION: 60-Day notice of submission of information collection request (ICR) renewal approval and request for comments.

SUMMARY: The proposed information collection request (ICR) renewal described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. The Chemical Safety Board (CSB) is soliciting public comments on this proposed collection renewal.

DATES: Comments should be sent no later than 5 p.m. EDT on Friday, April 28, 2023.

ADDRESSES: Requests for information, including copies of the information collection proposed and supporting documentation should be directed to: Tamara Qureshi, Assistant General Counsel, U.S. Chemical Safety and Hazard Investigation Board, 1750 Pennsylvania Ave. NW, Suite 910, Washington, DC, 20006 or at report@csb.gov.

FOR FURTHER INFORMATION CONTACT: Tamara Qureshi, telephone: 202–261–7600, email: report@csb.gov.

SUPPLEMENTARY INFORMATION:

Title: CSB Accidental Release Reporting Form.

OMB Control Number: 3301–0001.

Expiration Date of Approval: 04–30–2023.

Type of Request: Renewal.

Abstract

The enabling statute of the Chemical Safety and Hazard Investigation Board (CSB) provides that the CSB shall establish by regulation requirements binding on persons for reporting accidental releases into the ambient air subject to the Board's investigative jurisdiction. The CSB published its Accidental Reporting Rule (40 CFR part 1604) on February 21, 2020. This final rule is intended to satisfy the CSB's statutory requirement. The rule describes when an owner or operator is required to file a report of an accidental release, and the required content of such a report. The purpose of the rule is to ensure that the CSB receives rapid, accurate reports of any accidental release that meets established statutory criteria.

In conjunction with the Accidental Release Reporting Rule, the CSB also developed a form to capture the information necessary to initially assess an accidental release. The form is located on CSB's website: <https://www.csb.gov/news/incident-report-rule-form/>.

Type of Respondents

The vast majority of respondents will be private sector businesses involved in the production, storage or handling of regulated substances or extremely hazardous substances.

Estimate Annual Number of Respondents: 100.

Frequency of Use

On occasion. Most respondents will only submit a response if an accidental release within the scope of the rule occurs during a given year. For the vast majority of potential respondents, the frequency of responses will likely be “none” in a given year.

Small Businesses or Organizations Affected

No. At the time of the rulemaking, the CSB determined that the rule would not have an impact on businesses, including small businesses. Furthermore, there have been even less reports than originally predicted.

Estimated Number of Annual Responses: 100.

Estimated Average Burden Hours per Response: 0.25 hour. The CSB acknowledges that there may be additional burdens on the public that are not quantifiable.

Estimated Total Annual Burden Hours: 25 hours.

Need for and Use of Information:

The CSB is required by law to issue an accidental release reporting rule. The CSB intends to use the information to learn of any accidental release within its jurisdiction and to plan how to respond to that accidental release.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on

respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: February 24, 2023.

Tamara Qureshi,

Assistant General Counsel, Chemical Safety and Hazard Investigation Board.

[FR Doc. 2023–04234 Filed 2–28–23; 8:45 am]

BILLING CODE 6350–01–P

COMMISSION ON CIVIL RIGHTS**Notice of Public Meeting of the South Dakota Advisory Committee to the U.S. Commission on Civil Rights**

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the South Dakota State Advisory Committee to the Commission will convene a business meeting on Monday, March 27, 2023, at 1:00 p.m. Central Time. The purpose of the business meeting is to discuss the draft report for the Committee's topic on voting rights and voter access.

DATES: Monday, March 27, 2023, at 1:00 p.m. Central Time.

ADDRESSES: Meetings will be held via Zoom.

Meeting Link (Audio/Visual): <https://tinyurl.com/mrxtjs96>; password, if needed: USCCR–SD.

Join Phone (Audio Only): 1–551–285–1373; Meeting ID: 160 139 2841#.

FOR FURTHER INFORMATION CONTACT:

Email Mallory Trachtenberg, Designated Federal Officer, at mtrachtenberg@usccr.gov or 202–809–9618.

SUPPLEMENTARY INFORMATION: The meetings are available to the public through the web link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and

providing the Service with conference details found through registering at the web link above. To request other accommodations, please email mtrachtenberg@usccr.gov at least 10 business days prior to the meeting for which accommodations are requested.

Members of the public are entitled to make comments during the open period at the end of each meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following each meeting. Written comments may be emailed to Mallory Trachtenberg at mtrachtenberg@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit at (202) 809-9618. Records and documents discussed during meetings will be available for public viewing as they become available at www.facadatabase.gov. Persons interested in the work of this advisory committee are advised to go to the Commission's website, www.usccr.gov, or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

- I. Meeting Announcement and Roll Call
- II. Welcome
- III. Discussion on Draft Report: Voting Rights and Voter Access
- IV. Public Comment
- V. Adjournment

Dated: February 24, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-04243 Filed 3-1-23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the South Dakota Advisory Committee to the U.S. Commission on Civil Rights; Revision to Time and Agenda Item

AGENCY: Commission on Civil Rights.

ACTION: Notice: revision to meeting time and agenda item.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** of Tuesday, January 10, 2023, concerning meetings of the South Dakota Advisory Committee. The notice is in FR Doc. 2023-00230, in the first and second columns of page 1348. The document contains a meeting time that is now revised. Also, in the second column, Agenda item three should be revised to read: Discussion: Report on Voting Rights and Voter Access.

DATES: March 13, 2023, Monday at 1:00 p.m. (CT) and April 10, 2023, Monday at 1:00 p.m. (CT)

ADDRESSES: Meetings will be held via the same Zoom information.

Meeting Link (Audio/Visual): <https://tinyurl.com/3stmv9et>; password, if needed: USCCR-SD.

Join by Phone (Audio Only): 1-551-285-1373; Meeting ID: 160 729 5158#.

FOR FURTHER INFORMATION CONTACT:

Mallory Trachtenberg, at mtrachtenberg@usccr.gov or by phone at 202-809-9618.

Dated: February 24, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-04246 Filed 3-1-23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Minnesota Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Minnesota Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 1:00 p.m. CT on Thursday, March 23, 2023, to discuss the Committee's next topic of study.

DATES: The meeting will take place on Thursday, March 23, 2023, from 1:00 p.m.-2:00 p.m. CT.

Registration Link (Audio/Visual): <https://www.zoomgov.com/j/1612943387>.

Telephone (Audio Only): Dial (833) 435-1820 USA Toll Free; Meeting ID: 161 294 3387.

FOR FURTHER INFORMATION CONTACT:

David Barreras, DFO, at dbarreras@usccr.gov or (202) 656-8937.

SUPPLEMENTARY INFORMATION:

Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls

they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captions will be provided for individuals who are deaf, deafblind, or hard of hearing. To request additional accommodations, please email dbarreras@usccr.gov at least 10 business days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at lschiller@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 809-9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via www.facadatabase.gov under the Commission on Civil Rights, Minnesota Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

- I. Welcome & Roll Call
- II. Discussion: Civil Rights Concerns in Minnesota
- III. Public Comment
- IV. Next Steps
- V. Adjournment

Dated: February 24, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-04247 Filed 3-1-23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wyoming Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Wyoming Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business

meeting via Zoom at 4:00 p.m. MT on Thursday, March 2, 2023. The purpose of the meeting is to approve the panelists for the Committee's first briefing on housing discrimination in the state.

DATES: The meeting will take place on Thursday, March 2, 2023, from 4:00 p.m.—5:30 p.m. MT.

Registration Link (Audio/Visual):
<https://www.zoomgov.com/j/1617970826>.

Telephone (Audio Only): Dial (833) 435-1820 USA Toll Free; Meeting ID: 161 797 0826.

FOR FURTHER INFORMATION CONTACT:
 Kayla Fajota, DFO, at kfajota@usccr.gov or (434) 515-2395.

SUPPLEMENTARY INFORMATION:

Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captions will be provided for individuals who are deaf, deafblind, or hard of hearing. To request additional accommodations, please email kfajota@usccr.gov at least 10 business days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at lschiller@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 809-9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via www.facadatabase.gov under the Commission on Civil Rights, Wyoming Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call

II. Discussion: Panel Planning

III. Public Comment

IV. Next Steps

V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102-3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting because of the exceptional circumstances of final preparations for the upcoming scheduled Committee briefing.

Dated: February 24, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-04244 Filed 3-1-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S-210-2022]

Approval of Expansion of Subzone 196A, TTI, Inc., Fort Worth, Texas

On November 30, 2022, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by Alliance Corridor, Inc., grantee of FTZ 196, requesting an expansion of Subzone 196A subject to the existing activation limit of FTZ 196, on behalf of TTI, Inc., in Fort Worth, Texas.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (87 FR 74401-74402, December 5, 2022). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to expand Subzone 196A was approved on February 27, 2023, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 196's 2,000-acre activation limit.

Dated: February 27, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023-04300 Filed 3-1-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-880]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2020-2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that HiSteel Co., Ltd. (HiSteel) made sales of subject merchandise at less than normal value during the period of review (POR), September 1, 2020, through August 31, 2021.

DATES: Applicable March 2, 2023.

FOR FURTHER INFORMATION CONTACT:

Alice Maldonado, 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) 482-4682.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2022, Commerce published the *Preliminary Results* and invited interested parties to comment.¹ In October 2022, HiSteel submitted a case brief.² In the same month, Nucor Tubular Products Inc. (Nucor) submitted a rebuttal brief.³ For a description of the events that occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.⁴

Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

¹ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review; 2020-2021*, 87 FR 53725 (September 1, 2022) (*Preliminary Results*).

² In October 2022, HiSteel filed a redacted brief based on Commerce's request to remove untimely new factual information. See HiSteel's Letter, "Redacted Case Brief of HiSteel Co. Ltd.," dated October 24, 2022.

³ In October 2022, Nucor filed a redacted rebuttal brief based on Commerce's request to remove untimely new factual information. See Nucor's Letter, "Nucor Tubular's Rebuttal Brief Resubmission," dated October 24, 2022.

⁴ See Memorandum, "Issues and Decision Memorandum for the Final Results of the 2020-2021 Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea," dated concurrently with, and hereby adopted by, these results (Issues and Decision Memorandum).

Scope of the Order

The products covered by the order are certain heavy walled rectangular welded steel pipes and tubes from the Republic of Korea. Products subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item subheading 7306.61.1000. Subject merchandise may also be classified under 7306.61.3000. Although the HTSUS subheadings and ASTM specification are provided for convenience and for customs purposes, the written product description remains dispositive.⁵

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. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results*, we made no changes to the preliminary weighted-average margin calculations for HiSteel.⁶

Final Results of Review

We are assigning the following weighted-average dumping margin to the firm listed below for the period September 1, 2020, through August 31, 2021:

Producer/exporter	Weighted-average dumping margin (percent)
HiSteel Co., Ltd	2.80

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), where the respondent did not report entered value, we calculated the entered value in order to calculate the assessment rate. Where 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 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 future deposits of estimated duties, where applicable.⁷

Commerce's "automatic assessment" will apply to entries of subject merchandise during the POR produced by HiSteel in these final results of review for which HiSteel 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 each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this

proceeding; (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, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.24 percent, the all-others rate established in the LTFV investigation.⁸ 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 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 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), 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

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 24, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of Issue
 - Comment: Differential Pricing

⁵ For a full description of the scope of the order, see Issues and Decision Memorandum.

⁶ See Issues and Decision Memorandum.

⁷ See section 751(a)(2)(C) of the Act.

⁸ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Antidumping Duty Orders*, 81 FR 62865 (September 13, 2016).

V. Recommendation

[FR Doc. 2023-04297 Filed 3-1-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-856-001]

Common Alloy Aluminum Sheet From Slovenia: Preliminary Results of Antidumping Duty Administrative Review; 2020-2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that Impol d.o.o. and Impol FT, d.o.o. (collectively, Impol), made sales of subject merchandise at less than normal value during the period of review (POR) October 15, 2020, through March 31, 2022. Interested parties are invited to comment on these preliminary results.

DATES: Applicable March 2, 2023.

FOR FURTHER INFORMATION CONTACT: Dennis McClure, 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) 482-5973.

SUPPLEMENTARY INFORMATION:**Background**

On April 27, 2021, Commerce published the antidumping duty order on common alloy aluminum sheet from Slovenia.¹ In accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act), Commerce is conducting an administrative review of the *Order*. On June 9, 2022, in accordance with 19 CFR 251.221(c)(1)(i), we initiated the administrative review of the *Order* covering Impol, the only company requested for review.² For a complete description of the events between the initiation of this review and these preliminary results, see the Preliminary Decision Memorandum.³

¹ See *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, India, Indonesia, Italy, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Antidumping Duty Orders*, 86 FR 22139 (April 27, 2021) (*Order*).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 35165 (June 9, 2022).

³ See Memorandum, "Common Alloy Aluminum Sheet from Slovenia: Decision Memorandum for the Preliminary Results of Antidumping Duty

Scope of the Order

The merchandise subject to the *Order* is common alloy aluminum sheet from Slovenia. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.⁴

Methodology

Commerce conducted this review in accordance with section 751(a) of the Act. We calculated export prices in accordance with section 772(a) of the Act. We calculated normal value in accordance with section 773 of the Act.

For a full description of the methodology underlying these preliminary results, see the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, the signed Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margin exists for the period October 15, 2020, through March 31, 2022:

Producer and/or exporter	Weighted-average dumping margin (percent)
Impol d.o.o./Impol FT, d.o.o. ⁵	5.42

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, 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. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this administrative review in the

Administrative Review; 2020-2022," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ *Id.* at "Scope of the Order."

⁵ The preliminary rate calculated for Impol applies to subject merchandise produced by Impol FT, d.o.o. and exported by either Impol FT, d.o.o. or Impol d.o.o.

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).

If Impol's weighted-average dumping margin is not *de minimis* (*i.e.*, less than 0.50 percent), upon completion of the final results, Commerce intends to calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those sales. Where we do not have entered values for all U.S. sales to a particular importer, we will calculate an importer-specific, per-unit assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total quantity of those sales.⁶ To determine whether an importer-specific, per-unit assessment rate is *de minimis*, in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. Where either Impol's weighted-average dumping margin is zero or *de minimis*, or an importer-specific *ad valorem* assessment rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.⁷ For entries of subject merchandise during the POR produced by Impol for which it did not know that the merchandise it sold to the intermediary (*e.g.*, reseller, trading company, or exporter) was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate⁸ if there is no rate for the intermediate company(ies) involved in the transaction.⁹

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 future deposits of estimated duties, where applicable.¹⁰

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise

⁶ See 19 CFR 351.212(b)(1).

⁷ See 19 CFR 352.106(c)(2); see also *Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012).

⁸ See *Order*.

⁹ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹⁰ See section 751(a)(2)(C) of the Act.

entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Impol will be equal to the weighted-average dumping margin established in the final results of this review (except, if that rate is *de minimis*, then the cash deposit rate will be zero); (2) for producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review or a prior segment of the proceeding but the producer is, then the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 13.43 percent, the all-others rate established in the less-than-fair-value investigation.¹¹ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure, Public Comment, and Opportunity To Request a Hearing

We intend to disclose the calculations performed for these preliminary results of review to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.¹² Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.¹³ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁴ Case and rebuttal briefs should be filed using ACCESS¹⁵ and must be served on interested parties.¹⁶ Commerce has temporarily modified certain of its requirements for serving documents containing business

proprietary information, until further notice.¹⁷

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. An electronically-filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues the party intends to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.¹⁸

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

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 duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: February 23, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

[FR Doc. 2023-04304 Filed 3-1-23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List

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

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482-4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the

¹¹ See Order, 86 FR at 22141.

¹² See 19 CFR 351.309(c)(1)(ii).

¹³ See 19 CFR 351.309(d)(1) and (2); see also *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006, 17007 (March 26, 2020).

¹⁴ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁵ See 19 CFR 351.303.

¹⁶ See 19 CFR 351.303(f).

¹⁷ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

¹⁸ See 19 CFR 351.310(c).

period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be “collapsed” (*i.e.*, treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.*, investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to

treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act

by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.¹ Section 773(e) of the Act states that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.” When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

Opportunity To Request a Review: Not later than the last day of March 2023,² interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

Antidumping Duty Proceedings

AUSTRALIA: Certain Uncoated Paper, A-602-807	3/1/22-2/28/23
BELGIUM: Acetone, A-423-814	3/1/22-2/28/23
BRAZIL: Certain Uncoated Paper, A-351-842	3/1/22-2/28/23
CANADA: Iron Construction Castings, A-122-503	3/1/22-2/28/23
FRANCE: Brass Sheet & Strip, A-427-602	3/1/22-2/28/23
GERMANY: Brass Sheet & Strip, A-428-602	3/1/22-2/28/23
INDIA: Granular Polytetrafluoroethylene Resin, A-533-899	9/2/21-2/28/23
INDIA: Large Diameter Welded Pipe, A-533-881	3/1/22-2/28/23
INDIA: Off-The-Road Tires, A-533-869	3/1/22-2/28/23
INDIA: Sulfanilic Acid, A-533-806	3/1/22-5/8/22
INDONESIA: Certain Uncoated Paper, A-560-828	3/1/22-2/28/23
ITALY: Brass Sheet & Strip, A-475-601	3/1/22-2/28/23
PORTUGAL: Certain Uncoated Paper, A-471-807	3/1/22-2/28/23
REPUBLIC OF KOREA: Acetone, A-580-899	3/1/22-2/28/23
RUSSIA: Granular Polytetrafluoroethylene Resin, A-821-829	9/2/21-2/28/23
RUSSIA: Silicon Metal, A-821-817	3/1/22-2/28/23
SOUTH AFRICA: Acetone, A-791-824	3/1/22-2/28/23
SOUTH AFRICA: Carbon and Alloy Steel Wire Rod, A-791-823	3/1/22-2/28/23

¹ See Trade Preferences Extension Act of 2015, Public Law 114-27, 129 Stat. 362 (2015).

² Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

TAIWAN: Light-Walled Rectangular Welded Carbon Steel Pipe and Tube, A-583-803	3/1/22-2/28/23
THAILAND: Circular Welded Carbon Steel Pipes and Tubes, A-549-502	3/1/22-2/28/23
THE PEOPLE'S REPUBLIC OF CHINA: Ammonium Sulfate, A-570-049	3/1/22-2/28/23
THE PEOPLE'S REPUBLIC OF CHINA: Amorphous Silica Fabric, A-570-038	3/1/22-2/28/23
THE PEOPLE'S REPUBLIC OF CHINA: Certain Biaxial Integral Geogrid Products, A-570-036	3/1/22-2/28/23
THE PEOPLE'S REPUBLIC OF CHINA: Certain Carbon and Alloy Steel Cut-To-Length Plate, A-570-047	3/1/22-2/28/23
THE PEOPLE'S REPUBLIC OF CHINA: Certain Corrosion Inhibitors, A-570-122	3/1/22-2/28/23
THE PEOPLE'S REPUBLIC OF CHINA: Certain Plastic Decorative Ribbon, A-570-075	3/1/22-2/28/23
THE PEOPLE'S REPUBLIC OF CHINA: Certain Uncoated Paper, A-570-022	3/1/22-2/28/23
THE PEOPLE'S REPUBLIC OF CHINA: Certain Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof, A-570-119	3/1/22-2/28/23
THE PEOPLE'S REPUBLIC OF CHINA: Circular Welded Austenitic Stainless Pressure Pipe, A-570-930	3/1/22-2/28/23
THE PEOPLE'S REPUBLIC OF CHINA: Difluoromethane (R-32), A-570-121	3/1/22-2/28/23
THE PEOPLE'S REPUBLIC OF CHINA: Glycine, A-570-836	3/1/22-2/28/23
THE PEOPLE'S REPUBLIC OF CHINA: Large Diameter Welded Pipe, A-570-077	3/1/22-2/28/23
THE PEOPLE'S REPUBLIC OF CHINA: Pentafluoroethane (R-125), A-570-137	8/17/21-2/28/23
THE PEOPLE'S REPUBLIC OF CHINA: Sodium Hexametaphosphate, A-570-908	3/1/22-2/28/23
THE PEOPLE'S REPUBLIC OF CHINA: Certain Tissue Paper Products, A-570-894	3/1/22-2/28/23
UKRAINE: Carbon and Alloy Steel Wire Rod, A-823-816	3/1/22-2/28/23

Countervailing Duty Proceedings

INDIA: Fine Denier Polyester Staple Fiber, C-533-876	1/1/22-12/31/22
INDIA: Granular Polytetrafluoroethylene Resin, C-533-900	7/6/21-12/31/22
INDIA: Large Diameter Welded Pipe, C-533-882	1/1/22-12/31/22
INDIA: Off-The-Road Tires, C-533-870	1/1/22-12/31/22
INDIA: Sulfanilic Acid, C-533-807	1/1/22-5/8/22
INDONESIA: Certain Uncoated Paper, C-560-829	1/1/22-12/31/22
IRAN: In-Shell Pistachios, C-507-501	1/1/22-12/31/22
RUSSIA: Granular Polytetrafluoroethylene Resin, C-821-830	7/6/21-12/31/22
THE PEOPLE'S REPUBLIC OF CHINA: Ammonium Sulfate, C-570-050	1/1/22-12/31/22
THE PEOPLE'S REPUBLIC OF CHINA: Amorphous Silica Fabric, C-570-039	1/1/22-12/31/22
THE PEOPLE'S REPUBLIC OF CHINA: Certain Biaxial Integral Geogrid Products, C-570-037	1/1/22-12/31/22
THE PEOPLE'S REPUBLIC OF CHINA: Certain Carbon and Alloy Steel Cut-To-Length Plate, C-570-048	1/1/22-12/31/22
THE PEOPLE'S REPUBLIC OF CHINA: Certain Corrosion Inhibitors, C-570-123	1/1/22-12/31/22
THE PEOPLE'S REPUBLIC OF CHINA: Certain Plastic Decorative Ribbon, C-570-076	1/1/22-12/31/22
THE PEOPLE'S REPUBLIC OF CHINA: Certain Uncoated Paper, C-570-023	1/1/22-12/31/22
THE PEOPLE'S REPUBLIC OF CHINA: Certain Vertical Shaft Engines Between 225CC and 999CC, and Parts Thereof, C-570-120	1/1/22-12/31/22
THE PEOPLE'S REPUBLIC OF CHINA: Circular Welded Austenitic Stainless Pressure Pipe, C-570-931	1/1/22-12/31/22
THE PEOPLE'S REPUBLIC OF CHINA: Fine Denier Polyester Staple Fiber, C-570-061	1/1/22-12/31/22
THE PEOPLE'S REPUBLIC OF CHINA: Large Diameter Welded Pipe, C-570-078	1/1/22-12/31/22
THE PEOPLE'S REPUBLIC OF CHINA: Pentafluoroethane (R-125), C-570-138	6/25/21-12/31/22
TURKEY: Circular Welded Carbon Steel Pipes and Tubes, C-489-502	1/1/22-12/31/22

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of

origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), and *Non-*

Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.³

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.⁴ Accordingly, the NME entity

³ See the Enforcement and Compliance website at <https://www.trade.gov/us-antidumping-and-countervailing-duties>.

⁴ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy*

will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.⁵ In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at <https://access.trade.gov>.⁶ Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.⁷

Commerce will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of March 2023. If Commerce does not receive, by the last day of March 2023, a request for review of entries covered by an order, finding, or suspended

investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period of the order, if such a gap period is applicable to the period of review.

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled "*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*" in the **Federal Register**.⁸ On September 27, 2021, Commerce also published the notice entitled "*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*" in the **Federal Register**.⁹ The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.¹⁰

In accordance with the *Procedural Guidance*, for orders published in the **Federal Register** before November 4, 2021, Commerce created an annual inquiry service list segment for each order and suspended investigation. Interested parties who wished to be added to the annual inquiry service list for an order submitted an entry of appearance to the annual inquiry service list segment for the order in ACCESS, and on November 4, 2021, Commerce finalized the initial annual inquiry service lists for each order and

suspended investigation. Each annual inquiry service list has been saved as a public service list in ACCESS, under each case number, and under a specific segment type called "AISL-Annual Inquiry Service List."¹¹

As mentioned in the *Procedural Guidance*, beginning in January 2022, Commerce will update these annual inquiry service lists on an annual basis when the *Opportunity Notice* for the anniversary month of the order or suspended investigation is published in the **Federal Register**.¹² Accordingly, Commerce will update the annual inquiry service lists for the above-listed antidumping and countervailing duty proceedings. All interested parties wishing to appear on the updated annual inquiry service list must take one of the two following actions: (1) new interested parties who did not previously submit an entry of appearance must submit a new entry of appearance at this time; (2) interested parties who were included in the preceding annual inquiry service list must submit an amended entry of appearance to be included in the next year's annual inquiry service list. For these interested parties, Commerce will change the entry of appearance status from "Active" to "Needs Amendment" for the annual inquiry service lists corresponding to the above-listed proceedings. This will allow those interested parties to make any necessary amendments and resubmit their entries of appearance. If no amendments need to be made, the interested party should indicate in the area on the ACCESS form requesting an explanation for the amendment that it is resubmitting its entry of appearance for inclusion in the annual inquiry service list for the following year. As mentioned in the *Final Rule*,¹³ once the petitioners and foreign governments have submitted an entry of appearance for the first time, they will automatically be added to the updated annual inquiry service list each year.

Interested parties have 30 days after the date of this notice to submit new or amended entries of appearance.

Entity in NME Antidumping Duty Proceedings, 78 FR 65963 (November 4, 2013).

⁵ In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

⁶ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

⁷ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

⁸ See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300 (September 20, 2021) (*Final Rule*).

⁹ See *Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*, 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

¹⁰ *Id.*

¹¹ This segment has been combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A-000-000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as "AISL-January Anniversary." Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

¹² See *Procedural Guidance*, 86 FR at 53206.

¹³ See *Final Rule*, 86 FR at 52335.

Commerce will then finalize the annual inquiry service lists five business days thereafter. For ease of administration, please note that Commerce requests that law firms with more than one attorney representing interested parties in a proceeding designate a lead attorney to be included on the annual inquiry service list.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at <https://access.trade.gov>.

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule*, Commerce stated that, "after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow."¹⁴

Accordingly, as stated above and pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 21, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023-04296 Filed 3-1-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-891-001]

Common Alloy Aluminum Sheet From Croatia: Preliminary Results of Antidumping Duty Administrative Review; 2020-2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that Impol d.o.o. and Impol TLM d.o.o. (collectively, Impol), made sales of subject merchandise at less than normal value during the period of review (POR) October 15, 2020, through March 31, 2022. Interested parties are invited to comment on these preliminary results.

DATES: Applicable March 2, 2023.

FOR FURTHER INFORMATION CONTACT: Dennis McClure, 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) 482-5973.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 2021, Commerce published the antidumping duty order on aluminum sheet from Croatia.¹ In accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), Commerce is conducting an administrative review of the *Order*. On June 9, 2022, in accordance with 19 CFR 251.221(c)(1)(i), we initiated the administrative review of the *Order* covering Impol, the only company requested for review.² For a complete description of the events between the initiation of this review and these preliminary results, see the Preliminary Decision Memorandum.³

Scope of the Order

The merchandise subject to the *Order* is common alloy aluminum sheet from

¹ See *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, India, Indonesia, Italy, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan and the Republic of Turkey: Antidumping Duty Orders*, 86 FR 22139 (April 27, 2021) (*Order*).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 35165 (June 9, 2022).

³ See Memorandum, "Common Alloy Aluminum Sheet from Croatia: Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review; 2020-2022," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Croatia. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.⁴

Methodology

Commerce conducted this review in accordance with section 751(a) of the Act. We calculated export prices in accordance with section 772(a) of the Act. We calculated normal value in accordance with section 773 of the Act.

For a full description of the methodology underlying these preliminary results, see the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, the signed Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margin exists for the period October 15, 2020, through March 31, 2022.

Producer and/or exporter	Weighted-average dumping margin (percent)
Impol d.o.o./Impol-TLM d.o.o. ⁵ ...	2.37

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, 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. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this administrative 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

⁴ *Id.* at "Scope of the Order."

⁵ The preliminary rate calculated for Impol applies to subject merchandise produced by Impol-TLM d.o.o. and exported by either Impol-TLM d.o.o. (Croatia) or Impol d.o.o. (Slovenia).

¹⁴ *Id.*

expired (*i.e.*, within 90 days of publication).

If Impol's weighted-average dumping margin is not *de minimis* (*i.e.*, less than 0.50 percent), upon completion of the final results, Commerce intends to calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those sales. Where we do not have entered values for all U.S. sales to a particular importer, we will calculate an importer-specific, per-unit assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total quantity of those sales.⁶ To determine whether an importer-specific, per-unit assessment rate is *de minimis*, in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. Where either Impol's weighted-average dumping margin is zero or *de minimis*, or an importer-specific *ad valorem* assessment rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.⁷ For entries of subject merchandise during the POR produced by Impol for which it did not know that the merchandise it sold to the intermediary (*e.g.*, reseller, trading company, or exporter) was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate⁸ if there is no rate for the intermediate company(ies) involved in the transaction.⁹

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 future deposits of estimated duties, where applicable.¹⁰

Cash Deposit Requirements

The following cash deposit requirements will be effective for all 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, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Impol will be equal

to the weighted-average dumping margin established in the final results of this review (except, if that rate is *de minimis*, then the cash deposit rate will be zero); (2) for producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review or a prior segment of the proceeding but the producer is, then the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 3.19 percent, the all-others rate established in the less-than-fair-value investigation.¹¹ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure, Public Comment, and Opportunity To Request a Hearing

We intend to disclose the calculations performed for these preliminary results of review to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.¹² Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.¹³ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁴ Case and rebuttal briefs should be filed using ACCESS¹⁵ and must be served on interested parties.¹⁶ Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹⁷

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. An electronically-filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.¹⁸

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

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 duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: February 23, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Currency Conversion

¹⁸ See 19 CFR 351.310(c).

⁶ See 19 CFR 351.212(b)(1).

⁷ See 19 CFR 352.106(c)(2); *see also* *Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012).

⁸ See *Order*.

⁹ For a full discussion of this practice, *see* *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹⁰ See section 751(a)(2)(C) of the Act.

¹¹ See *Order*, 86 FR at 22142.

¹² See 19 CFR 351.309(c)(1)(iii).

¹³ See 19 CFR 351.309(d)(1) and (2); *see also* *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006, 17007 (March 26, 2020).

¹⁴ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁵ See 19 CFR 351.303.

¹⁶ See 19 CFR 351.303(f).

¹⁷ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

VI. Recommendation

[FR Doc. 2023-04303 Filed 3-1-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-842]

Large Residential Washers From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2021-2022

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that sales of large residential washers (washers) from Mexico have been made below normal value (NV) during the period of review (POR), February 1, 2021, through January 31, 2022. We invite interested parties to comment on these preliminary results.

DATES: Applicable March 2, 2023.

FOR FURTHER INFORMATION CONTACT: Steven Seifert, 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) 482-3350.

SUPPLEMENTARY INFORMATION:**Background**

On April 2, 2021, based on a timely request for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty order on washers from Mexico.¹ This review covers one producer/exporter of the subject merchandise, Electrolux Home Products Corp. N.V. and Electrolux Home Products de Mexico, S.A. de C.V. (collectively, Electrolux). For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.²

Scope of the Order

The products covered by the order are all large residential washers and certain subassemblies thereof from Mexico. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.³

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *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>. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists for the respondent for the period February 1, 2021, through January 31, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
Electrolux	2.02

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.⁴ Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.⁵ Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.⁶ Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.⁷ Case and rebuttal briefs should be filed

using ACCESS.⁸ Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information.⁹

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, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.¹⁰ Hearing 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. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.¹¹

An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline. Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless otherwise extended.¹²

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.¹³ Pursuant to 19 CFR 351.212(b)(1), because Electrolux reported the entered value of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. 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 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 future

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 21624 (April 2, 2022).

² See Memorandum, "Decision Memorandum for the Preliminary Results of the 2021-2022 Administrative Review of the Antidumping Duty Order on Large Residential Washers from Mexico," dated concurrently with this notice.

³ *Id.* at 2.

⁴ See 19 CFR 351.224(b).

⁵ See 19 CFR 351.309(c).

⁶ Commerce is exercising its discretion, under 19 CFR 351.309(d)(1), to alter the time limit for filing of rebuttal briefs.

⁷ See 19 CFR 351.309(c)(2) and (d)(2).

⁸ See 19 CFR 351.303.

⁹ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

¹⁰ See 19 CFR 351.310(c).

¹¹ See 19 CFR 351.310(d).

¹² See section 751(a)(3)(A) of the Act.

¹³ See 19 CFR 351.212(b).

deposits of estimated duties where applicable.¹⁴

Commerce's "automatic assessment" practice will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they 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.¹⁵

Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the final results of this review in the **Federal Register**, in accordance with 19 CFR 356.8(a).

Cash Deposit Requirements

The following 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 the exporter listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for companies not participating in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 36.52 percent, the all-others rate established in the LTFV investigation.¹⁶ 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 duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 24, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Product Comparisons
- VI. Constructed Export Price
- VII. Normal Value
- VIII. Currency Conversion
- IX. Recommendation

[FR Doc. 2023-04333 Filed 3-1-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC809]

New England 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 New England Fishery Management Council (Council) is scheduling a public meeting of its Skate Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate. **DATES:** This hybrid meeting will be held on Wednesday, March 22, 2023, at 8:30 a.m. Webinar registration URL information: <https://>

attendee.gotowebinar.com/register/446656137088812120.

ADDRESSES:

Meeting address: This meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739-3000.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Skate Advisory Panel will meet to discuss recent fishery performance and outlook for 2023 and plan for the 2023 management track stock assessment for skates. They will also progress towards developing a white paper regarding thorny skate as well as review of specification setting process and plans for developing 2024-25 skate specifications, including setting possession limits. Other business will be discussed as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

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

Dated: February 27, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023-04344 Filed 3-1-23; 8:45 am]

BILLING CODE 3510-22-P

¹⁴ See section 751(a)(2)(C) of the Act.

¹⁵ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹⁶ See *Large Residential Washers from Mexico: Antidumping Duty Orders*, 78 FR 11148 (February 15, 2013).

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****[RTID 0648–XC808]****New England 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 New England Fishery Management Council (Council) is scheduling a public meeting of its Skate Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This hybrid meeting will be held on Wednesday, March 22, 2023, at 1:30 p.m. Webinar registration URL information: <https://attendee.gotowebinar.com/register/3505843831724426326>.

ADDRESSES: This meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:**Agenda**

The Skate Committee will meet to discuss recent fishery performance and outlook for 2023 and plan for the 2023 management track stock assessment for skates. They will also progress towards developing a white paper regarding thorny skate as well as review of specification setting process and plans for developing 2024–25 skate specifications, including setting possession limits. Other business will be discussed as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to

take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: February 27, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–04343 Filed 3–1–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****[RTID 0648–XC762]****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) to discuss items on the Pacific Council's April 2023 meeting agenda. This meeting is open to the public.

DATES: The online meeting will be held on Monday, March 27, 2023, from 1 p.m. to 4 p.m., Pacific Time. The scheduled ending time for this GMT meeting is an estimate, the meeting will adjourn when business for the day is completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join 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 GMT webinar is to prepare for the Pacific Council's April 2023 agenda items. The GMT will discuss items related to groundfish management and administrative matters on the Pacific Council's agenda. The GMT may also address other assignments relating to groundfish management. No management actions will be decided by the GMT. A detailed agenda for the webinar will be available on the Pacific Council's website prior to the meeting.

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: February 27, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–04342 Filed 3–1–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****[RTID 0648–XC761]****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's (Pacific Council) Coastal Pelagic Species Management Team will hold one public meeting.

DATES: The meeting will be held Thursday, March 23, 2023, from 1 p.m. to 3 p.m. Pacific Daylight Time or until business for the day has been completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join 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: Jessi Doerpinghaus, Staff Officer, Pacific Council; telephone: (503) 820-2415.

SUPPLEMENTARY INFORMATION: The primary purpose of this online meeting is to discuss and develop work products and recommendations for the Pacific Council's April 2023 meeting. Topics will include Pacific Council process and efficiencies and Fishery Management Plan housekeeping. Other items on the Pacific Council's April agenda may be discussed as well. The meeting agenda will be available on the Pacific Council's website in advance of the meeting.

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: February 27, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023-04341 Filed 3-1-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC804]

Marine Mammals; File No. 27052

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the NMFS Northwest Fisheries Science Center (NWFS), 2725 Montlake Boulevard East, Seattle, WA 98112-2097 (Responsible Party: M. Bradley Hanson, Ph.D.), has applied in due form for a permit to conduct research on marine mammals.

DATES: Written, telefaxed, or email comments must be received on or before April 3, 2023.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the "Features" box on the Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 27052 from the list of available applications. These documents are also available upon written request via email to NMFS.Pr1Comments@noaa.gov.

Written comments on this application should be submitted via email to NMFS.Pr1Comments@noaa.gov. Please include File No. 27052 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to NMFS.Pr1Comments@noaa.gov. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan, Ph.D., or Amy Hapeman, (301) 427-8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant requests a 5-year permit to assess the biology and ecology of

marine mammals in U.S. and international waters of the North Pacific Ocean off the coasts of Washington, Oregon, California, Alaska, and Canada. Up to 33 species of marine mammals may be taken during research including the following ESA-listed species: blue (*Balaenoptera musculus*), fin (*B. physalus*), gray (*Eschrichtius robustus*; Western North Pacific distinct population segments[DPS]), humpback (*Megaptera novaeangliae*; Western North Pacific, Central America, and Mexico DPSs), killer (*Orcinus orca*; Southern Resident DPS), North Pacific right (*Eubalaena japonica*), sei (*B. borealis*), and sperm (*Physeter macrocephalus*) whales; and Guadalupe fur seals (*Arctocephalus townsendi*) and Steller sea lions (*Eumetopias jubatus*; Western DPS). The applicant proposes to take marine mammals during vessel and aerial surveys, including unmanned aircraft systems, for above and underwater photography and videography, photo-identification, photogrammetry, thermal imaging, behavioral observations, passive acoustic recordings, prey mapping with echosounders, biological sampling (exhaled air, feces, sloughed skin, predation samples, and skin and blubber biopsies), and suction-cup tagging. Research may also be conducted on captive killer whales. Marine mammal parts may be received, imported, and exported for analysis. See the application for complete numbers of animals requested by species, life stage, and procedure.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 24, 2023.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023-04221 Filed 3-1-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Telecommunications and Information Administration****[Docket No.: 230224–0051]****RIN 0660–XC055****Digital Equity Act of 2021; Request for Comments**

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice; request for comment.

SUMMARY: The Infrastructure Investment and Jobs Act of 2021, also known (and referred to subsequently herein) as IIJA or the Bipartisan Infrastructure Law, includes a historic investment of \$65 billion to help close the digital divide and ensure that everyone in America has access to affordable, reliable, high-speed internet service. The Department of Commerce's National Telecommunications and Information Administration (NTIA) is responsible for distributing more than \$48 billion in Bipartisan Infrastructure Law funding through several different programs. NTIA is requesting comments on the \$2.75 billion Digital Equity Act of 2021 Program, and on the design and implementation of two components of that grant program: the \$1.44 billion State Digital Equity Capacity Grant Program and the \$1.25 billion Digital Equity Competitive Grant Program. NTIA seeks broad input and feedback from all interested stakeholders across the nation, including Tribal entities, and has established multiple avenues for the public to offer input to bolster NTIA's work and to improve the number and quality of ideas under consideration as the agency develops Notices of Funding Opportunity for each of the Digital Equity Capacity Grant and Digital Equity Competitive Grant Programs to be implemented by NTIA pursuant to the Bipartisan Infrastructure Law. This includes a series of public virtual listening sessions which will be announced at a later date.

DATES: Submit written comments on or before 5 p.m. Eastern Standard Time on May 1, 2023.

ADDRESSES: You may submit public comments on this action, identified by *Regulations.gov* docket number NTIA–2023–0002, by any of the following means:

1. Using the federal e-Rulemaking Portal at <http://www.regulations.gov> (our preferred method). The docket established for this opportunity to comment can be found at www.Regulations.gov, NTIA–2023–

0002. Click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

2. Sending email to digitalequity@ntia.gov. Include the docket number NTIA–2023–0002 in the subject line of the message.

3. Mailing a printed submission to National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4878, Washington, DC 20230, Attention: Digital Equity RFC.

Please submit your comments in only one of these ways to minimize the receipt of duplicate submissions.

FOR FURTHER INFORMATION CONTACT:

Please direct questions regarding this Notice to digitalequity@ntia.gov, indicating “Notice and Request for Comment” in the subject line, or if by mail, addressed to Angela Thi Bennett, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; or by telephone: (202) 482–2048. Please direct media inquiries to NTIA's Office of Public Affairs, press@ntia.gov or (202) 482–7002.

SUPPLEMENTARY INFORMATION:**I. Background**

Recognizing the internet's fundamental role in today's society and its centrality to our nation's continued health and prosperity, the Biden-Harris Administration will work to ensure that every community in America has access to affordable, reliable, high-speed internet service. On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act of 2021 into law, also known (and referred to subsequently herein) as the Bipartisan Infrastructure Law, which includes a historic investment of \$65 billion to help close the digital divide and ensure that everyone in America has access to affordable, reliable, high-speed internet service. The National Telecommunications and Information Administration (NTIA), is responsible for distributing more than \$48 billion in Bipartisan Infrastructure Law funding through several different programs, including the \$2.75 billion Digital Equity Act of 2021 Program.

The COVID–19 pandemic highlighted what many have known for a very long time: High-speed internet access is not a luxury, but a basic necessity for all Americans. Since the pandemic, telehealth access and use has expanded and the workplace is changing as more workers are choosing to work from home. The Biden-Harris Administration

supports bringing affordable, high-speed, reliable internet service and the resources necessary to realize its full potential to every household in America. Passed on a bipartisan basis in both chambers of Congress, the Infrastructure Investment and Jobs Act of 2021 (IIJA), Public Law 117–58, 135 Stat. 429 (November 15, 2021), also known as the Bipartisan Infrastructure Law, allocated \$42.45 billion to create the Broadband, Equity, Access and Deployment Program (BEAD), \$1 billion to create the Enabling Middle Mile Broadband Infrastructure Program, \$2 billion to help tribal communities expand high-speed internet access and adoption on tribal lands, and \$2.75 billion (through the Digital Equity Act of 2021 (Digital Equity Act), also passed as part of the IIJA) to advance federal goals relating to digital equity¹ and digital inclusion.² These programs administered by NTIA are designed to work in tandem with other high-speed internet programs, including the Affordable Connectivity Program which provides up to \$30 per month toward internet service for qualifying households and up to \$75 per month for households on qualifying Tribal lands. With the passage of the Bipartisan Infrastructure Law, Congress took a significant step forward in achieving the Biden-Harris Administration's goal of ensuring that all Americans not only have access to affordable, reliable, high-speed internet but also the skills and resources needed for full participation in the society and economy of the United States.

This Notice is part of NTIA's strategy to engage with partners, stakeholders, and most importantly, individuals with lived experiences who faced challenges of having access to and/or the skills and devices to fully utilize affordable, reliable, high-speed internet, to help meet the President's goal to close the digital divide and transform the lives of all Americans. This is America's

¹ Section 60302(10) of the IIJA defines “digital equity” as “the condition in which individuals and communities have the information technology capacity that is needed for full participation in the society and economy of the United States.”

² Section 60302(11) of the IIJA Law defines “digital inclusion” as “(A) . . . the activities that are necessary to ensure that all individuals in the United States have access to, and the use of, affordable information and communication technologies, such as—(i) reliable fixed and wireless broadband internet service; (ii) internet-enabled devices that meet the needs of the user; and (iii) applications and online content designed to enable and encourage self-sufficiency, participation, and collaboration; and (B) includes—(i) obtaining access to digital literacy training; (ii) the provision of quality technical support; and (iii) obtaining basic awareness of measures to ensure online privacy and cybersecurity.”

opportunity to harness the talents and strengths of all parts of our country and remove systemic barriers and provide equal access to opportunities and benefits, so that everyone has a chance to reach their full potential. But in order to achieve this objective, we need to hear from you. This Notice is your opportunity to inform how NTIA designs a program that works to achieve this national and community driven opportunity for change.

II. Objectives of This Notice

This Notice offers an opportunity for all interested parties to provide vital input and recommendations for consideration in the development of Digital Equity Act programs established by the Bipartisan Infrastructure Law for implementation by NTIA.

This Notice seeks comment on two Bipartisan Infrastructure Law grant programs to be administered by NTIA: the \$1.44 billion State Digital Equity Capacity Grant Program and the \$1.25 billion Digital Equity Competitive Grant Program. Along with the State Digital Equity Planning Grant Program,³ these three Digital Equity Act programs promote digital inclusion and equity to ensure that all individuals and communities have the skills, technology, and capacity needed to reap the full benefits of our digital economy.

III. Request for Comments

NTIA welcomes input on any of the matters set forth in this Request for Comment that commenters believe are important to NTIA's implementation efforts. Commenters are invited to provide input on the full range of issues presented by this Notice and are encouraged to address any or all of the following questions or to provide additional information relevant to the implementation of the Bipartisan Infrastructure Law's broadband programs. When responding to one or more of the questions below, please note in the text of your response the number of the question to which you are responding. Where applicable, NTIA encourages commenters to provide specific, actionable proposals and relevant fact-based information, along with the rationale for their comments, including available examples of studies, measures, outcomes, assessments, etc., and supporting information.

Responders should include a page number on each page of their submissions. Please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. All comments received are a part of the public record and will generally be posted to *Regulations.gov* without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Information obtained as a result of this notice may be used by the federal government for program planning on a non-attribution basis.

NTIA Seeks Public Comment on the Following Areas (Inclusive of 24 Questions):

Implementation of the Digital Equity Act of 2021

The Digital Equity Act dedicated \$2.75 billion to establish three grant programs: the \$60 million State Digital Equity Planning Grant Program (Planning Grant Program), the \$1.44 billion State Digital Equity Capacity Grant Program (Capacity Grant Program), and the \$1.25 billion Competitive Digital Equity Program (Competitive Grant Program). The combined goal of these programs is to promote the adoption and meaningful use of the internet across the Covered Populations⁴ which include (1) individuals who live in low-income households,⁵ (2) aging individuals,⁶ (3) incarcerated individuals, other than individuals who are incarcerated in a Federal correctional facility, (4) veterans,⁷ (5) individuals with disabilities,⁸ (6) individuals with a language barrier, including individuals who are English learners and have low levels of literacy, (7) racial and ethnic minorities, and (8) rural inhabitants.⁹

The Bipartisan Infrastructure Law is not only a significant step toward achieving the goal that every household in America has access to affordable, reliable, high-speed internet; it also will meaningfully address the fundamental economic, educational, social, and health-related inequities in our country by giving everyone the skills and tools they need to connect, particularly the members of our communities who have previously been excluded until now. To achieve digital equity for all Americans, the Biden-Harris Administration fosters

the full participation of those individuals who are members of the Covered Populations.

State Digital Equity Planning Grant Program

Under the Planning Grant Program, NTIA made up to \$60,000,000 available to award grants to the 50 states, the District of Columbia, and Puerto Rico (collectively the "States") and Territories for the purpose of developing State Digital Equity Plans within one year from the date of funding. Through these Plans, each State and Territory will, among other things, identify barriers to digital equity in each State and strategies for overcoming those barriers. States that develop State Digital Equity Plans will then be able to apply for funds from the State Digital Equity Capacity Grant Program to implement those plans.

A. Assessing State Digital Equity Plans Under the Digital Equity Planning Grant Program

State Digital Equity Plans must include the following content: (1) identification of the barriers to digital equity faced by Covered Populations in the State; (2) measurable objectives for documenting and promoting, among each Covered Population, the achievement of digital equity in the minimum of five key areas;¹⁰ (3) an assessment of how the measurable objectives for the Covered Populations will affect and interact with the States' public health, workforce, economic, and education outcomes¹¹ and delivery of other essential services; (4) a description of how the State plans to collaborate with key stakeholders¹² in the State;

¹⁰ Section 60304(c)(1)(B) of the IIJA sets forth the following key areas: (i) the availability of, and affordability of access to, fixed and wireless broadband technology; (ii) the online accessibility and inclusivity of public resources and services; (iii) digital literacy; (iv) awareness of, and the use of, measures to secure the online privacy of, and cybersecurity with respect to, an individual; and (v) the availability and affordability of consumer devices and technical support for those devices.

¹¹ Section 60304(c)(1)(C) of the IIJA sets forth the following impact and interaction areas: (i) economic and workforce development goals, plans and outcomes, (ii) educational outcomes, (iii) health outcomes, and (iv) civic and social engagement, and (v) delivery of other essential services.

¹² Section 60304(c)(1)(D) sets forth the following key stakeholders: (i) community anchor institutions, (ii) county and municipal governments; (iii) local educational agencies; (iv) where applicable, Indian Tribes, Alaska Native entities, or Native Hawaiian organizations; (v) nonprofit organizations; (vi) organizations that represent Covered Populations; (vii) civil rights organizations; (viii) entities that carry out workforce development programs; (ix) agencies of the State that are responsible for administering or supervising adult education and literacy activities in the State; (x) public housing authorities in the

³ On May 13, 2022, NTIA released a Notice of Funding Opportunity for the State Digital Equity Planning Grant Program. States, territories or possessions, Indian Tribes, Alaska Native entities, and Native Hawaiian organizations interested in participating were required to apply or submit their letter of intent by July 12, 2022. NTIA began releasing awards to States in August 2022.

⁴ Section 60302(1)(8) of the IIJA.

⁵ Section 60302(7) of the IIJA.

⁶ Section 60302(3) of the IIJA.

⁷ Section 60302(22) of the IIJA.

⁸ Section 60302(13) of the IIJA.

⁹ Section 60302(20) of the IIJA.

and (5) a list of organizations with which the administering entity for the State collaborated in developing and implementing the State Digital Equity Plan.¹³ Organizations may include libraries, community anchor institutions, and grass roots community-based organizations.

To be awarded under the Capacity Grant Program, the States, including the District of Columbia and Puerto Rico, must submit an application that includes the State Digital Equity Plan funded through the State Digital Equity Planning Grant Program. Before submitting an application for the Capacity Grant Program, each State must make the State Digital Equity Plan of the State available for public comment for at least 30 days, consider all comments received during the comment period, and make any changes to the State Digital Equity Plan that it determines to be worthwhile. When submitting the application, the State must include a description of how the State responded to the public comments it received on the draft of the plan.¹⁴

Question 1: During the public comment period for the States' Digital Equity Plans, what guidance should NTIA and/or each State provide to enable communities to review and provide actionable feedback to States regarding their State Digital Equity Plans? What criteria/factors/outcomes should communities focus on in their review? How can NTIA ensure that States/Territories consult with Tribal entities about how best to meet Tribal members' needs?

NTIA would like to learn from stakeholder experiences to inform the development of technical assistance resources to support applicants' efforts to identify successful project models, partnerships, activities, and strategies that deliver impactful and sustainable outcomes. In implementing the Bipartisan Infrastructure Law's programs, NTIA will offer technical assistance to all applicants and prospective sub-grantees. As a statutory requirement, these entities must evaluate the impact of funding projects on Covered Populations from the implementation of the Digital Equity Plans.

Question 2: Over the next year, NTIA will deliver technical assistance for States and Territories to develop holistic, actionable, and impactful State Digital Equity Plans. NTIA has created a Needs Assessment Guide, Asset

Mapping Guide, Digital Equity Plan Guidance, Best Practices, Workforce Planning Guide, webinars, and other technical assistance resources.¹⁵ What additional guidance/resources should NTIA provide to States, Territories, and Tribal entities as they develop their Digital Equity Plans? What additional guidance can NTIA provide to help States and community organizations utilize other federal tools to close the digital divide by increasing access and reducing cost like the Affordable Connectivity Program? Individuals and communities who are most impacted by the digital divide are in the best position to help States, Territories, and Tribal entities understand the inequities and how best to focus and scale local efforts. How can individuals and communities provide feedback to States, Territories, and Tribal entities to ensure their unique communities' needs are solicited, considered, and reflected in the Digital Equity Plans?

B. State Digital Equity Capacity Grant Program

The State Digital Equity Capacity Grant Program is a \$1.44 billion formula grant program¹⁶ for States, Territories, Indian Tribes, Alaska Native entities, and Native Hawaiian organizations. It will fund an annual grant program, appropriating funds over government fiscal years 2022–2026, in support of the implementation of the Digital Equity Plans. The purpose of the Capacity Grant Program is to support the implementation of Digital Equity Plans of those States, Territories, and Tribal entities, including the digital inclusion activities to achieve digital equity in those States, Territories, and Tribal communities. Capacity Grant Program funds can be leveraged by combining those funds with other funding, such as federal, state, local, and/or philanthropic, to support the implementation of the Digital Equity Plans. NTIA must submit to the appropriate committees of Congress, the findings of evaluations of whether eligible States are meeting, or have met, the stated goals of the Digital Equity Plans developed by the States.¹⁷

Question 3: How should NTIA *define* success for the Capacity Grant Program? What outcomes are most important to measure? How should NTIA *measure* the success of the Capacity Grant Program, including measures and methods?

Question 4: How should NTIA design the Capacity Grant Program to ensure equity is achieved? Please explain. NTIA encourages stakeholders to provide the rationale for their comments, including available examples of studies, measures, outcomes, assessments and supporting information.

Question 5: What criteria/factors should NTIA take into consideration when assessing whether States, Territories, and Tribal entities are meeting the stated goals of their Digital Equity Plans? How should NTIA measure each Digital Equity Plan's progress in the short-term (one year or less) and long-term (two or more years)?

Question 6: What reporting requirements should NTIA establish for grantees to ensure that the voices of those most impacted by the digital divide are reflected in the implementation and updates of the Digital Equity Plans? What steps, if any, should NTIA take to monitor and evaluate implementation practices? From a sustainability perspective, what role can collaborations, partnerships, and coalitions play? Please share examples of any existing impactful collaborations, partnerships, and/or coalitions.

The Assistant Secretary is allowed to prescribe such rules as may be necessary to carry out the Capacity Grant Program.¹⁸

Question 7: What rules, if any, should the Assistant Secretary develop to ensure that digital equity is achieved in the Capacity Grant Program?

C. Digital Equity Competitive Grant Program

The Digital Equity Competitive Grant Program is a \$1.25 billion program to award grants to support efforts to achieve digital equity, promote digital inclusion activities, and spur greater adoption of internet among Covered Populations. Eligible applicants include (1) a political subdivision, agency or instrumentality of a State, including an agency of a State that is responsible for administering or supervising adult education and literacy activities, or for providing public housing, in the State; (2) an Indian Tribe, an Alaska Native entity, or a Native Hawaiian organization; (3) a foundation, corporation, institution, or association that is a nonprofit entity and not a school; (4) a community anchor institution, which includes a library or a State library agency; (5) a local educational agency; (6) an entity that carries out a workforce development

State; and (xi) a partnership between any of the entities described in clauses (i) through (x).

¹³ Section 60304(c)(1)(E) of the IIJA.

¹⁴ Section 60304(c)(2) of the IIJA.

¹⁵ NTIA, Digital Equity Programs, BroadbandUSA, <https://broadbandusa.ntia.doc.gov/resources/grant-programs/digital-equity-programs>.

¹⁶ Section 60304(d)(3)(A) of the IIJA.

¹⁷ Section 60306(a) of the IIJA.

¹⁸ Section 60304(j) of the IIJA.

program; (7) a partnership between any of the entities described in the foregoing (1)–(6); and (8) a partnership between an entity described in the foregoing (1)–(6) and an entity that the Assistant Secretary, by rule, determines to be in the public interest and is not a school.¹⁹ The term “community anchor institution” means a public school, a public or multi-family housing authority, a library, a medical or healthcare provider, a community college or other institution of higher education, a State library agency, and any other nonprofit or governmental community support organization.²⁰ Entities that serve or have served as the administering entity for a State or Territory under the State Digital Equity Planning Grant and State Digital Equity Capacity Grant Programs are ineligible applicants for the Competitive Grant Program.

The purpose of the Competitive Grant Program is to: (1) develop and implement digital inclusion activities that benefit the Covered Populations; (2) facilitate the adoption of internet by Covered Populations in order to provide educational and employment opportunities to those Covered Populations; (3) implement training programs for Covered Populations that cover basic, advance, and applied skills or other workforce development programs; (4) make available equipment, instrumentation, networking capability, hardware and software, or digital network technology for broadband services to Covered Populations at low or no cost; (5) construct, upgrade, expend, or operate new or existing public access computing centers for Covered Populations through community anchor institutions; and (6) undertake any other project and activity that the Assistant Secretary finds to be consistent with the purposes for which the Digital Equity Competitive Program is established.²¹

Question 8: How should NTIA define success for the Competitive Grant Program? What outcomes are most important to measure? How should NTIA measure the success of the Competitive Grant Program, including specific measures? Are the measures of success the same or different from the Capacity Grant Program? If so, please elaborate.

Question 9: What kind of activities or projects should the Assistant Secretary consider for inclusion in eligible projects and activities for the Competitive Grant Program?

1. Competitive Program Rules

As discussed in section D of this Notice, the statutory language for the Competitive Program lists several eligible entities. The Assistant Secretary may also consider a partnership between an entity in one of those groups and an entity that “the Assistant Secretary, by rule, determines to be in the public interest” and that “is not a school.”²²

Question 10: What group or groups that are not already listed should the Assistant Secretary consider to be eligible to apply for the Competitive Grant Program?

The Assistant Secretary is allowed to prescribe such rules as may be necessary to carry out obligations relating to the Competitive Grant Program.²³

Question 11: What rules, if any, should the Assistant Secretary develop to ensure that digital equity is achieved in the Competitive Grant Program?

2. Competitive Grant Program Scoring

NTIA has an interest in ensuring that the Bipartisan Infrastructure Law is implemented in a way that promotes the efficient and effective use of federal funds. NTIA endeavors to design the Competitive Grant Program in a way in which those projects with the highest merit and relevant impact receive funding.

In any competitive grant program, NTIA will establish a robust and in-depth application review process, which will include a merit review based on evaluation criteria (to be established in the NOFO) by subject matter experts. Further, when deciding whether to make a particular grant under the Competitive Grant Program, the Assistant Secretary “shall, to the extent possible, consider whether an application shall, if approved—increase internet access and the adoption of the internet among Covered Populations to be served by the applicant and not result in unjust enrichment, the comparative geographic diversity of the application in relation to other eligible applications, and the extent to which an application may duplicate or conflict with another program.”²⁴ Examples of unjust enrichment may include profiting from a Federal grant or

artificially increasing the costs associated with a Federal grant.

Question 12: How should NTIA design a scoring rubric system to ensure that digital equity will be achieved in the Competitive Grant Program? What factors, elements, and/or criteria should NTIA consider to ensure that funding is equitably distributed to serve the Covered Populations, e.g., by geography, covered population, project type, etc.?

Question 13: Should NTIA use weighted scoring?²⁵ If so, are there specific evaluation criteria to which NTIA should provide more weight or value in the evaluation criteria for the Competitive Grant Program (i.e., place more weight on collaborations that support building the capacity of local, community-based organizations that are delivering meaningful and impactful services to the Covered Populations, provide more than 10% of matching funds or resources, or intend to provide project benefits to multiple communities or Covered Populations)? NTIA encourages stakeholders to provide the rationale for their comments, including available examples of studies, measures, outcomes, assessments and supporting information.

Question 14: What additional weight, if any, should NTIA give to proposed projects that align with the State, Territory, and/or Tribal entity Digital Equity Plans?

D. Measuring for Success & Transformative Impact

The Bipartisan Infrastructure Law includes historic investments in digital inclusion and digital equity. Applicants and grantees will need to make important investment decisions with the aim that short-term measures are planned with the intention to generate long-term, sustainable, positive, and measurable social and economic impact. NTIA is interested in identifying successful project models, partnerships, activities, and strategies for digital equity projects that deliver impact and sustainable outcomes.

Question 15: What are examples of past or current evidence-based or evidence-informed digital equity and/or inclusion projects or other relevant or similar projects that NTIA can showcase as a part of its technical assistance efforts to support applicants in identifying promising or evidence-based project models, partnerships, activities, and strategies to consider, replicate, and leverage lessons learned as applicable?

¹⁹ Section 60305(b) of the IIJA.

²⁰ Section 60302(6) of the IIJA.

²¹ Section 60305(d)(2)(A) of the IIJA.

²² Section 60305(b) of the IIJA.

²³ Section 60305(k) of the IIJA.

²⁴ Section 60305(d) of the IIJA.

²⁵ A weighted scoring model is used to rank and prioritize criteria for evaluation by assigning a numeric value to each criterion.

1. Program Measurement, Evaluation, and Reporting

Measurement and reporting outcomes to the public is critical to the proper evaluation of Digital Equity Act programs. NTIA is required to evaluate the efficacy of the efforts funded by grants under the Capacity Grant Program.²⁶ The Commerce Program Evaluation Policy oversees how all evaluation conducted by (or funded by) the Department of Commerce and its bureaus (including NTIA) should be executed. Competitive Grant Program recipients are required to comply with reporting and evaluation requirements and the Assistant Secretary must establish various procedures and mechanisms to effectuate the Capacity and Competitive Program's goals.²⁷

Question 16: How should grantees define digital equity with respect to each of the Covered Populations? What does success look like for each of the Covered Populations? How should NTIA measure the effects of access to and adoption of, and meaningful use of the internet for each Covered Population? What examples of equity gap analysis and tools should the Assistant Secretary consider when measuring outcomes as they relate to each Covered Populations? To what extent should grantees disaggregate data within each of the Covered Populations to reveal the underlying trends and patterns? NTIA encourages stakeholders to provide the rationale for their comments, including available examples of studies, measures, outcomes, assessments and supporting information.

Question 17: What metrics and performance data infrastructure and data governance strategies and tools are needed to create a vibrant digital equity ecosystem (e.g., metrics, digital skills, sustainability) to measure program effectiveness and effects for Covered Populations? What publicly available datasets and tools should NTIA and grantees (e.g., States, Territories, non-profits, develop) enhance or support to benchmark and to track progress of grantee goals and objectives?

Question 18: NTIA will require regular grantee performance and progress reporting, e.g., semi-annually, project close out to monitor grantee implementation of funded projects and capture metrics, outcomes, and impact. How should NTIA measure grantees implementation of such metric tracking? To what extent should NTIA require standardized inputs, metrics, and

measures in order to facilitate nationwide insights?

2. Digital Equity Strategies, Tactics, and Success Measures for Covered Populations

NTIA seeks to learn and understand what digital equity project strategies, tactics, and success measures would be appropriate for the Covered Populations listed in the Bipartisan Infrastructure Law. NTIA understands that there is not a one-size-fits-all approach to the spectrum of Covered Populations across the country, as communities and Covered Populations' needs vary greatly. However, NTIA is interested in learning and understanding the following for each Covered Population:

Question 19: For each of the Covered Populations, what are proven strategies and tactics, projects or programs, with outcome-based measures and impacts, that promote and achieve digital equity?

Question 20: Youth and young adults are members of each of the Covered Populations except for Older Americans. The COVID-19 pandemic had a devastating impact on academic achievement, physical and mental health, and earning opportunities for our youth and young adults. How can NTIA encourage and measure the effects of investments in our youth and young adult?

Question 21: To ensure all learners (youth, adult, incarcerated, etc.) have access to the opportunities that technology unlocks, how should NTIA promote a baseline or fundamental standard for digital literacy for all learners? What kind of baselines should NTIA's grant programs strive to achieve and should the intended outcomes be based on a type of standard which includes varying levels of digital skills, such as pre-basic, basic, intermediate and advanced? If so, please elaborate.

E. Ensuring That Equity Is Achieved in BEAD

Full participation in our twenty-first-century economy requires that everyone in America has access to affordable, reliable, high-speed internet service. Yet far too many live in a location where no service is available, the speed or quality of the service available is unreliable, or the options available are unaffordable. Under the BEAD Program, States and Territories will engage with all relevant stakeholders, including localities and those historically excluded communities, to design and implement projects that most benefit those groups from Underrepresented Communities. Successful execution of the BEAD Program will lay critical groundwork for universal access, affordability, equity,

and adoption of the internet. It will also create good-paying jobs (including for local workers), close longstanding equity gaps, and improve the overall quality of life across America.

In general, the "Covered Populations" under Digital Equity Grant Programs are comparable to the "Underrepresented Communities" under BEAD. Under BEAD, "Underrepresented Communities" refers to groups that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, including but not limited to: low-income households, aging individuals, incarcerated individuals, veterans, persons of color, Indigenous and Native American persons, members of ethnic and religious minorities, women, LGBTQI+ persons, persons with disabilities, persons with limited English proficiency, persons who live in rural areas, and persons otherwise adversely affected by persistent poverty or inequality.²⁸

Question 22: How can NTIA best ensure that States and Territories that receive funding under BEAD and Digital Equity Programs are closely aligning their planning efforts to close the equity gaps for all Covered Populations? How can NTIA work with the States, Territories, and their communities to promote the collective impact and outcomes between BEAD's Five-Year Action Plan and States' Digital Equity Plans to achieve equity for its Underrepresented Communities/ Covered Populations?

F. Ensure Workforce and Subcontracting Opportunities Are Inclusive of Underrepresented Communities/ Covered Populations

The goal of BEAD is to connect everyone in the country to affordable, reliable, high-speed internet service. To meet the workforce needs of BEAD, States and their subgrantees are required to make appropriate investments in the development of a skilled, diverse workforce for the high-paying jobs that will need to be filled. One of the transformative objectives of the Bipartisan Infrastructure Law is to ensure members of Underrepresented Communities, especially those members of Underrepresented Communities who were most impacted by the pandemic, have access to the good jobs that will be created in connection with the historic internet investments. States and their subgrantees must describe how they plan to create equitable entry points to internet-related jobs; provide wrap-

²⁶ Section 60304(d)(3)(D)(iv) of the IIJA.

²⁷ Section 60305(h) of the IIJA.

²⁸ Section (I)(C)(aa) of the BEAD Notice of Funding Opportunity.

around services²⁹ to support workers to access and complete training to attract, train, retain, or transition to meet local workforce needs; and increase high-paying job opportunities. States and their subgrantees should also understand the importance of their position, not just as a recipient of federal funding, but also via the role they play as the “entrusted liaison” on behalf of members of Underrepresented Communities/Covered Populations. Their efforts will ensure that individuals from Underrepresented Communities/Covered Populations can access unlimited possibilities and opportunities in the workforce.

Additionally, a non-federal entity must take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and Labor Surplus Area firms are contracted with when possible.³⁰

Question 23: How can NTIA encourage the design and implementation of Digital Equity Programs to support and advance the economic mobility of members of Underrepresented Communities/Covered Populations to support BEAD implementation and broader economic outcomes (e.g., through new skills, upskilling, re-skilling, career pathways, and other high-quality workforce development activities)?

Question 24: How can the BEAD and Digital Equity Programs support and promote youth employment and skills building? What kind of programs, projects, and partnerships—based on existing evidence—would encourage and prepare youth to have the digital skills needed to be workforce-ready, but also to enter internet and internet-related careers?

Dated: February 24, 2023.

Stephanie Weiner,

Acting Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2023-04242 Filed 3-1-23; 8:45 am]

BILLING CODE 3510-60-P

²⁹ Wrap-around services or supportive services help individuals, and especially those from underrepresented and underserved groups, enroll in and successfully complete training. These services include, but are not limited to, child and dependent care, tools, work clothing, application fees and other costs of apprenticeship or required pre-employment training, transportation and travel (including lodging) to training and work sites, and services aimed at helping to retain underrepresented groups such as mentoring, tutoring, support groups, and peer networking.

³⁰ 2 CFR 200.321.

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before April 3, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice’s publication to OIRA, at <https://www.reginfo.gov/public/do/PRAMain>. Please find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the website’s search function. Comments can be entered electronically by clicking on the “comment” button next to the information collection on the “OIRA Information Collections Under Review” page, or the “View ICR—Agency Submission” page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting <https://www.reginfo.gov/public/do/PRAMain>.

In addition to the submission of comments to <https://Reginfo.gov> as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the “Commission” or “CFTC”) by clicking on the “Submit Comment” box next to the descriptive entry for OMB Control No. 3038-0076, at <https://comments.cftc.gov/FederalRegister/PublicInfo.aspx>.

Or by either of the following methods:

- **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.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should

include 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.¹ 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 <https://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.

FOR FURTHER INFORMATION CONTACT:

Eileen Chotiner, Senior Compliance Analyst, Division of Clearing and Risk, Commodity Futures Trading Commission, (202) 418-5467; email: echotiner@cftc.gov, and refer to OMB Control No. 3038-0076.

SUPPLEMENTARY INFORMATION:

Title: Part 39, Requirements for Derivatives Clearing Organizations, (OMB Control No. 3038-0076). This is a request for extension of a currently approved information collection.

Abstract: Commission Regulations 39.10, 39.11, 39.12, 39.13, 39.14, 39.15, 39.16, 39.18, 39.19, 39.21, 39.24, and 39.27 establish reporting requirements for registered derivatives clearing organizations (DCOs). Regulation 39.3 requires any person seeking to register as a DCO to submit a completed Form DCO as provided in Appendix A to part 39, accompanied by all applicable exhibits. Subpart C of part 39 includes additional requirements for systemically important DCOs and DCOs that elect to be subject to Subpart C. The rules establish reporting and recordkeeping requirements that implement Section 5b of the Commodity Exchange Act (CEA), and are necessary for the Commission to assess compliance of DCOs and DCO applicants with requirements prescribed in the CEA and Commission regulations.

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.² On November 17, 2022, the Commission published in the

¹ 17 CFR 145.9.

² 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8(b)(3)(vi).

Federal Register notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 87 FR 69013 (“60-Day Notice”). The Commission did not receive any relevant comments on the 60-Day Notice.

Burden Statement: The Commission anticipates that there will continue to be approximately 86 respondents and the hourly burden will remain the same as in the 2020 renewal. The respondent burden for this collection is estimated to be as follows:

Estimated number of respondents: 86.

Estimated average burden hours per respondent: 736.

Estimated total annual burden hours: 63,311.

Frequency of Collection: On occasion.

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

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: February 27, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023-04294 Filed 3-1-23; 8:45 am]

BILLING CODE 6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Technology Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of meeting.

SUMMARY: The Commodity Futures Trading Commission (CFTC) announces that on March 22, 2023, from 12:00 p.m. to 4:30 p.m. Eastern Time, the Technology Advisory Committee (TAC or Committee) will hold an in-person public meeting at the CFTC’s Washington, DC headquarters with options for the public to attend virtually. At this meeting, the TAC will discuss, among other things, the Committee’s structure; formation of subcommittees; and potential topics for the TAC to prioritize in making policy recommendations to the CFTC on issues relating to the impact and implications of technological change in the financial services, derivatives, and commodity markets.

DATES: The meeting will be held on March 22, 2023, from 12:00 p.m. to 4:30 p.m. Eastern Time. Please note that the meeting may end early if the TAC has completed its business. Members of the public who wish to submit written statements in connection with the meeting should submit them by March 29, 2023.

ADDRESSES: The meeting will take place in the Conference Center at the CFTC’s headquarters, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, subject to CFTC facility health protocols in place at that time. You may submit public comments, identified by “Technology Advisory Committee,” through the CFTC website at <https://comments.cftc.gov>. Follow the instructions for submitting comments through the Comments Online process on the website. If you are unable to submit comments online, contact Anthony Biagioli, Designated Federal Officer, via the information listed under **FOR FURTHER INFORMATION CONTACT** to discuss alternate means of submitting your comments. Any statements submitted in connection with the committee meeting will be made available to the public, including publication on the CFTC website, <https://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT: Anthony Biagioli, TAC Designated Federal Officer, Commodity Futures Trading Commission, 2600 Grand Boulevard, Suite 210, Kansas City, MO 64108; (816) 960-7722; or abiagioli@cftc.gov.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating on a first-come, first-served basis. Seating may be limited due to the Centers for Disease Control and Prevention’s COVID-19 Community Level, which may require facilitating physical distancing to avoid overcrowding and additional restrictions. Members of the public may also listen to the meeting by telephone by calling a domestic or international toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

Domestic Numbers: +1 669 254 5252, +1 646 964 1167, +1 646 828 7666, +1 551 285 1373, +1 669 216 1590, +1 415 449 4000, 833 568 8864 (Toll Free), or 833 435 1820 (Toll Free).

International Numbers: Will be posted on the CFTC’s website, <https://www.cftc.gov>, on the page for the meeting, under Related Links.

Call-In/Webinar ID: 161 623 6013.

Pass Code/Pin Code: 862238.

Members of the public may also view a live webcast of the meeting via the www.cftc.gov website. The meeting agenda may change to accommodate other TAC priorities. For agenda updates, please visit <https://www.cftc.gov/About/AdvisoryCommittees/TAC#:~:text=The%20Technology%20>

Advisory%20Committee%20(TAC, of%20technology%20in%20the%20markets.

After the meeting, a transcript of the meeting will be published through a link on the CFTC’s website, <https://www.cftc.gov>. Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person above.

(Authority: 5 U.S.C. 1009(a)(2).)

Dated: February 27, 2023.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2023-04332 Filed 3-1-23; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2023-OS-0019]

Submission for OMB Review; Comment Request

AGENCY: United States Special Operations Command (USSOCOM), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by April 3, 2023.

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.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571-372-7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Optimizing Brain Health by Mitigating Post Traumatic Stress Disorder, OMB Control Number 0704-USCR.

Type of Request: New collection.

Survey

Number of Respondents: 1,536.

Responses per Respondent: 1.

Annual Responses: 1,536.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 768.

Qualitative Interview

Number of Respondents: 24.

Responses per Respondent: 1.

Annual Responses: 24.

Average Burden per Response: 1 hour.

Annual Burden Hours: 24.

Total

Number of Respondents: 1,560.

Annual Responses: 1,560.

Annual Burden Hours: 792.

Needs and Uses: The objective is to identify barriers and facilitators of accessing PTSD treatment that are most important to the Special Operations Forces (SOF) community via an online confidential survey of all relevant stakeholders in the healthcare delivery process (N=1,536). Stakeholders will include operators/enablers, healthcare providers, leadership, and policy makers from all SOF commands (Army, Air Force, Naval Special Warfare, Marine). We will then conduct qualitative interviews with SOF operators/enablers (N=24) to generate solutions to the barriers identified in the survey.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Dated: February 27, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023-04302 Filed 3-1-23; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2022-OS-0134]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by April 3, 2023.

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.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571-372-7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB

Number: Evaluation of State Implementation of Supportive Policies to Improve Educational Experiences and Achievement for K-12 Military Children (SPEAK Military Children); OMB Control Number 0704-SPEK.

Type of Request: New.

Number of Respondents: 225.

Responses per Respondent: 1.

Annual Responses: 225.

Average Burden per Response: 45 minutes.

Annual Burden Hours: 168.75.

Needs and Uses: The purpose of this study is to investigate the implementation of four specific initiatives (*i.e.*, Advance Enrollment, Military Student Identifier, Purple Star Schools [or similar efforts], and the Interstate Compact on Educational Opportunity for Military Children) and other policies intended to support military-connected students' (*i.e.*, kindergarten through 12th grade) educational success (*e.g.*, academic performance, social-emotional development and well-being).

Each of these groups of people may have different perspectives on the

implementation of the abovementioned four initiatives. Since little is known about the implementation or effectiveness of these initiatives, understanding different stakeholders' perspectives is critical. With a better understanding of how the programs and policies are being implemented and stakeholders' perceptions of the programs and policies, the Defense-State Liaison Office will be able to make informed recommendations for improvements in federal and state policies intended to support children in military families.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Dated: February 27, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023-04293 Filed 3-1-23; 8:45 am]

BILLING CODE 5001-06-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: RP23-455-000.

Applicants: KO Transmission Company.

Description: Tariff Amendment: KOT—Notice of Cancellation to be effective 2/23/2023.

Filed Date: 2/23/23.

Accession Number: 20230223–5067.

Comment Date: 5 p.m. ET 3/7/23.

Docket Numbers: RP23–456–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Compliance filing: Annual Report on Operational Transactions 2023 to be effective N/A.

Filed Date: 2/23/23.

Accession Number: 20230223–5087.

Comment Date: 5 p.m. ET 3/7/23.

Docket Numbers: RP23–457–000.

Applicants: Crossroads Pipeline Company.

Description: Compliance filing: Annual Report on Operational Transactions 2023 to be effective N/A.

Filed Date: 2/23/23.

Accession Number: 20230223–5090.

Comment Date: 5 p.m. ET 3/7/23.

Docket Numbers: RP23–458–000.

Applicants: Hardy Storage Company, LLC.

Description: Compliance filing: Annual Report on Operational Transactions 2023 to be effective N/A.

Filed Date: 2/23/23.

Accession Number: 20230223–5096.

Comment Date: 5 p.m. ET 3/7/23.

Docket Numbers: RP23–459–000.

Applicants: Columbia Gulf Transmission, LLC.

Description: Compliance filing: Annual Report on Operational Transactions 2023 to be effective N/A.

Filed Date: 2/23/23.

Accession Number: 20230223–5099.

Comment Date: 5 p.m. ET 3/7/23.

Docket Numbers: RP23–460–000.

Applicants: Viking Gas Transmission Company.

Description: § 4(d) Rate Filing: Annual LMCRA Filing—Spring 2023 to be effective 4/1/2023.

Filed Date: 2/24/23.

Accession Number: 20230224–5031.

Comment Date: 5 p.m. ET 3/8/23.

Docket Numbers: RP23–461–000.

Applicants: Viking Gas Transmission Company.

Description: § 4(d) Rate Filing: Semi-Annual Fuel and Losses Retention Adjustment—Spring 2023 to be effective 4/1/2023.

Filed Date: 2/24/23.

Accession Number: 20230224–5050.

Comment Date: 5 p.m. ET 3/8/23.

Docket Numbers: RP23–462–000.

Applicants: Cimarron River Pipeline, LLC.

Description: § 4(d) Rate Filing: Fuel Tracker 2023—Summer Season Rates to be effective 4/1/2023.

Filed Date: 2/24/23.

Accession Number: 20230224–5071.

Comment Date: 5 p.m. ET 3/8/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) 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/fercensearch.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.

Dated: February 24, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–04311 Filed 3–1–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC23–5–000]

Commission Information Collection Activities (FERC–730); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–730 (Report of Transmission Investment Activity) which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements.

DATES: Comments on the collection of information are due April 3, 2023.

ADDRESSES: Send written comments on FERC–730 to OMB through www.reginfo.gov/public/do/PRAMain, Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number

(1902–0239) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments (identified by Docket No. IC23–5–000) to the Commission as noted below. Electronic filing through <https://www.ferc.gov> is preferred.

- **Electronic Filing:** Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

- **Mail via U.S. Postal Service Only:**

Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

- **Hand (Including Courier) Delivery:**

Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at www.reginfo.gov/public/do/PRAMain; using the search function under the “Currently Under Review field,” select Federal Energy Regulatory Commission; click “submit” and select “comment” to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: <https://www.ferc.gov>. For user assistance, contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <https://www.ferc.gov>.

FOR FURTHER INFORMATION CONTACT:

Ellen Brown may be reached by email at DataClearance@FERC.gov and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–730, Report of Transmission Investment Activity.

OMB Control No.: 1902–0239.

Type of Request: Three-year extension of the FERC–730 information collection requirements with no changes to the current reporting requirements.

Abstract: This collection of information assists the Commission in implementing section 219 of the Federal Power Act (FPA) ¹ and 18 CFR 35.35(h), which address incentive-based rate treatments for transmission infrastructure investment. FERC–730

¹ 16 U.S.C. 824s.

consists of an annual report that includes projections, details on the level and status of transmission investment, and the reason for delay (if any).

The regulation at 18 CFR 35.35(h) requires public utilities that have been granted incentive rate treatment for specific transmission projects to file FERC Form 730 annually, beginning with the calendar year incentive rate treatment is granted by the Commission. Such filings are due by April 18 of the following calendar year and are due April 18 each year thereafter. The following information must be filed:

(1) In dollar terms, actual transmission investment for the most recent calendar year, and projected,

incremental investments for the next five calendar years; and

(2) For all current and projected investments (except projects with projected costs less than \$20 million) over the next five calendar years, a project-by-project listing that specifies for each project the most up-to-date, expected completion date, percentage completion as of the date of filing, and reasons for delays.

For good cause shown, the Commission may extend the time within which any FERC-730 filing is to be filed or waive the requirements applicable to any such filing.

The Commission uses the FERC-730 information collection to determine an

accurate assessment of the state of transmission investment by public utilities. Filers are strongly encouraged to submit the FERC-730 electronically via eFiling.

Type of Respondents: Public utilities that have been granted incentive based rate treatment for specific transmission projects under provisions of 18 CFR 35.35.

*Estimate of Annual Burden:*² The Commission estimates 63 responses annually, and per-response burdens of 30 hours and \$2,370. The total estimated burdens per year are 1,890 hours and \$171,990. These burdens are itemized in the following table.

Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response ³	Total annual burden hours & total annual cost	Cost per respondent (\$)
A.	B.	C. (Column A × Column B)	D.	E. (Column C × Column D)	F. (Column E ÷ Column A)
63	1	63	30 hours; \$2,730	1,890 hours; \$171,990	2,730
Totals .....	.....	63	.....	1,890 hours; \$171,990 .....	.....

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: February 24, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023-04308 Filed 3-1-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC23-7-000]

Commission Information Collection Activities (FERC-725A(1B); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC-725A(1B), (Mandatory Reliability Standards for the Bulk Power System). There are no changes in the requirements of the collection.

DATES: Comments on the collection of information are due May 1, 2023.

ADDRESSES: You may submit comments (identified by Docket No. IC23-7-000) by either of the following methods:

explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

³ The Commission staff estimates that the industry's hourly cost for wages plus benefits is

• *eFiling at Commission's Website:*
<https://www.ferc.gov/docs-filing/efiling.asp>.

• *Mail/Hand Delivery/Courier:*
Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: <https://www.ferc.gov/help/submission-guide.asp>. For user assistance, contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at: (866) 208-3676 (toll-free), or (202) 502-8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <https://www.ferc.gov/docs-filing/docs-filing.asp>.

FOR FURTHER INFORMATION CONTACT:
Ellen Brown may be reached by email at DataClearance@FERC.gov, telephone at (202) 502-8663.

SUPPLEMENTARY INFORMATION:

Title: FERC-725A(1B), (Mandatory Reliability Standards for the Bulk Power System).

OMB Control No.: 1902-0292.

similar to the Commission's \$91.00 FY 2022 average hourly cost for wages and benefits.

² Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further

Type of Request: Three-year extension of the FERC-725A(1B) information collection requirements with no changes to the current reporting and recordkeeping requirements.

Abstract: The FERC-725A(1B)¹ Under section 215 of the Federal Power Act (FPA), the Commission proposes to approve Reliability Standards TOP-010-11 (Real-time Reliability Monitoring and Analysis Capabilities) submitted by North American Electric Corporation (NERC). In this order, the Reliability Standards build on monitoring, real-time assessments and support effective situational awareness. The Reliability Standards accomplish this by requiring applicable entities to: (1) Provide

notification to operators of real-time monitoring alarm failures; (2) provide operators with indications of the quality of information being provided by their monitoring and analysis capabilities; and (3) address deficiencies in the quality of information being provided by their monitoring and analysis capabilities. FERC-725A(1B) addresses situational awareness objectives by providing for operator awareness when key alarming tools are not performing as intended. These collections will improve real-time situational awareness capabilities and enhance reliable operations by requiring reliability coordinators, transmission operators,

and balancing authorities to provide operators with an improved awareness of system conditions analysis capabilities, including alarm availability, so that operators may take appropriate steps to ensure reliability. These functions include planning, operations, data sharing, monitoring, and analysis.

Type of Respondent: Balancing Authority (BA), Transmission Operations (TOP) and Reliability Coordinators (RC).

*Estimate of Annual Burden:*² The Commission estimates the total annual burden and cost for this information collection in the table below.

FERC-725A(1B)—MANDATORY RELIABILITY STANDARDS FOR THE BULK POWER SYSTEM³

Entity	Requirements	Number of respondents ⁴	Annual number of responses per respondent	Total number of responses	Average burden & cost per response ⁵	Total annual burden hours & total annual cost	Cost per respondent (\$)
		(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
BA ⁶	Annual reporting ..	98	1	98	42 hrs.; \$3,234.84	4,116 hrs.; \$317,014.32	\$3,234.84
TOP ⁷	Annual reporting ..	168	1	168	40 hrs.; \$3,080.80	6,720 hrs.; \$517,574.40	3,080.80
BA/TOP	Annual Record Retention.	266	1	266	2 hrs.; \$84.70	532 hrs.; \$22,530.20	84.70
Total Burden Hours Per Year (Reporting).	.....	.....	.....	.....	.....	10,836 hrs. \$834,588.72	.....
Total Burden Hours Per Year (Record Retention).	.....	.....	.....	.....	.....	532 hrs.; \$22,530.20 .....	.....

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use

of automated collection techniques or other forms of information technology.

Dated: February 24, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023-04307 Filed 3-1-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC23-8-000]

Commission Information Collection Activities (FERC-725T); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

¹ The 725(1B) collection was created as a temporary collection number originally used at the time of the RD16-6-000, because OMB cannot review two pending requests with the same OMB control no. at a given time. The FERC 725A is still pending at OMB for an unrelated matter, thus we are renewing the temporary number and the related collection at this time.

² "Burden" is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3.

³ Our estimates are based on the NERC Compliance Registry Summary of Entities and

Functions as of November 4, 2022, which indicates there are 266 entities registered as BA and TOP.

⁴ The number of respondents is the number of entities in which a change in burden from the current standards to the proposed standards exists, not the total number of entities from the current or proposed standards that are applicable.

⁵ The estimated hourly costs (salary plus benefits) are based on Bureau of Labor Statistics (BLS) information, as of May 2022 (at http://www.bls.gov/oes/current/naics2_22.htm, with updated benefits information for March 2022 at <http://www.bls.gov/news.release/ecec.nr0.htm>), for an electrical engineer (code 17-2071, \$77.02/hour), and for information and record clerks record keeper (code 43-4199, \$42.35/hour). The hourly figure for engineers is used for reporting; the hourly figure for

information and record clerks is used for document retention.

⁶ Balancing Authority (BA). The following Requirements and associated measures apply to balancing authorities: Requirement R1: A revised data specification and writing the required operating process/operating procedure; and Requirement R2: quality monitoring logs and the data errors and corrective action logs.

⁷ Transmission Operations (TOP). The following Requirements and associated measures apply to transmission operators: Requirement R1: A revised data specification and writing the required operating process/operating procedure; and Requirement R3: alarm process monitor performance logs to maintain performance logs and corrective action plans.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC-725T, Mandatory Reliability Standards for the Bulk-Power System: Texas Reliability Entity (TRE) Reliability Standards.

DATES: Comments on the collection of information are due May 1, 2023.

ADDRESSES: You may submit comments (identified by Docket No. IC23-8-000) by either of the following methods:

- *eFiling at Commission's Website:* <https://www.ferc.gov/docs-filing/efiling.asp>.

- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, at Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: <https://www.ferc.gov/help/submission-guide.asp>. For user assistance contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at: (866) 208-3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <https://www.ferc.gov/docs-filing/docs-filing.asp>.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at DataClearance@FERC.gov, telephone at (202) 502-8663.

SUPPLEMENTARY INFORMATION:

Title: FERC-725T, Mandatory Reliability Standards for the Bulk-Power System: TRE Reliability Standards BAL-001-TRE-2 (Primary Frequency Response in the ERCOT Region).

OMB Control No.: 1902-0273.

Type of Request: Three-year extension of the FERC-725T information collection requirements with no changes to the current reporting requirements.

Abstract: TRE Reliability Standards apply to entities registered as Generator Owners (GOs), Generator Operators (GOPs), and Balancing Authorities (BAs) within the Texas Reliability Entity region.

The information collection requirements entail the setting or configuration of the Control System software, identification and recording of events, data retention, and submitting frequency measurable events to the compliance enforcement authority (Regional Entity or NERC).

Submitting frequency measurable events—The BA is required to identify and post information regarding Frequency Measurable Events (FME). Further, the BA must calculate and report to the Compliance Enforcement Authority data related to Primary Frequency Response (PFR) performance of each generating unit/generating facility.

Data retention—The BA, GO, and GOP shall keep data or evidence to show compliance, as identified below, unless directed by its Compliance Enforcement Authority to retain specific evidence for a longer period of time as part of an investigation. Compliance audits are generally about three years apart.

- The BA shall retain a list of identified Frequency Measurable Events and shall retain FME information since its last compliance audit.

- The BA shall retain all monthly PFR performance reports since its last compliance audit.

- The BA shall retain all annual Interconnection minimum Frequency Response calculations, and related methodology and criteria documents, relating to time periods since its last compliance audit.

- The BA shall retain all data and calculations relating to the Interconnection's Frequency Response, and all evidence of actions taken to increase the Interconnection's Frequency Response, since its last compliance audit.

- Each GOP and GO shall retain evidence since its last compliance audit.

Type of Respondents: NERC Registered entities: Balancing Authorities, Generator Owners, Generator Operators.

*Estimate of Annual Burden:*¹ The Commission estimates the annual public reporting burden for the information collection as:

FERC-725T (MANDATORY RELIABILITY STANDARDS FOR THE BULK-POWER SYSTEM: TRE RELIABILITY STANDARDS)

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response ²	Total annual burden hours & total annual cost	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Maintenance and submission of event log data.	³ 1	1	1	16 hrs.; \$891.20	16 hrs.; \$891.20	\$891.20
Evidence Retention	⁴ 420	1	420	2 hrs.; 111.40	840 hrs.; 46,788	111.40
Total			421		856 hrs.; \$47,679.20 ..	

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection

of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use

of automated collection techniques or other forms of information technology.

Dated: February 24, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023-04314 Filed 3-1-23; 8:45 am]

BILLING CODE 6717-01-P

¹ Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

² The figures for May 2022 posted by the Bureau of Labor Statistics for the Utilities sector (available

at http://www.bls.gov/oes/current/naics2_22.htm) and updated May 2022 for benefits information (at <http://www.bls.gov/news.release/ceec.nr0.htm>). The hourly estimates for salary plus benefits are:

—File Clerks (code 43-4071), \$34.38.

—Electrical Engineer (code 17-2071), \$77.02.

The average hourly burden cost for this collection is \$55.70 [(\$34.38 + \$77.02)/2 = 55.70].

³ BA (balancing authority).

⁴ BA (balancing authority) (1), GO (generator owner) (233), and GOP (generator operator) (186) = 420 functional entities numbers based on NERC Compliance Registry November 4, 2022. The large increase is due to counting each entity function separately instead of considering overlap. Also, there has been an increase in number of renewable energy entities in the Texas region.

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. ER23–1165–000]

McFarland Solar A, 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 McFarland Solar A, 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 March 16, 2023.

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 TTY, (202) 502–8659.

Dated: February 24, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–04309 Filed 3–1–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings #1**

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–85–000.

Applicants: Sweetland Wind Farm, LLC.

Description: Sweetland Wind Farm, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 2/24/23.

Accession Number: 20230224–5145.

Comment Date: 5 p.m. ET 3/17/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–495–002.

Applicants: AES CE Solutions, LLC.

Description: Tariff Amendment: AES CE Solutions, LLC MBR Tariff to be effective 11/24/2022.

Filed Date: 2/24/23.

Accession Number: 20230224–5122.

Comment Date: 5 p.m. ET 3/17/23.

Docket Numbers: ER23–757–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment of Amended ISA, SA No. 5422, Queue No. AC1–158 in Docket No. ER23–757 to be effective 3/1/2023.

Filed Date: 2/24/23.

Accession Number: 20230224–5013.

Comment Date: 5 p.m. ET 3/17/23.

Docket Numbers: ER23–1173–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2023–02–24 Schedules 24 and 24A Cost Recovery to be effective 4/26/2023.

Filed Date: 2/24/23.

Accession Number: 20230224–5002.

Comment Date: 5 p.m. ET 3/17/23.

Docket Numbers: ER23–1174–000.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2023–02–24 SA 1756 METC-Consumers Energy 16th Rev GIA (G479B) to be effective 2/1/2023.

Filed Date: 2/24/23.

Accession Number: 20230224–5003.

Comment Date: 5 p.m. ET 3/17/23.

Docket Numbers: ER23–1175–000.
Applicants: Dominion Energy South Carolina, Inc.

Description: Tariff Amendment: Jasper Provisional LGIA Notice of Cancellation to be effective 2/7/2023.

Filed Date: 2/24/23.

Accession Number: 20230224–5018.

Comment Date: 5 p.m. ET 3/17/23.

Docket Numbers: ER23–1176–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: First Revised ISA, Service Agreement No. 6248; Queue No. AE2–206/AF1–078 to be effective 1/18/2023.

Filed Date: 2/24/23.

Accession Number: 20230224–5077.

Comment Date: 5 p.m. ET 3/17/23.

Docket Numbers: ER23–1177–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 217, Exhibit B.PAD–LIB to be effective 4/28/2023.

Filed Date: 2/24/23.

Accession Number: 20230224–5082.

Comment Date: 5 p.m. ET 3/17/23.

Docket Numbers: ER23–1178–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: SE Solar II (Fayette Solar) LGIA Termination Filing to be effective 2/3/2023.

Filed Date: 2/24/23.

Accession Number: 20230224–5093.

Comment Date: 5 p.m. ET 3/17/23.

Docket Numbers: ER23–1179–000.

Applicants: HIKO Energy, LLC.

Description: Notice of Cancellation of Market Based Rate Tariff of HIKO Energy, LLC.

Filed Date: 2/24/23.

Accession Number: 20230224–5156.

Comment Date: 5 p.m. ET 3/17/23.

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 or protest in any of the above proceedings must file in accordance with Rules 211

and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) 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.

Dated: February 24, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-04313 Filed 3-1-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22-461-000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Southside Reliability Enhancement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Southside Reliability Enhancement Project (Project), proposed by Transcontinental Gas Pipe Line Company, LLC (Transco) in the above-referenced docket. Transco requests authorization to construct and operate one new compressor station and modify two existing compressor stations and three existing meter stations in North Carolina and Virginia. The Project would provide an incremental 423,400 dekatherms per day (Dth/d) of year-round firm transportation capacity from Transco's Compressor Station 165 and Pine Needle Storage Facility along the mainline and South Virginia Lateral pipeline systems to delivery points in North Carolina.

The final EIS assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed Project, with the mitigation measures recommended in the EIS, would result in some adverse environmental impacts; however, impacts would be reduced to less-than-

significant levels. Regarding climate change impacts, the Project's construction and operation emissions would increase the atmospheric concentration of greenhouse gases (GHG), in combination with past, present, and future emissions from all other sources. Climate change impacts are not characterized in the EIS as significant or insignificant because the Commission is conducting a generic proceeding to determine whether and how the Commission will conduct significance determinations going forward.¹ The EIS also concludes that no system or other alternative site would meet the Project objective while providing a significant environmental advantage over the Project as proposed.

The final EIS addresses the potential environmental effects of the construction and operation of the following Project facilities:

- installation of a new compressor station (Compressor Station 168) which includes one new 33,000 horsepower electric motor-driven compressor unit, and installation of new mainline valves on South Virginia Lateral A-Line and B-Line at the new Compressor Station 168 in Mecklenburg County, Virginia;
- addition of one 16,000 horsepower electric motor-driven compressor unit at existing Compressor Station 166 in Pittsylvania County, Virginia;
- installation of piping modifications to allow for flow reversal at existing Compressor Station 155 in Davidson County, North Carolina;
- replacement of one meter run to increase delivery volumes at the existing Ahoskie Meter Station in Hertford County, North Carolina;
- installation of new facilities to increase delivery volumes at the existing Pleasant Hill Meter Station in Northampton County, North Carolina; and
- upgrade meter and controls and debottleneck piping at the existing Iredell Meter Station in Iredell County, North Carolina.

The Commission mailed a copy of the *Notice of Availability* of the final EIS to Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the Project area. The final EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (www.ferc.gov), on the

¹ Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews, 178 FERC ¶ 61,108 (2022); 178 FERC ¶ 61,197 (2022).

natural gas environmental documents page (<https://www.ferc.gov/industries-data/natural-gas/environmental-environmental-documents>). In addition, the final EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (<https://elibrary.ferc.gov/eLibrary/search>), select "General Search", and enter the docket number in the "Docket Number" field (i.e., CP22-461). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

The final EIS is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding.

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website (www.ferc.gov) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

Dated: February 24, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-04310 Filed 3-1-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No 1121-135]

Pacific Gas and Electric Company; Notice of Waiver Period for Water Quality Certification Application

On February 2, 2023, Pacific Gas and Electric Company submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with the

California State Water Resources Control Board, in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 5.23(b) of the Commission's regulations,¹ we hereby notify the California State Water Resources Control Board of the following:

Date of Receipt of the Certification Request: February 2, 2023.

Reasonable Period of Time to Act on the Certification Request: One year (February 2, 2024).

If the California State Water Resources Control Board fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: February 24, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-04312 Filed 3-1-23; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2022-0083; FRL-10750-01-OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; NESHAP for the Printing and Publishing Industry (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for the Printing and Publishing Industry (EPA ICR Number 1739.10, OMB Control Number 2060-0335), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2023. Public comments were previously requested, via the **Federal Register**, on July 22, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before April 3, 2023.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OAR-2022-0083, to EPA online

using <https://www.regulations.gov/> (our preferred method), or by email to docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Muntasir Ali, Sector Policies and Program Division (D243-05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-0833; email address: ali.muntasir@epa.gov.

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through March 31, 2023. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested, via the **Federal Register** (87 FR 43843), on July 22, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at <https://www.regulations.gov/>, or in person, at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Printing and Publishing Industry (40 CFR part 63, subpart KK) apply to both existing facilities and new facilities operating: publication rotogravure, product and

packaging rotogravure, or wide-web flexographic printing presses at major sources. These standards also apply to owners and/or operators who choose to commit to, and meet the criteria of establishing the facility to, be an area source of hazardous air pollutants (HAP). New facilities include those that commenced construction or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart KK. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP.

Form Numbers: None.

Respondents/affected entities: Owners and operators of printing and publishing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart KK).

Estimated number of respondents: 352 (total).

Frequency of response: Annually, semiannually.

Total estimated burden: 59,800 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$7,590,000 (per year), which includes \$414,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is no change in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to two considerations: (1) the regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup or operation and maintenance (O&M) costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2023-04216 Filed 3-1-23; 8:45 am]

BILLING CODE 6560-50-P

¹ 18 CFR 5.23(b) (2022).

ENVIRONMENTAL PROTECTION AGENCY**[FRL-10751-01-R9]****Revision of Approved State Primacy Program for the State of Arizona****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of approval.

SUMMARY: Notice is hereby given that the State of Arizona revised its approved State primacy program under the federal Safe Drinking Water Act (SDWA) by adopting regulations that effectuate the federal Revised Total Coliform Rule (RTCR). The Environmental Protection Agency (EPA) has determined that Arizona's revision request meets the applicable SDWA program revision requirements and the regulations adopted by Arizona are no less stringent than the corresponding federal regulations. Therefore, EPA approves this revision to Arizona's approved State primacy program. However, this determination on Arizona's request for approval of a program revision shall take effect in accordance with the procedures described below in the **SUPPLEMENTARY INFORMATION** section of this notice after the opportunity to request a public hearing.

DATES: A request for a public hearing must be received or postmarked before April 3, 2023.

ADDRESSES: Documents relating to this determination that were submitted by Arizona as part of its program revision request are available for public inspection online at <https://azdeq.gov/notices>, or available upon request by emailing R9dw-program@epa.gov. In addition, these documents are available by appointment between the hours of 08:00 a.m. and 05:00 p.m., Monday through Friday, at the following address: Records Center, 1110 W Washington St., Phoenix, Arizona 85007.

FOR FURTHER INFORMATION CONTACT: Daria Evans-Walker, EPA Region 9, Drinking Water Section; via telephone at (415) 972-3451 or via email address at Evans-Walker.Daria@epa.gov.

SUPPLEMENTARY INFORMATION:

Background. EPA approved Arizona's initial application for primary enforcement authority ("primacy") of drinking water systems on August 25, 1978 (43 FR 38083). Since initial primacy approval, EPA has approved various revisions to Arizona's primacy program. For the revision covered by this action, EPA promulgated the RTCR

on February 13, 2013 (78 FR 10269) and minor corrections to the rule on February 26, 2014 (79 FR 10665). The RTCR revises the 1989 Total Coliform Rule and is intended to improve public health protection through the reduction of potential pathways of entry for fecal contamination into distribution systems. The RTCR applies to all public water systems, establishes a treatment technique for total coliforms and a maximum contaminant level (MCL) for *E. coli*. Public water systems that incur a set number of total coliform occurrences or exceed the *E. coli* MCL must perform assessments to identify and correct sanitary defects to prevent microbial contamination of the distribution system. EPA has determined that Arizona has adopted into state law RTCR requirements that are comparable to and no less stringent than the federal requirements. EPA has also determined that the State's program revision request meets all of the regulatory requirements for approval, as set forth in 40 CFR 142.12, including a side-by-side comparison of the Federal requirements demonstrating the corresponding State authorities, additional materials to support special primacy requirements of 40 CFR 142.16, a review of the requirements contained in 40 CFR 142.10 necessary for States to attain and retain primary enforcement responsibility, and a statement by the Arizona Attorney General certifying that Arizona's laws and regulations to carry out the program revision were duly adopted and are enforceable. The Attorney General's statement also affirms that there are no environmental audit privilege and immunity laws that would impact Arizona's ability to implement or enforce the Arizona laws and regulations pertaining to the program revision. This finding relies upon the analysis contained in the letter from the Office of the Attorney General to the EPA Region 9 Water Division Director, dated January 28, 2019, regarding its environmental audit privilege law. Therefore, EPA approves this revision of Arizona's approved State primacy program. The Technical Support Document, which provides EPA's analysis of Arizona's program revision request, is available by submitting a request to the following email address: R9dw-program@epa.gov. Please note "Technical Support Document" in the subject line of the email.

Public Process. Any interested person may request a public hearing on this determination. A request for a public hearing must be received or postmarked before April 3, 2023 and addressed to

the Regional Administrator of EPA Region 9, via the following email address: R9dw-program@epa.gov, or by contacting the EPA Region 9 contact person listed above in this notice by telephone if you do not have access to email. Please note "State Program Revision Determination" in the subject line of the email. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. If a timely request for a public hearing is made, then EPA Region 9 may hold a public hearing. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

If EPA, Region 9 does not receive a timely request for a hearing or a request for a hearing was denied by the Regional Administrator for being frivolous or insubstantial, and the Regional Administrator does not elect to hold a hearing on their own motion, EPA's approval shall become final and effective on April 3, 2023, and no further public notice will be issued.

Authority: Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300g-2 (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: February 23, 2023.

Martha Guzman Aceves,

Regional Administrator, Region 9.

[FR Doc. 2023-04223 Filed 3-1-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**[FRL-10684-01-OA]****Small Community Advisory Subcommittee Meeting****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notification of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), EPA hereby provides notice of a meeting for the Local Government Advisory Committee's (LGAC) Small Community Advisory Subcommittee (SCAS) on the

date and time described below. This meeting will be open to the public. For information on public attendance and participation, please see the registration information under **SUPPLEMENTARY INFORMATION**.

DATES: The SCAS will meet virtually March 17, 2023, from 12 p.m. through 1 p.m. Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: Edlynzia Barnes, Designated Federal Officer (DFO), at Barnes.edlynzia@epa.gov or 773-638-9158.

Information on Accessibility: For information on access or services for individuals requiring accessibility accommodations, please contact Edlynzia Barnes by email at Barnes.edlynzia@epa.gov. To request accommodation, please do so five (5) business days prior to the meeting, to give EPA as much time as possible to process your request.

SUPPLEMENTARY INFORMATION: The SCAS will welcome newly appointed members and discuss proposed charges from EPA. Details on the charges will be posted online (link below) one week prior to the meeting.

Registration: The meeting will be held virtually through an online audio and video platform. Members of the public who wish to participate should register by contacting the Designated Federal Officer (DFO) at Barnes.edlynzia@epa.gov by March 13, 2023. The agenda and other supportive meeting materials will be available online at <https://www.epa.gov/ocir/small-community-advisory-subcommittee-scas> and will be emailed to all registered. In the event of cancellation for unforeseen circumstances, please contact the DFO or check the website above for reschedule information.

Edlynzia Barnes,

Designated Federal Officer, U.S. Environmental Protection Agency.

[FR Doc. 2023-04264 Filed 3-1-23; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 127350]

Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that

the Federal Communications Commission's (Commission) Communications Security, Reliability, and Interoperability Council (CSRIC) VIII will hold its seventh meeting.

DATES: March 21, 2023 at 1:00 p.m. EST.

ADDRESSES: The Meeting will be held at 45 L Street NE, Washington, DC, and via conference call. The meeting is open to the public and is available via WebEx at <https://www.fcc.gov/live> and on the FCC's YouTube channel.

FOR FURTHER INFORMATION CONTACT: Suzon Cameron, Designated Federal Officer, Federal Communications Commission, Public Safety and Homeland Security Bureau, (202) 418-1916 or email: suzon.cameron@fcc.gov, or Kurian Jacob, Deputy Designated Federal Officer, Federal Communications Commission, Public Safety and Homeland Security Bureau, (202) 418-2040 or email: kurian.jacob@fcc.gov.

SUPPLEMENTARY INFORMATION: The meeting will be held on March 21, 2023, at 1:00 p.m. EST, in the Commission Meeting Room of the Federal Communications Commission, 45 L Street NE, Washington, DC. While the CSRIC VIII meeting is open to the public, the FCC headquarters building is not open access, and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees at the meeting will not be required to have an appointment but must otherwise comply with protocols outlined at: <https://www.fcc.gov/visit>.

The CSRIC is a Federal Advisory Committee that will provide recommendations to the Commission to improve the security, reliability, and interoperability of communications systems.

On June 30, 2021, the Commission, pursuant to the Federal Advisory Committee Act, renewed the charter for CSRIC VII for a period of two years through June 29, 2023. The meeting on March 21, 2023, will be the seventh meeting of CSRIC VIII under the current charter.

The Commission will provide audio and/or video coverage of the meeting over the internet from the FCC's web page at <https://www.fcc.gov/live> and on the FCC's YouTube channel. The public may submit written comments before the meeting to Suzon Cameron, CSRIC VIII Designated Federal Officer, by email to CSRIC@fcc.gov.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to

fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the Commission can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted but may be impossible to fill.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023-03737 Filed 3-1-23; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE

[OMB No. 3064-0140;-0175]

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. 3064-0140;-0175).

DATES: Comments must be submitted on or before May 1, 2023.

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:* Insurance Sales Consumer
Protections.

OMB Number: 3064–0140.

Forms: None.

Affected Public: Insured State
nonmember banks and savings
associations that sell insurance
products; persons who sell insurance in
or on behalf of insured State
nonmember banks and savings
associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0140]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Insurance Sales Consumer Protections, 12 CFR 343 (Mandatory).	Third Party Disclosure (On Occasion).	1,101	1	05:00	5,505
Total Annual Burden (Hours)					5,505

Source: FDIC.

General Description of Collection:
Respondents must prepare and provide certain disclosures to consumers (e.g., that insurance products and annuities are not FDIC-insured) and obtain consumer acknowledgments, at two different times: (1) Before the completion of the initial sale of an insurance product or annuity to a consumer; and (2) at the time of application for the extension of credit (if insurance products or annuities are sold, solicited, advertised, or offered in connection with an extension of credit). There is no change in the substance or methodology of this information collection. The decrease in burden is due solely to a decrease in the estimated number of respondents.

The disclosure requirements in this information collection apply to all FDIC-supervised IDIs that sell insurance products. According to recent Reports of

Condition and Income (Call Report), there are currently 3,068 FDIC-supervised IDIs.¹ To estimate the number of IDIs that would be directly affected by this ICR, FDIC restricts the count to those IDIs that report income from the sale of insurance on their Call Reports. IDIs report income from insurance activities differently depending on which Call Report form they file. IDIs file Call Report form 051 if they have less than \$1 billion in total assets and do not have any foreign offices, and they file forms 031 or 041 otherwise. IDIs that file form 051 report income from insurance activities on Call Report schedule RI line 5(d) 2, while IDIs that file forms 031 or 041 report income from annuity sales, underwriting income from insurance and reinsurance activities, and other income from insurance activities on Call Report schedule RI lines 5(d) 3–5.

As of September 30, 2022, 321 FDIC-supervised IDIs reported non-zero values of income from annuity sales, underwriting income from insurance and reinsurance activities, or income from other insurance activities on Call Report forms 031 or 041. Another 780 FDIC-supervised IDIs reported non-zero values of income from insurance activities on Call Report form 051.² Accordingly, the estimated number of respondents for this information collection is 1,101.³

2. *Title:* Interagency Guidance on Sound Incentive Compensation Policies.

OMB Number: 3064–0175.

Forms: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0175]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Initial documentation: Interagency Guidance on Sound Incentive Compensation Practices, 75 FR 36395 (Voluntary).	Recordkeeping (Annual)	1	1	40:00	40
2. Revision of initial documentation: Interagency Guidance on Sound Incentive Compensation Practices, 75 FR 36395 (Voluntary).	Recordkeeping (Annual)	1,985	1	02:00	3,970
Total Annual Burden (Hours)					4,010

Source: FDIC.

General Description of Collection:
This Guidance helps promote that incentive compensation policies at

insured state non-member banks do not encourage excessive risk-taking and are consistent with the safety and

soundness of the organization. Under this Guidance, banks are encouraged to: (i) Have policies and procedures that

¹ FDIC Call Report data, September 2022.

² *Id.*

³ 321 + 780 = 1,101.

identify and describe the role(s) of the personnel and units authorized to be involved in incentive compensation arrangements, identify the source of significant risk-related inputs, establish appropriate controls governing these inputs to help ensure their integrity, and identify the individual(s) and unit(s) whose approval is necessary for the establishment or modification of incentive compensation arrangements; (ii) create and maintain sufficient documentation to permit an audit of the organization's processes for incentive compensation arrangements; (iii) have any material exceptions or adjustments to the incentive compensation arrangements established for senior executives approved and documented by its board of directors; and (iv) have its board of directors receive and review, on an annual or more frequent basis, an assessment by management of the effectiveness of the design and operation of the organization's incentive compensation system in providing risk taking incentives that are consistent with the organization's safety and soundness. There is no change in the substance or methodology of this information collection. The change in burden is due to a decrease in the estimated number of respondents. The burden hours decreased by 358 from 4,368 to 4,010.

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.

Dated at Washington, DC, on February 27, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023-04257 Filed 3-1-23; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project "The AHRQ Safety Program for Telemedicine: Improving the Diagnostic Process and Improving Antibiotic Use." This proposed information collection was previously published in the **Federal Register** on December 15th, 2022 and allowed 60 days for public comment. AHRQ received no substantive comments from members of the public. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by April 3, 2023.

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 proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427-1477, or by email at doris.lefkowitz@AHRQ.hhs.gov.

SUPPLEMENTARY INFORMATION:

Proposed Project

The AHRQ Safety Program for Telemedicine: Improving the Diagnostic Process and Improving Antibiotic Use

Telemedicine visits have increased dramatically in response to the COVID-19 pandemic and resulting changes in third-party payer reimbursement policies. Telemedicine visits increased from 0.3 percent of all ambulatory visits in 2019 to 23.6 percent by Spring 2020. Given this rapid growth, the need to ensure safe and appropriate patient care in this setting is urgent. Telemedicine

has many benefits, such as facilitating continuity of care; improving access beyond normal hours; reducing patients' travel burden; overcoming health care provider (HCP) shortages; and providing support for patients managing chronic health conditions. However, transferring clinical practices from an in-person to a virtual environment poses potential risks. Many HCPs have never received formal training in using telemedicine effectively to diagnose and treat patients virtually. Additionally, inadequate internet access, which disproportionately impacts rural and minority populations, and struggles accessing telemedicine platforms may force video-based telemedicine visits to transition to audio-only or be skipped.

This program aims to improve two at-risk areas among telemedicine practices by implementing the AHRQ- and Johns Hopkins Armstrong Institute for Patient Safety and Quality (JHAI)-developed Comprehensive Unit-based Safety Program (CUSP) approach: (1) the diagnostic process for breast, colorectal, and lung cancer; and (2) antibiotic stewardship (AS). The CUSP approach improves safety culture at the practice level, enables harm prevention, and engages providers who are on the front lines while integrating technical and adaptive/cultural approaches to making sustainable change.

This program constitutes the first large-scale implementation of a quality improvement effort for the cancer diagnostic process and AS in telemedicine. These areas were chosen given the need for clearer guidance and evidence-based telemedicine practices for clinicians and potential for positive impact on outcomes. This program will incorporate CUSP strategies to improve the diagnostic process for breast, colorectal, and lung cancer and to improve antibiotic prescribing in telemedicine. The program goals are to:

- Identify best practices in implementing interventions to improve the cancer diagnostic process and AS in telemedicine.

- Determine how best to adapt CUSP to enhance the cancer diagnostic process and AS in telemedicine.

This study is being conducted by AHRQ through its contractor, contractor, NORC at the University of Chicago (NORC) and NORC's subcontractors, the Johns Hopkins Armstrong Institute of Patient Safety and Quality (JHAI) and Baylor College of Medicine (Baylor), pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency,

appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the goals of the AHRQ Safety Program for Telemedicine ("Safety Program"), primary and secondary data collection activities will include:

(1) *Structural Assessment*: A brief online assessment will be completed by a leader/champion from each practice to understand practices' infrastructure and capacity to implement the Safety Program.

(2) *AHRQ Office Readiness Survey*: A brief online Office Readiness Survey will be completed by all participating staff from each practice in the cancer diagnostic process cohort to understand practices' readiness for implementation of the Safety Program.

(3) *The AHRQ Surveys on Patient Safety Culture*: The Medical Office Survey on Patient Safety Culture (MOSOPS) (both cohorts) and a Diagnostic Safety Supplement (cancer diagnostic process cohort only) will be completed by all participating staff to assess patient safety issues, medical errors, and event reporting practices.

(4) *Participant Experience Survey*: A brief online assessment will be completed by a leader/champion from

each practice to assess how practices approached implementation of the Safety Program.

(5) *Semi-structured Qualitative Interviews*: A proportion of practices from both cohorts will be selected to participate in telephone/virtual discussions to understand the facilitators and barriers to implementing the Safety Program.

(6) *Clinical Data Collection Form*: Practices in the cancer diagnostic process cohort will complete a Clinical Data Collection Form for patients suspected of having breast, colorectal, or lung cancer.

(7) *Electronic Health Record (EHR) Data*: Practice-level antibiotic usage and clinical outcomes data will be extracted from the EHRs of practices in the AS cohort.

This data collection effort will be part of a comprehensive evaluation strategy to assess the adoption of the Safety Program among telemedicine practices comprising the cancer diagnostic process and AS cohorts; measure the effectiveness of the Safety Program among the participating practices and evaluate how providers experienced the program as well as the perceived usefulness of the Safety Program's education materials and metrics; and understand drivers of antibiotic prescribing among practices in the AS

cohort and drivers of timely follow-up for patients suspected of having breast, colorectal, or prostate cancer among practices in the cancer diagnostic process cohort.

The evaluation is largely formative in nature as AHRQ seeks information on the implementation and effectiveness of CUSP in a novel setting—telemedicine. The evaluation will utilize a pre-post design, comparing data collected at baseline and at the end of the Safety Program within each cohort.

Estimated Annual Respondent Burden

Exhibit A.1 shows the estimated annualized burden hours for the respondents' time to complete the structural assessments, AHRQ office readiness and patient safety culture surveys, participant experience surveys, semi-structured qualitative interviews, clinical data collection instrument (collected for 3 patients monthly and submitted quarterly), and EHR data extractions (collected monthly and submitted quarterly). Data will be collected from up to 300 practices providing telemedicine for the cancer diagnostic process cohort and from up to 500 practices providing telemedicine for the AS cohort. For the three-year clearance period, the estimated annualized burden hours for the data collection activities are 5,570.

EXHIBIT A.1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents *	Number of responses per respondent	Hours per response	Total burden hours
1. Structural Assessments (both cohorts)	200	2	0.2	80
2. AHRQ Office Readiness Survey (cancer diagnostic process cohort only)	350	1	0.1	35
3. AHRQ Patient Safety Culture Surveys:				
a. MOSOPS (both cohorts)	933	2	0.5	933
b. Diagnostic Safety Supplement (cancer diagnostic process cohort only)	350	2	0.2	140
4. Participant Experience Survey (both cohorts):				
a. Cancer diagnostic process cohort survey	75	1	0.17	13
b. AS cohort survey	125	1	0.33	41
5. Semi-structured qualitative interviews (both cohorts)	24	1	1	24
6. Clinical Data Collection Form (cancer diagnostic process cohort)	90	54	0.33	1,604
7. EHR data (AS cohort)	150	18	1	2,700
Total				5,570

* Annualized number of respondents is based on maximum practices recruited and 75% response rate for forms 1 and 4a and 4b, 50% response rate for forms 2, 3a and 3b, and 90% response rate for forms 5–7.

Exhibit A.2 shows the estimated annualized cost burden based on the respondents' time to complete the data

collection forms. The total cost burden is estimated to be \$576,922.

EXHIBIT A.2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents *	Total burden hours	Average hourly wage rate **	Total burden cost
1. Structural Assessments (both cohorts)	200	80	^a \$111.30	\$8,904

EXHIBIT A.2—ESTIMATED ANNUALIZED COST BURDEN—Continued

Form name	Number of respondents *	Total burden hours	Average hourly wage rate **	Total burden cost
2. AHRQ Office Readiness Survey (cancer diagnostic process cohort only)	350	35	^a 111.30	3,896
3. AHRQ Patient Safety Culture Surveys:				
a. MOSOPS (both cohorts):				
i. Physicians	466	466	^a 111.30	51,866
ii. Other Health Practitioners	467	467	^b 31.19	14,566
b. Diagnostic Safety Supplement (cancer diagnostic process cohort only):				
i. Physicians	175	70	^a 111.30	7,791
ii. Other Health Practitioners	175	70	^b 31.19	2,183
4. Participant Experience Survey (both cohorts)	200	54	^a 111.30	6,010
5. Semi-structured qualitative interviews (both cohorts)	24	24	^a 111.30	2,671
6. Clinical Data Collection Form (cancer diagnostic process cohort only) ...	90	1,604	^a 111.30	178,525
7. EHR data (AS cohort only)	150	2,700	^a 111.30	300,510
Total	3,497	5,917	.....	576,922

** Annualized number of respondents is based on maximum practices recruited and 75% response rate for forms 1 and 4, 50% response rate for forms 2, 3a and 3b, and 90% response rate for forms 5–7.

** National Compensation Survey: Occupational wages in the United States May 2021 “U.S. Department of Labor, Bureau of Labor Statistics”: https://www.bls.gov/oes/current/oes_stru.htm#29-0000.

^a Based on the mean wages for 29–1069 Physicians and Surgeons, All Other.

^b Based on the mean wages for 29–9099 Miscellaneous Health Practitioners and Technical Workers: Healthcare Practitioners and Technical Workers, All Other.

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ’s information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of AHRQ’s health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ’s estimate of burden (including hours and costs) of the proposed collection(s) of information; (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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency’s subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: February 23, 2023.

Marquita Cullom,

Associate Director.

[FR Doc. 2023–04220 Filed 3–1–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), 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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—GH23–003, Conducting Public Health Research with Universities in Thailand.

Date: April 12, 2023.

Time: 9 a.m.–2:30 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact:
Hylan Shoob, Ph.D., Scientific Review Officer, Center for Global Health, CDC, 1600 Clifton Road NE, Mailstop H21–9,

Atlanta, Georgia 30329–4027;
Telephone: (404) 639–4796; Email:
HShoob@cdc.gov.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–04241 Filed 3–1–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), 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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—GH19–005, Advancing Public Health Research in Bangladesh; and GH21–003, Advancing Public Health Research in Kenya.

Date: April 13, 2023.

Time: 9 a.m.–2:30 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Hylan Shoob, Ph.D., Scientific Review Officer, Center for Global Health, CDC, 1600 Clifton Road NE, Mailstop H21–9, Atlanta, Georgia 30329–4027; Telephone: (404) 639–4796; Email: HShoob@cdc.gov.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–04239 Filed 3–1–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), 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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—GH21–001, Conducting Public Health Research in Thailand; Technical collaboration with the Ministry of Public Health (MOPH) in the Kingdom of Thailand; and GH23–001, Enhancing Capacity for Strategic and Applied Research Activities in Support of Control and Elimination of Neglected Tropical Diseases.

Date: April 11, 2023.

Time: 9 a.m.–2:30 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Hylan Shoob, Ph.D., Scientific Review Officer, Center for Global Health, CDC, 1600 Clifton Road NE, Mailstop H21–9, Atlanta, Georgia 30329–4027; Telephone: (404) 639–4796; Email: HShoob@cdc.gov.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–04240 Filed 3–1–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Center for Preparedness and Response

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with regulatory provisions, the Centers for Disease Control and Prevention (CDC) announces the following meeting for the Board of Scientific Counselors, Center for Preparedness and Response (BSC, CPR). This is a hybrid meeting,

accessible both in person and virtually. It is open to the public and limited only by the space available and the number of internet conference accesses available. Time will be available for public comment.

DATES: The meeting will be held on March 30, 2023, from 9 a.m. to 3 p.m., EDT.

ADDRESSES: Centers for Disease Control and Prevention, Building 19, Auditorium B3, 1600 Clifton Road NE, Atlanta, Georgia 30329–4027. The conference room will have seating for approximately 40 people.

Please note that the meeting location is a federal facility and in-person access is limited to United States citizens unless prior authorizations, taking up to 30 to 60 days, have been made. Visitors must follow all directions for access to CDC facilities. Directions for visitors to CDC, including safety requirements related to COVID–19, are available at <https://www.cdc.gov/screening/visitors.html>.

If you wish to attend in person, please submit a request by email to Ms. Dometa Ouisley at DOuisley@cdc.gov at least 5 business days in advance of the meeting.

If you wish to attend the meeting virtually, please register by accessing the link at: https://cdc.zoomgov.com/webinar/register/WN_SFaFlNxQBQtK3_Sux-5Kjfw. Instructions to access the Zoom virtual meeting will be provided in the link following registration.

FOR FURTHER INFORMATION CONTACT: Dometa Ouisley, Public Health Analyst, Office of Science and Public Health Practice, Office of Readiness and Response, CDC, 1600 Clifton Road NE, Mailstop H21–6, Atlanta, Georgia 30329–4027; Telephone: (404) 639–7450; Email: DOuisley@cdc.gov.

SUPPLEMENTARY INFORMATION:

Purpose: The Board of Scientific Counselors, Center for Preparedness and Response (BSC, CPR) is charged with providing advice and guidance to the Secretary, HHS; the Assistant Secretary for Health; the Director, CDC; and the Director, CPR, concerning strategies and goals for the programs and research within the agency and CPR; monitoring the overall strategic direction and focus of the CPR Divisions and Offices; and administration and oversight of peer review for CPR scientific programs. For additional information about the Board, please visit: <https://www.cdc.gov/cpr/bsc/index.htm>.

Matters To Be Considered: The agenda will include discussion on: (1) Organizational Update; (2) Office of Policy, Planning, and Evaluation Update; (3) CDCReady Responder

Update; (4) Health Equity Updates; (5) Data Modernization Update; and (6) Liaison Representative Updates. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023-04238 Filed 3-1-23; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Intent To Award a Single-Source Supplement for the Expanding the National Capacity for Person-Centered, Trauma-Informed (PCTI) Care: Services and Supports for Holocaust Survivors and Other Older Adults With a History of Trauma and Their Family Caregivers Program

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) announces the intent to award a single-source supplement to the current cooperative agreement held by the Jewish Federations of North America for the project *Expanding the National Capacity for Person-Centered, Trauma-Informed (PCTI) Care: Services and Supports for Holocaust Survivors and Other Older Adults with a History of Trauma and Their Family Caregivers* program. The purpose of this program is to advance the development and expansion of PCTI supportive services for Holocaust survivors living in the U.S. Additionally, the project is advancing the capacity of the broader aging services network to deliver services of this type to any older adult with a history of trauma and their family caregivers.

FOR FURTHER INFORMATION CONTACT: For further information or comments regarding this program supplement, contact Greg Link, U.S. Department of Health and Human Services, Administration for Community Living, Administration on Aging, Office of

Supportive and Caregiver Services: telephone (202) 795-7386; email greg.link@acl.hhs.gov.

SUPPLEMENTARY INFORMATION: The overall goals of the program are as follows:

1. Increase the number and type of innovations in PCTI care for Holocaust survivors, older adults with a history of trauma, and their family caregivers, and
2. Expand the capacity of the Aging Network to provide PCTI care to the populations it serves.

The administrative supplement for FY 2023 will be in the amount of \$3,454,500, bringing the total award for FY 2023 to \$8,389,500. The supplement will provide sufficient resources to enable the grantee and their partners, JFNA, to accomplish the following:

- Continue to address the significant needs of Holocaust survivors living in the United States and other older adults with histories of trauma and their family caregivers by:

- Further expanding Innovations Program, deepening its focus on existing programs to make them more PCTI, and expand the program to additional communities;

- Expanding the Critical Supports Initiative to federation agencies and aging services providers together to identify and address the most critical needs and allocate additional resources accordingly to those needs. This component of the program allows each participating community to determine how to best allocate the resources available to meet the needs and form new partnerships to prevent emergencies; and

- Growing the National Networks program to scale PCTI approaches to multiple locations/cities.

- For all of these programs, the supplement will increase outreach, evaluation, technical assistance, and sub-grantee monitoring and financial oversight activities.

- Expanding Technical Assistance and Capacity Building to establish the infrastructure and framework to realize Congress' intent for the establishment and operation of a national resource center to provide training and technical assistance to agencies in the aging network delivering services to older individuals experiencing the long-term and adverse consequences of trauma, as described in Section 411(14) of the Older Americans Act of 1965, as amended. Doing so will enable JFNA to expand the reach and effectiveness of this project by broadening the technical assistance and capacity building activities in the following ways:

- Growth and partnerships are essential for PCTI approaches to take

root. The supplement will be used to increase the ways in which this can be accomplished, including re-launching an Aging and Trauma Workgroup and an Educational Advisory Committee, ensuring the voices of Holocaust survivors, other older adults with histories of trauma and their family caregivers are represented; enabling the grantee to develop and implement an action plan to work with foundations.

- Thought leadership in the field of PCTI care is greatly needed for it to take root as standard practice in the aging services network. The supplement will: (1) permit the expansion of the grantee's PCTI training program; (2) provide the resources necessary to fund the development of a family caregiving roadmap to support PCTI approaches to implementing the National Strategy to Support Family Caregivers; and (3) further develop and expand the field and practice of PCTI evaluation approaches and practices already begun under this project, but on a limited basis.

- Sustainability and efficiency are key to any demonstration project. The supplement will enable JFNA to explore technology enhancements to streamline the sub-grant management process, bring on additional staff to manage expanded expectations and work, including growth, and enhance program oversight, monitoring, evaluation, and additional activities proportional to the increased funding and expectations resulting from this supplement.

Program Name: Expanding the National Capacity for Person-Centered, Trauma-Informed (PCTI) Care: Services and Supports for Holocaust Survivors and Other Older Adults with a History of Trauma and Their Family Caregivers.

Recipient: The Jewish Federations of North America.

Period of Performance: The supplement award will be issued for the third year of the five-year project period of September 1, 2020 through August 31, 2025.

Total Award Amount: \$8,389,500 in FY 2023.

Award Type: Cooperative Agreement Supplement.

Statutory Authority: The Older Americans Act (OAA) of 1965, as amended, Public Law 109-365—Title 4, Section 411.

Basis for Award: The Jewish Federations of North America (JFNA) is currently funded to carry out the objectives of the project entitled *Expanding the National Capacity for Person-Centered, Trauma-Informed (PCTI) Care: Services and Supports for Holocaust Survivors and Other Older Adults with a History of Trauma and*

Their Family Caregivers for the period of September 1, 2020 through August 31, 2025. Since project implementation began in late 2020, the grantee has accomplished a great deal. This supplement will enable the grantee to carry their work even further, serving more Holocaust survivors, other older adults with histories of trauma, family caregivers and to train more professionals in the principles of PCTI. The additional funding will not be used to begin new projects or activities.

The JFNA is uniquely positioned to complete the work called for under this project. JFNA's partners on this project include the National Indian Council on Aging, the Japanese American Service Committee, the National Caucus and Center on Black Aging, Inc., the New Jersey Office for Refugees International Rescue Committee, the Asociacion Nacional Pro Personas Mayores (a pioneering organization in the field of Hispanic/minority aging); SAGE (the nation's leading organization devoted to aging in the lesbian, gay, bisexual, and transgender community); and HIAS (which works around the world to protect refugees). Additional project partners include, the Caregiver Center at the Veterans Affairs Medical Center at the University of Tennessee; the Community Care Corps Program, funded by the Administration for Community Living and led by the Oasis Institute; the Caregiver Action Network, and USAging; LeadingAge, an association of 6,000 not for profit organizations across the continuum of aging services; the Center for Health Care Strategies, Inc., which advances models for organizing and financing health care delivery; and the Campaign for Trauma-Informed Policy and Practice, which promotes the building of trauma-informed communities.

Establishing an entirely new grant project at this time would be potentially disruptive to the current work already well under way. More importantly, the Holocaust survivors and other older adults currently being served by this project could be negatively impacted by a service disruption, thus posing the risk of re-traumatization and further negative impacts on health and wellbeing. If this supplement is not provided, the project would be less able to address the significant unmet health and social support needs of additional Holocaust survivors and other older adults with histories of trauma. Similarly, the project would be unable to expand its current technical assistance and training efforts in PCTI concepts and approaches, let alone reach beyond traditional providers of services to this population to train more

“mainstream” providers of aging services. Finally, providing this supplement to JFNA will allow for the greater realization of Congress' intent in section 411(14)(A) of the Older Americans Act, as amended, which calls for the establishment of a national resource center to provide training, technical assistance and sub-grants in this area.

Dated: February 25, 2023.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2023-04250 Filed 3-1-23; 8:45 am]

BILLING CODE 4154-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; the Analysis of Senior Medicare Patrol Grantees' Program Implementation OMB Control Number 0985-New

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under the Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the information collection requirements related to the analysis of Senior Medicare Patrol Grantees' Program Implementation.

DATES: Submit written comments on the collection of information by April 3, 2023.

ADDRESSES: Submit written comments and recommendations for the proposed information collection within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find the information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. By mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT:

Kristen Robinson, Kristen.Robinson@acl.hhs.gov, 202-795-7428.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, The Administration for Community Living (ACL) has submitted the following proposed collection of information to OMB for review and clearance. ACL is requesting approval to collect data for the Under ACL's Office of Healthcare Information and Counseling, the Senior Medicare Patrol (SMP) programs recruit and train a national network of staff and volunteers to help “prevent, detect, and report Medicare fraud, errors, and abuse.”¹ The SMP supports programs in every state, the District of Columbia, and in U.S. territories through grants. Additionally, the SMP Resource Center, established in 2003, assists SMP grantees in networking and provides tools, training, and technical assistance to SMPs. To promote and advance equity in its programming, ACL is conducting interviews with SMP program directors or their designee to better understand their activities and their experiences in program implementation and in reaching low-income and rural Medicare beneficiaries.

Specifically, this IC will allow ACL to understand (1) how SMP grantees conceive of program priorities; (2) successes and challenges SMP grantees experience in implementing activities and in reaching low-income and rural Medicare beneficiaries; and (3) which programs need clarification on programmatic priority expectations or additional support to conduct their activities.

Up to 54 SMP grantee representatives and one SMP Resource Center representative will be invited to participate in a 75-minute web-based interview. Findings from the interviews will inform ACL's strategy to support SMP grantees in achieving program priorities and to promote equitable access to SMP activities for low-income and rural Medicare beneficiaries.

Comments in Response to the 60-Day Federal Register Notice

A notice published in the **Federal Register** 87 FR 77849 on 12/20/2022. No comments were received during the 60-day FRN.

Estimated Program Burden: ACL estimates the burden of this collection of information as follows:

A maximum of 54 SMP grantee project directors or their designees and one representative from the SMP Resource Center are expected to

¹ Administration for Community Living. (2022, November 8). *Senior Medicare Patrol (SMP)*. Available at <https://acl.gov/programs/protecting-rights-and-preventing-abuse/senior-medicare-patrol-smp>.

participate in interviews over videoconferencing. The approximate burden for participation in interviews is

1.25 hours per respondent for a total estimate of 68.75 hours.

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours	Cost per hour	Annual burden cost
Interviews with grantees and SMP Resource Center	54	1	1.25	67.5	¹ \$26.12	\$1,763.10
Interview with SMP Resource Center	1	1	1.25	1.25	² \$36.92	46.15
Total	55	.....	.....	68.75	.....	1,809.25

Dated: February 25, 2023.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2023-04249 Filed 3-1-23; 8:45 am]

BILLING CODE 4154-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2022-N-2174]

Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Oncologic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on April 28, 2023, from 11 a.m. to 4:30 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of the COVID-19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm>.

FDA is establishing a docket for public comment on this meeting. The docket number is FDA-2022-N-2174. Please note that late, untimely filed comments will not be considered. The docket will close on April 27, 2023. The

<https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 27, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before April 14, 2023, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for Written/Paper Submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2022-N-2174 for "Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not

in the body of your comments and you must identify the information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: She-Chia Jankowski, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993-0002, 240-402-5343, email: ODAC@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA’s website at <https://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committee will discuss supplemental new drug application (sNDA) 208558/S-025, for LYNPARZA (olaparib) tablets, submitted by AstraZeneca Pharmaceuticals LP. The proposed indication (use) for this product is in combination with abiraterone and prednisone or prednisolone for the treatment of adult patients with metastatic castration-resistant prostate cancer (mCRPC).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will

be made publicly available on FDA’s website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at <https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before April 14, 2023, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 2:15 p.m. to 3:15 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 6, 2023. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by April 7, 2023.

For press inquiries, please contact the Office of Media Affairs at fdaoma@fda.hhs.gov or 301-796-4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact She-Chia Jankowski (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023-04268 Filed 3-1-23; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary of Health and Human Services delegates to the Food and Drug Administration (FDA) Commissioner the authorities vested in the Secretary of Health and Human Services (the Secretary) under section 3855 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, as amended, to send annual letters to Congress regarding the progress of FDA in: evaluating the Over-the-Counter Monograph M012: Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use with respect to children under the age of 6, and as appropriate, revising that monograph through the order process of section 505G(b) of the Federal Food, Drug, and Cosmetic Act to address such children. These authorities may be redelegated. Exercise of this authority shall be in accordance with established policies, procedures, guidelines, and regulations as prescribed by the Secretary.

DATES: This authority delegation was approved by the Secretary on February 22, 2023.

Dated: February 22, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023-04009 Filed 3-1-23; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2023-D-0202]

Potency Assay Considerations for Monoclonal Antibodies and Other Therapeutic Proteins Targeting Viral Pathogens; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled “Potency Assay Considerations for Monoclonal Antibodies and Other Therapeutic Proteins Targeting Viral Pathogens.” The purpose of this draft guidance is to provide to sponsors recommendations that assist in the development of monoclonal antibodies (mAbs) and other therapeutic proteins that directly target viral proteins or host cell proteins mediating pathogenic mechanisms of infection. A critical quality control measure for these products is the development and implementation of a potency assay(s) adequate to ensure that each lot is produced consistently with the potency necessary to achieve clinical efficacy and that such potency is maintained over the shelf life of the product. This draft guidance provides detailed recommendations to drug developers with the goal of helping to ensure that drug developers provide adequate information to assess potency at each stage of a product’s life cycle.

DATES: Submit either electronic or written comments on the draft guidance by May 1, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the

manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2023–D–0202 for “Potency Assay Considerations for Monoclonal Antibodies and Other Therapeutic Proteins Targeting Viral Pathogens.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov>

and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Natalia Comella, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 6648, Silver Spring, MD 20993–0002, 301–796–6226.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled “Potency Assay Considerations for Monoclonal Antibodies and Other Therapeutic Proteins Targeting Viral Pathogens.” The purpose of this draft guidance is to provide to sponsors recommendations that assist in the development of mAbs and other therapeutic proteins that directly target viral proteins or host cell proteins mediating pathogenic mechanisms of infection. A critical quality control measure for these products is the development and implementation of a potency assay(s) adequate to ensure that each lot is produced consistently with the potency necessary to achieve clinical efficacy and that such potency is maintained over the shelf life of the product. This draft guidance provides detailed recommendations to drug developers with the goal of helping to ensure that drug developers provide adequate information to assess potency at each stage of a product’s life cycle.

This draft guidance applies only to mAbs and other therapeutic proteins regulated by the Center for Drug Evaluation and Research that are designed to bind to viral proteins or their receptors on host cells, inhibit

viral entry, and/or elicit Fc-mediated effector function and are subject to licensure under section 351(a) or section 351(k) of the Public Health Service Act (PHS Act) (42 U.S.C. 262(a) or (k)). This draft guidance does not apply to immunomodulatory drugs (*e.g.*, cytokines or cytokine antagonists), vaccines, hyperimmune globulins, gene therapies, cell therapies, and convalescent plasma.

The draft guidance describes approaches that sponsors should use to develop potency assay methods for release and stability that assess comprehensively known or potential mechanism(s) of action of the product. The sensitivity of these methods must be established, for example, to conduct the appropriate laboratory determination of satisfactory conformance to final specifications for the drug product (*i.e.*, demonstrate lot-to-lot consistency). In addition to release and stability methods, other methods that demonstrate the biological function(s) of the product may be needed for characterization and comparability studies. The draft guidance describes methods that sponsors should use to ensure the potency of mAbs and other therapeutic proteins proposed to prevent or treat a viral infection.

In January 2021, FDA published the guidance for industry entitled “COVID-19: Potency Assay Considerations for Monoclonal Antibodies and Other Therapeutic Proteins Targeting SARS-CoV-2 Infectivity” (available at <https://www.fda.gov/media/145128/download>) to support public health efforts following a declaration, under section 319 of the PHS Act (42 U.S.C. 247d), by the Secretary of Health and Human Services of a public health emergency related to Coronavirus Disease 2019 (the disease caused by SARS-CoV-2) (section 319 public health emergency). The 2021 guidance focuses solely on addressing potency assays as they relate to mAbs and other therapeutic proteins that directly target SARS-CoV-2, and it is intended to remain in effect only for the duration of the section 319 public health emergency related to Coronavirus Disease 2019. However, FDA believes that many of the recommendations set forth in the 2021 guidance are applicable outside the context of the section 319 public health emergency and are applicable to mAbs and other therapeutic proteins directly targeting any viral surface (glyco)proteins mediating pathogenic mechanisms of infection, not just those that directly target SARS-CoV-2. FDA is, therefore, issuing this draft guidance. In preparing this guidance, FDA considered

comments received regarding the 2021 guidance as well as the Agency’s experience with SARS-CoV-2 and other viruses.

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on “Potency Assay Considerations for Monoclonal Antibodies and Other Therapeutic Proteins Targeting Viral Pathogens.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 for submission of an investigational new drug application have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 for new drug applications have been approved under OMB control number 0910–0001. The collections of information in 21 CFR parts 601 and 610 pertaining to biologics license applications have been approved under OMB control number 0910–0338. The collections of information in 21 CFR parts 210 and 211 pertaining to current good manufacturing practices have been approved under OMB control number 0910–0139. The collections of information in 21 CFR part 11 pertaining to electronic records and signatures have been approved under OMB control number 0910–0303.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: February 27, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–04267 Filed 3–1–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0517]

Blood Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Blood Products Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA’s regulatory issues related to blood and products derived from blood. At least one portion of the meeting will be closed to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on April 26, 2023, from 9:30 a.m. to 1 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of the COVID-19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm>.

The online web conference meeting will be available at the following link on the day of the meeting: <https://youtube.com/live/avlyUZDDfCQ?feature=share>.

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2023–N–0517. Please note that late, untimely filed comments will not be considered. The docket will close on April 25, 2023. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 25, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before April 19, 2023, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is canceled, FDA will continue to evaluate any relevant

applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2023-N-0517 for "Blood Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Christina Vert or Marie DeGregorio, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 1244, Silver Spring, MD 20993-0002, 240-402-8054, CBERBPAC@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at <https://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the

advisory committee information line to learn about possible modifications before joining the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. On April 26, 2023, the committee will meet in open session to hear an overview of the research programs in the Division of Hemostasis, Office of Plasma Protein Therapeutics Chemistry, Manufacturing, and Controls, Office of Therapeutic Products, Center for Biologics Evaluation and Research. After the open session, the meeting will be closed to the public for committee deliberations.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at <https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: On April 26, 2023, from 9:30 a.m. to 12:05 p.m. Eastern Time, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before April 19, 2023, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 11:05 a.m. and 12:05 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 11, 2023. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public

hearing session. The contact person will notify interested persons regarding their request to speak by April 12, 2023.

Closed Committee Deliberations: On April 26, 2023, from 12:05 p.m. to 1 p.m. Eastern Time, the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The recommendations of the advisory committee regarding the progress of the individual investigators' research programs, along with other information, will be discussed during this session. We believe that public discussion of these recommendations on individual scientists would constitute an unwarranted invasion of personal privacy.

For press inquiries, please contact the Office of Media Affairs at fdaoma@fda.hhs.gov or 301-796-4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Christina Vert or Marie DeGregorio at CBERBPAC@fda.hhs.gov (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023-04270 Filed 3-1-23; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2023-N-0094]

Joint Meeting of the Nonprescription Drugs Advisory Committee and the Anesthetic and Analgesic Drug Products Advisory Committee; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The meeting of the Nonprescription Drugs Advisory

Committee and the Anesthetic and Analgesic Drug Products Advisory Committee scheduled for March 20, 2023, is cancelled. This meeting was announced in the **Federal Register** of January 30, 2023. The meeting is no longer needed.

FOR FURTHER INFORMATION CONTACT:

Moon Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993-0002, 301-796-2894, email: NDAC@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting, which was announced in the **Federal Register** of January 30, 2023 (88 FR 5893).

Dated: February 27, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023-04271 Filed 3-1-23; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Be The Match® Patient Support Center Survey

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than May 1, 2023.

ADDRESSES: Submit your comments to paperwork@hrsa.gov or by mail at: HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the

proposed project or to obtain a copy of the data collection plans and draft instruments, email paperwork@hrsa.gov or call Samantha Miller, the HRSA Information Collection Clearance Officer, at (301) 443-1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Be The Match® Patient Support Center Survey, OMB No. 0906-0004-Revision.

Abstract: The C.W. Bill Young Cell Transplantation Program was established by the Stem Cell Therapeutic and Research Act of 2005 (Public Law [Pub. L.] 109-129) and was reauthorized in 2010 (Pub. L. 111-264), 2015 (Pub. L. 114-104) and again in 2021 (Pub. L. 117-15). The C.W. Bill Young Cell Transplantation Program's Office of Patient Advocacy (OPA) is operated by the National Marrow Donor Program® (NMDP). Through OPA, NMDP provides navigation services, education resources and support to people in need of or who have received an allogeneic hematopoietic cell transplant (HCT). As the contractor for the OPA, NMDP is required to conduct surveys to evaluate patient satisfaction with the services provided. As such, NMDP will elicit feedback from HCT patients, caregivers, and family members who had contact with the NMDP/Be The Match® Patient Support Center (PSC) for service and support. The survey is administered through a web-based system. In addition to questions that measure satisfaction, the survey also includes demographic questions to determine representativeness of findings.

Need and Proposed Use of the Information: HCT is a complex medical procedure that requires significant support before, during and after the procedure. Many patients experience barriers that impede access to HCT. Barriers to HCT-related care and educational information are multifactorial. The NMDP/Be The Match PSC offers many programs and services to support patients, caregivers, and family members throughout their HCT journey. Feedback from recipients of NMDP services is essential to understand the changing needs for services and information as well as to demonstrate the effectiveness of existing services. The primary use for information gathered through the survey is to determine the helpfulness of participants' initial contact with the PSC patient navigators and to identify areas for improvement in the delivery of services. Patient navigators are trained

lay or licensed clinical patient navigators, who respond to requests for information and support. Program managers and NMDP leadership use this evaluation data to share patients' experiences as well as make program and resource allocation decisions.

Web-based surveys will be administered to all participants (patients, caregivers, and family members) who have contact with the PSC. All participants for whom an email address is known will be invited to complete the survey online. Survey respondents will be notified via email invitation and in the survey instructions that participation is voluntary, and responses will be kept confidential. A follow-up invitation will be sent within 2 weeks to non-respondents.

The survey will include these items to measure: (1) their experience, (2) if the contact helped the participant feel more confident in coping with treatment, (3) if the contact helped the participant feel more hopeful, (4) if the contact helped the participant feel less alone, (5) increased awareness of available resources, (6) if the contact helped the

participant feel more informed about treatment options, (7) if their questions were answered, and (8) types of challenges faced by participant. The survey data will be analyzed quarterly and annually, and results will be shared with program managers. Feedback indicating a need for improvement will be reviewed by program managers biannually and implementation of resulting program changes or additions will be documented.

Likely Respondents: Respondents will include patients, caregivers, and family members who have contact with the PSC via phone or email for HCT navigation services and support (advocacy). The decision to survey all participants was made based on the historically low response rate to this survey due to patients' frequent transitions in health status as well as transfer between home and the hospital for initial treatment and care for complications. Participants will receive the survey once in a 1-year cycle. If a participant contacts the PSC one or more years after the initial contact, they will receive a second survey. This is

because we anticipate that the participants' needs will likely change during the time lapse.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

The total respondent burden for the customer satisfaction surveys is estimated to be 153 hours. HRSA expects a total of 900 respondents to complete the Be The Match® Patient Support Center Survey.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Be The Match® Patient Support Center Survey	900	1	900	0.17	153
Total	900	1	900	0.17	153

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023-04235 Filed 3-1-23; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Secretary's Advisory Committee on Human Research Protections

AGENCY: Office of the Assistant Secretary for Health, Office of the

Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act, U.S.C. Appendix 2, notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold a meeting that will be open to the public. Information about SACHRP, the full meeting agenda, and instructions for linking to public access will be posted on the SACHRP website at <http://www.dhhs.gov/ohrp/sachrp-committee/meetings/index.html>.

DATES: The meeting will be held on Wednesday, March 22, 2023 from 11:00 a.m. until 5:00 p.m., and Thursday, March 23, 2023, from 11:00 a.m. until 5:00 p.m. (times are tentative and subject to change). The confirmed times and agenda will be posted on the SACHRP website as this information becomes available.

ADDRESSES: This meeting will be held via webcast. Members of the public may also attend the meeting via webcast. Instructions for attending via webcast will be posted at least one week prior to the meeting at <https://www.hhs.gov/ohrp/sachrp-committee/meetings/index.html>.

FOR FURTHER INFORMATION CONTACT: Julia Gorey, J.D., Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; telephone: 240-453-8141; fax: 240-453-6909; email address: SACHRP@hhs.gov.

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services, through the Assistant Secretary for Health, on issues and topics pertaining to or associated with the protection of human research subjects.

The Subpart A Subcommittee (SAS) was established by SACHRP in October 2006 and is charged with developing recommendations for consideration by SACHRP regarding the application of subpart A of 45 CFR part 46 in the current research environment.

The Subcommittee on Harmonization (SOH) was established by SACHRP at its July 2009 meeting and charged with identifying and prioritizing areas in which regulations and/or guidelines for human subjects research adopted by various agencies or offices within HHS would benefit from harmonization, consistency, clarity, simplification and/or coordination. The SACHRP meeting will open to the public at 11:00 a.m., on Wednesday, March 22, 2023, followed by opening remarks from Julie Kaneshiro, Acting Director of OHRP and Dr. Douglas Diekema, SACHRP Chair. The meeting will begin with an overview of the recently published GAO report #GAO-23-104721, Institutional Review Boards: Actions Needed to Improve Federal Oversight and Examine Effectiveness, followed by a panel of expert speakers addressing the topic of defining stakeholders and evaluating HRPP/IRB quality and effectiveness. SACHRP will subsequently discuss recommendations related to the report's recommendation #4.

A second agenda topic will be introduced and discussed at SACHRP in the afternoon, the FDA draft guidance on Ethical Considerations for Clinical Investigations of Medical Products Involving Children Guidance for Industry, Sponsors, and IRBs.

Discussion of both topics will continue on March 23rd. Other topics may be added; for the full and updated meeting agenda, see <http://www.dhhs.gov/ohrp/sachrp-committee/meetings/index.html>. The meeting will adjourn by 5:00 p.m. March 23, 2022.

Time will be allotted for public comment on both days of the meeting. The public may submit written public comment in advance to SACHRP@hhs.gov no later than midnight March 20th, 2023, ET. Written comments will be shared with SACHRP members and may read aloud during the meeting. Comments which are read aloud are limited to three minutes each. Public comment must be relevant to topics being addressed by the SACHRP.

Dated: February 23, 2023.

Julia G. Gorey,

Executive Director, SACHRP, Office for Human Research Protections.

[FR Doc. 2023-04324 Filed 3-1-23; 8:45 am]

BILLING CODE 4150-36-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcing Solicitation of Written Comments on the Physical Activity Guidelines Midcourse Report on Older Adults; Correction

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Office of the Assistant Secretary for Health published a document in the **Federal Register** of February 23, 2023, announcing the solicitation of written comments on the Physical Activity Guidelines Midcourse Report on Older Adults. The document announces the availability of the draft Physical Activity Guidelines Midcourse Report on Older Adults (Midcourse Report) and solicits written public comment on the draft report by March 10, 2023. The published Notice did not include the comment deadline.

FOR FURTHER INFORMATION CONTACT:

Katrina L. Piercy, Ph.D., R.D., Office of Disease Prevention and Health Promotion (ODPHP), Office of the Assistant Secretary for Health (OASH), U.S. Department of Health and Human Services (HHS); 1101 Wootton Parkway, Suite 420; Rockville, MD 20852; Telephone: 240-453-8271. Email: PAGReviews@hhs.gov.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of February 24, 2023, in FR Doc. 2023-03859, on page 11922, in the first, second, and third columns, correct the “[INSERT DATE 2 WEEKS FROM POSTING].” bracketed text to read: “March 10, 2023.”

Paul Reed,

Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion.

[FR Doc. 2023-04215 Filed 3-1-23; 8:45 am]

BILLING CODE 4150-32-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health.

ACTION: Notice of a hybrid meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S.

Department of Health and Human Service is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA or the Council) will convene the 76th full council meeting on Wednesday, March 29 and Thursday March 30, 2023. The meeting will convene in Washington, DC and it will also utilize virtual technologies. The meeting will be open to the public. Due to limited space, pre-registration is encouraged for members of the public who wish to attend the meeting in-person. Please email your name to PACHA@hhs.gov by close of business Wednesday, March 22, 2023 to pre-register. There will be a public comment session during the meeting; pre-registration is required to provide public comment. To pre-register to provide public comment, please send an email to PACHA@hhs.gov and include your name, organization, and title by close of business March 22, 2023. If you decide you would like to provide public comment but do not pre-register, you may submit your written statement by emailing PACHA@hhs.gov by close of business April 5, 2023. The meeting agenda will be posted on the PACHA page on HIV.gov at <https://www.hiv.gov/federal-response/pacha/about-pacha> prior to the meeting.

DATES: The meeting will be held on Wednesday, March 29 from approximately 9 a.m.–6 p.m. (ET) and Thursday, March 30 from approximately 9 a.m.–2:30 p.m. (ET).

ADDRESSES: The meeting will be located at the Hubert Humphrey building, located at 200 Independence Ave. SW. To attend the meeting virtually, please visit www.hhs.gov/live.

FOR FURTHER INFORMATION CONTACT: Ms. Caroline Talev, MPA, Senior Management Analyst, at PACHA@hhs.gov or Caroline.Talev@hhs.gov. Additional information can be obtained by accessing the Council's page on the HIV.gov site at www.hiv.gov/pacha.

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996 and is currently operating under the authority given in Executive Order 14048, dated September 30, 2021. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to promote effective HIV diagnosis, treatment, prevention, and quality care services. The functions of the Council are solely advisory in nature.

The Council consists of not more than 35 members. Council members are

selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, population health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. PACHA selections also include persons with lived HIV experience and racial/ethnic and sexual and gender minority persons disproportionately affected by HIV. Council members are appointed by the Secretary.

Dated: February 10, 2023.

B. Kaye Hayes,

Deputy Assistant Secretary for Infectious Disease, Director, Office of Infectious Disease and HIV/AIDS Policy, Executive Director, Presidential Advisory Council on HIV/AIDS, Office of the Assistant Secretary for Health, Department of Health and Human Services.

[FR Doc. 2023-04378 Filed 3-1-23; 8:45 am]

BILLING CODE 4150-43-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4684-DR; Docket ID FEMA-2023-0001]

Alabama; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA-4684-DR), dated January 15, 2023, and related determinations.

DATES: This amendment was issued February 3, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of January 15, 2023.

Mobile and Morgan Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling;

97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023-04280 Filed 3-1-23; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-3590-EM; Docket ID FEMA-2023-0001]

New York; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New York (FEMA-3590-EM), dated December 26, 2022, and related determinations.

DATES: The declaration was issued December 26, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 26, 2022, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of New York resulting from a severe winter storm beginning on December 23, 2022, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* ("the Stafford Act"). Therefore, I declare that such an emergency exists in the State of New York.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act,

to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Lai Sun Yee, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of New York have been designated as adversely affected by this declared emergency:

Erie and Genesee Counties for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023-04285 Filed 3-1-23; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4685–DR; Docket ID FEMA–2023–0001]

Georgia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–4685–DR), dated January 16, 2023, and related determinations.

DATES: This amendment was issued February 10, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of January 16, 2023.

Pike County for Individual Assistance.
Crisp County for Public Assistance.
Butts, Henry, Jasper, Meriwether, Newton, Spalding, and Troup Counties for permanent work [Categories C–G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–04282 Filed 3–1–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4683–DR; Docket ID FEMA–2023–0001]

California; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of California (FEMA–4683–DR), dated January 14, 2023, and related determinations.

DATES: This amendment was issued January 26, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of California is hereby amended to include permanent work under the Public Assistance program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of January 14, 2023.

San Mateo County for Individual Assistance.

Merced, Monterey, Sacramento, Santa Barbara, and Santa Cruz Counties for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

San Benito, Tulare, and Ventura Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–04274 Filed 3–1–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4684–DR; Docket ID FEMA–2023–0001]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–4684–DR), dated January 15, 2023, and related determinations.

DATES: The declaration was issued January 15, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 15, 2023, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in the State of Alabama resulting from severe storms, straight-line winds, and tornadoes on January 12, 2023, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs).

Consistent with the requirement that Federal assistance is supplemental, any

Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible cost.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin A. Wallace, Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alabama have been designated as adversely affected by this major disaster:

Autauga and Dallas Counties for Individual Assistance.

Autauga and Dallas Counties for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

All areas within the State of Alabama are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–04277 Filed 3–1–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3591–EM; Docket ID FEMA–2023–0001]

California; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State California (FEMA–3591–EM), dated January 9, 2023, and related determinations.

DATES: This amendment was issued February 6, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective January 31, 2023.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–04288 Filed 3–1–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4677–DR; Docket ID FEMA–2023–0001]

South Carolina; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Carolina (FEMA–4677–DR), dated November 21, 2022, and related determinations.

DATES: This change occurred on January 17, 2023.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Judy M. Kruger, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Kevin A. Wallace, Sr. as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–04289 Filed 3–1–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4682–DR; Docket ID FEMA–2023–0001]

Washington; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington

(FEMA-4682-DR), dated January 12, 2023, and related determinations.

DATES: The declaration was issued January 12, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 12, 2023, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Washington resulting from a severe winter storm, straight-line winds, flooding, landslides, and mudslides during the period of November 3 to November 8, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, David R. Gervino, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Washington have been designated as adversely affected by this major disaster:

Clallam, Island, Jefferson, Lewis, Okanogan, Skagit, Skamania, Snohomish, and Wahkiakum Counties for Public Assistance.

All areas within the State of Washington are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034,

Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023-04291 Filed 3-1-23; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4684-DR; Docket ID FEMA-2023-0001]

Alabama; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA-4684-DR), dated January 15, 2023, and related determinations.

DATES: This amendment was issued January 26, 2023.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of January 15, 2023.

Greene, Sumter, and Tallapoosa Counties for Individual Assistance.

Greene, Sumter, and Tallapoosa Counties for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to

Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023-04278 Filed 3-1-23; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4683-DR; Docket ID FEMA-2023-0001]

California; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State California (FEMA-4683-DR), dated January 14, 2023, and related determinations.

DATES: This amendment was issued February 6, 2023.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 31, 2023.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023-04276 Filed 3-1-23; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4683-DR; Docket ID FEMA-2023-0001]

California; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-4683-DR), dated January 18, 2023, and related determinations.

DATES: This amendment was issued January 18, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 18, 2023, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the State of California resulting from severe winter storms, flooding, landslides, and mudslides beginning on December 27, 2022, and continuing, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”).

Therefore, I amend my declaration of January 14, 2023, to authorize Federal funds for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs for 60 days from the start of the incident period.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023-04273 Filed 3-1-23; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4683-DR; Docket ID FEMA-2023-0001]

California; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of California (FEMA-4683-DR), dated January 14, 2023, and related determinations.

DATES: This amendment was issued February 1, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of California is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of January 14, 2023.

Alameda, Contra Costa, and Mendocino Counties for Individual Assistance.

Ventura County for Individual Assistance (already designated for Public Assistance).

Alameda, Butte, Colusa, Fresno, Glenn, Humboldt, Los Angeles, Marin, Mendocino, Placer, Santa Clara, Siskiyou, Sonoma, Trinity, and Yolo Counties for Public Assistance.

Calaveras and San Joaquin Counties for Public Assistance (already designated for Individual Assistance).

San Luis Obispo County for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023-04275 Filed 3-1-23; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-3590-EM; Docket ID FEMA-2023-0001]

New York; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of New York (FEMA-3590-EM), dated December 26, 2022, and related determinations.

DATES: This amendment was issued February 1, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective December 28, 2022.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034,

Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–04286 Filed 3–1–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0001]

Notice of Adjustment of Statewide Per Capita Indicator for Recommending a Cost Share Adjustment

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice that the statewide per capita indicator for recommending cost share adjustments for major disasters declared on or after January 1, 2023, through December 31, 2023 is \$173.

DATES: This notice applies to major disasters declared on or after January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Tod Wells, Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: Pursuant to 44 CFR 206.47, the statewide per capita indicator that is used to recommend an increase of the Federal cost share from seventy-five percent (75%) to not more than ninety percent (90%) of the eligible cost of permanent work under section 406 and emergency work under section 403 and section 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act is adjusted annually. The adjustment to the indicator is based on the Consumer Price Index for All Urban Consumers published annually by the U.S. Department of Labor. For disasters declared on January 1, 2023, through December 31, 2023, the qualifying indicator is \$173 per capita of state or tribal population.

This adjustment is based on an increase of 6.5 percent in the Consumer Price Index for All Urban Consumers for the 12-month period that ended December 2022. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on January 12, 2023.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–04283 Filed 3–1–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4684–DR; Docket ID FEMA–2023–0001]

Alabama; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–4684–DR), dated January 15, 2023, and related determinations.

DATES: This amendment was issued January 31, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include permanent work under the Public Assistance program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of January 15, 2023.

Barbour, Chambers, and Conecuh Counties for Public Assistance.

Autauga, Coosa, Dallas, Elmore, Hale, and Tallapoosa Counties for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–04279 Filed 3–1–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4685–DR; Docket ID FEMA–2023–0001]

Georgia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–4685–DR), dated January 16, 2023, and related determinations.

DATES: The declaration was issued January 16, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 16, 2023, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Georgia resulting from severe storms, straight-line winds, and tornadoes on January 12, 2023, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John F. Boyle, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Georgia have been designated as adversely affected by this major disaster:

Butts, Henry, Jasper, Meriwether, Newton, Spalding, and Troup Counties for Individual Assistance.

Butts, Henry, Jasper, Meriwether, Newton, Spalding, and Troup Counties for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

All areas within the State of Georgia are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA);

97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–04281 Filed 3–1–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4683–DR; Docket ID FEMA–2023–0001]

California; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–4683–DR), dated January 14, 2023, and related determinations.

DATES: The declaration was issued January 14, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 14, 2023, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in the State of California resulting from severe winter storms, flooding, landslides, and mudslides beginning on December 27, 2022, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible cost.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Andrew F. Grant, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of California have been designated as adversely affected by this major disaster:

Merced, Sacramento, and Santa Cruz Counties for Individual Assistance.

Merced, Sacramento, and Santa Cruz Counties for debris removal and emergency protective measures (Categories A and B), including direct federal assistance under the Public Assistance.

All areas within the State of California are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–04292 Filed 3–1–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4683–DR; Docket ID FEMA–2023–0001]

California; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of California (FEMA–4683–DR), dated January 14, 2023, and related determinations.

DATES: This amendment was issued January 23, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of California is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of January 14, 2023.

Calaveras County for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–04272 Filed 3–1–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4681–DR; Docket ID FEMA–2023–0001]

Havasupai Tribe; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Havasupai Tribe (FEMA–4681–DR), dated December 30, 2022, and related determinations.

DATES: The declaration was issued December 30, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 30, 2022 the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage to the lands associated with the Havasupai Tribe resulting from flooding during the period of October 1 to October 2, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists for the Havasupai Tribe.

In order to provide federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation for the Havasupai Tribe. Consistent with the requirement that federal assistance be supplemental, any federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved

assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Benigno Bern Ruiz, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas have been designated as adversely affected by this major disaster:

The Havasupai Tribe for Public Assistance.

The Havasupai Tribe is eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–04290 Filed 3–1–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3591–EM; Docket ID FEMA–2023–0001]

California; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of California (FEMA–3591–EM), dated January 9, 2023, and related determinations.

DATES: The declaration was issued January 9, 2023.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 9, 2023, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of California resulting from severe winter storms, flooding, and mudslides beginning on January 8, 2023, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the State of California.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Andrew F. Grant, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of California have been designated as adversely affected by this declared emergency:

El Dorado, Los Angeles, Mariposa, Mendocino, Merced, Monterey, Napa, Placer, Riverside, Sacramento, San Bernardino, San Mateo, Santa Clara, Santa Cruz, Sonoma, Stanislaus, and Ventura Counties for emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA);

97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2023–04287 Filed 3–1–23; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

[CIS No. 2725–22; DHS Docket No. USCIS–2023–0001]

RIN 1615–ZB97

Notice of EB–5 Regional Center Integrity Fund Fee

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice of integrity fund fee.

SUMMARY: The U.S. Citizenship and Immigration Services (USCIS) is announcing a fee to be collected by USCIS. The EB–5 Reform and Integrity Act of 2022 (the 2022 Act) requires USCIS to establish a special fund to be known as the EB–5 Integrity Fund to be primarily used by USCIS in the administration of the Regional Center Program. USCIS must collect a fee of \$20,000 or \$10,000, depending on certain factors established by the 2022 Act, to finance the EB–5 Integrity Fund from each designated regional center. This notice explains how regional centers should determine the amount of the fee and provides the process for how it is to be paid.

DATES: The first fee payment of the fees announced in this notice must be paid beginning on March 2, 2023 and before April 3, 2023. For fiscal year 2024 and each year thereafter, the fees must be paid between October 1st and October 31st of the same year.

FOR FURTHER INFORMATION CONTACT: Charles L. Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20588–0009, telephone (240) 721–3000 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone

number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

DHS—Department of Homeland Security
INA—Immigration and Nationality Act
USCIS—U.S. Citizenship and Immigration Services

I. Background and Authority

A. EB–5 Reform and Integrity Act of 2022

On March 15, 2022, the President signed into law the EB–5 Reform and Integrity Act of 2022 (the 2022 Act), Div. BB of the Consolidated Appropriations Act, 2022, Public Law 117–103. Among other things, the 2022 Act immediately repealed the former authorizing statutory provisions under the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act 1993, Public Law 102–395, 106 Stat. 1828, § 610, and added new authorizing provisions to the Immigration and Nationality Act, substantially reforming the Regional Center Program effective May 14, 2022. The reformed Regional Center Program is authorized through September 30, 2027.

The Regional Center Program makes visas available to qualified immigrants (and the eligible spouses and children of such immigrants) who pool their investments with other qualified immigrants in a “regional center” in the United States. *See* INA section 203(b)(5)(E), 8 U.S.C. 1153(b)(5)(E). USCIS designates regional centers based on a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment in their requested geographic region. *Id.*

B. EB–5 Integrity Fund

The 2022 Act establishes a special fund to be known as the EB–5 Integrity Fund (the Fund). INA section 203(b)(5)(J), 8 U.S.C. 1153(b)(5)(J). The fund is to be used by DHS for the following:

(1) Conducting investigations based outside of the United States, including monitoring and investigating program-related events and promotional activities and ensuring that an alien investor’s funds associated with the alien’s investment were obtained from a lawful source and through lawful means;

(2) Detecting and investigating fraud or other crimes;

(3) Determining whether regional centers, new commercial enterprises, job-creating entities, and alien investors

(and their alien spouses and alien children) comply with U.S. immigration laws;

(4) Conducting audits and site visits; and

(5) For other purposes as the Department of Homeland Security (DHS) determines necessary.

INA section 203(b)(5)(J)(iii), 8 U.S.C. 1153(b)(5)(J)(iii).

II. Integrity Fund Fee

A. Annual Fee.

The 2022 Act requires the Fund to be financed through the collection of an annual fee paid by and collected from designated regional centers (Integrity Fund Fee).¹ INA section 203(b)(5)(J)(ii), 8 U.S.C. 1153(b)(5)(J)(ii). USCIS recognizes that the 2022 Act required it to collect the first fee by October 1, 2022 and impose penalties for fees not paid by October 31, 2022. USCIS is working to implement the statutory mandates as soon as practicable. While that work is ongoing, and in an effort to implement the plain terms of the 2022 Act as quickly as possible, USCIS will begin collecting the fee for fiscal year 2023, which under the 2022 Act would have been due on October 1, 2022, on March 2, 2023. USCIS will accept payment of the fee, as required by the statute, for 30 days. For fiscal year 2024 and each year thereafter, such fees are required to be paid between October 1st and October 31st of the same year. *Id.*

Section 102 of the Homeland Security Act of 2002 and section 103 of the INA, 8 U.S.C. 1103, generally charge DHS with the administration and enforcement of the immigration and naturalization laws of the United States.² The INA further authorizes DHS to “establish such regulations; prescribe such forms of bond, reports, entries, and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the provisions of” the INA.³ In the Homeland Security Act of 2002, Congress also provided that DHS “shall be responsible for . . . [e]stablishing national immigration enforcement policies and priorities.”⁴ The Homeland

Security Act also provides that DHS, in carrying out its authorities, must “ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.”⁵

DHS is directed to set national immigration enforcement policies and priorities, and as such, is ultimately accountable for appropriately using the resources available to the Department as a whole and for taking a comprehensive view of the enforcement landscape.

The 2022 Act sets the standard annual fee at \$20,000 for each designated regional center. However, for those with “20 or fewer total investors in its new commercial enterprises” during the preceding fiscal year (October 1–September 30), the annual fee is reduced to \$10,000. *Id.*

At this time, given the statutory mandate to collect the fees beginning on October 1, 2022, and limited agency resources, USCIS is utilizing its discretion to set an enforcement policy for how it will evaluate whether a regional center has appropriately counted the number of its total investors and thus paid the correct fee. As a general matter, USCIS adjudicators will evaluate on a case-by-case basis how many investors a regional center has in any given fiscal year. However, adjudicators will engage in that case-by-case analysis with the understanding that, generally speaking, the number of investors for purpose of calculating the fee to be paid will be the total number of EB–5 investors who have invested (or are actively in the process of investing) in all of the regional center’s new commercial enterprises in the respective fiscal year. This policy is drawn as closely to the plain statutory language as possible and is in line with the general understanding of the term “investors” by EB–5 stakeholders.

Although “investor” is not specifically defined for purposes of INA section 203(b)(5), 8 U.S.C. 1153(b)(5), it is used extensively throughout that section to refer to noncitizens seeking classification, or classified, under INA section 203(b)(5) 8 U.S.C. 1153(b)(5) (*i.e.* I–526 and I–526E petitioners). For purposes of INA section 216A, “alien investor” is defined as “an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise)” under INA section 203(b)(5), 8 U.S.C. 1153(b)(5). *See* INA 216A(f)(1), 8 U.S.C. 1186b(f)(1).

USCIS recognizes that there is no legal requirement that an investor

remain invested in an NCE within a specific time period after they file their Form I–829, *Petition by Investor to Remove Conditions on Permanent Resident Status*, and thus has determined that the filing of the Form I–829 generally would be an appropriate demarcation for purposes of determining the number of “total investors in the preceding fiscal year.” Based on INA sections 203(b)(5) and 216A(f)(1), USCIS generally considers an individual to be an investor from the point of filing a petition for classification (Form I–526, *Immigrant Petition by Alien Entrepreneur*, or Forms I–526E, *Immigrant Petition by Regional Center Investor*) through the point of filing a petition for removal of conditions (Form I–829, *Petition by Investor to Remove Conditions on Permanent Resident Status*). This is also the general understanding of the term amongst EB–5 stakeholders.⁶ Thus, subject to additional considerations described below, USCIS intends to estimate the approximate number of total investors in a regional center in any given fiscal year by subtracting the number of Forms I–829 associated with the regional center filed at any time on or before September 30 of that fiscal year (including filings from prior fiscal years) from the total number of pending and approved Forms I–526, *Immigrant Petition by Standalone Investor*, associated with the regional center (filed on or before June 30, 2021) and Forms I–526E, *Immigrant Petition by Regional Center Investor*, (filed on or after June 1, 2022 (the date USCIS published the form)) associated with the regional center filed at any time on or before September 30 of that same fiscal year (including filings from prior fiscal years). A Form I–829 that is filed separately by a spouse or child of an investor that obtained conditional permanent resident status based on their relationship to the investor and was not included on the principal investor’s Form I–829 may typically be excluded from the total investor calculation. For example, if a regional center had 30 associated Form I–526 petitions, 10 associated Form I–526E petitions and 20 associated Form I–829 petitions filed on or before September 30, 2022, USCIS generally would estimate that the

¹ Beginning on October 1, 2022 and in accordance with Form I–526E, *Immigrant Petition by Regional Center Investor*, filing instructions on the USCIS website, USCIS began collecting a \$1,000 Integrity Fund Fee with each new immigrant investor petition filed by a regional center investor for the Fund. INA section 203(b)(5)(J)(ii)(II), 8 U.S.C. 1153(b)(5)(J)(ii)(II).

² Public Law 107–296, sec. 102(a)(3), 116 Stat. 2135, 2143 (codified at 6 U.S.C. 112(a)(3)); Public Law 82–414, 66 Stat. 163 (as amended); INA sec. 103(a)(1), 8 U.S.C. 1103(a)(1).

³ INA sec. 103(a)(3), 8 U.S.C. 1103(a)(3).

⁴ Public Law 107–296, sec. 402(5), 116 Stat. 2135, 2178 (codified at 6 U.S.C. 202(5)).

⁵ 6 U.S.C. 111(b)(1)(F).

⁶ See, e.g., EB–5 Diligence, Answers to Common EB–5 Visa Investor Questions (Apr. 26, 2021), available at <https://www.eb5diligence.com/articles/common-eb-5-investor-questions> (explaining that an investor’s capital goes into an NCE, the “at risk” requirement lasts the “duration of the immigrant investor’s conditional residency”, and if USCIS denies the petition for ineligibility, “all the NCE’s investors . . . would then have to start the investment process all over with a new I–526 filing and EB–5 investment.”).

regional center has 20 total investors in its new commercial enterprises for fiscal year 2022 (FY22) for purposes of calculating the applicable Integrity Fund fee for fiscal year 2023 (FY23) and would likely owe the reduced fee amount of \$10,000, subject to additional considerations described below.

USCIS recognizes that there may be alternative methods of calculating “total investors” and has considered potential reliance interests in arriving at this interpretation. As this is an entirely new statutorily created and mandated fee, and USCIS thus has not previously enforced this requirement, USCIS believes that regional centers likely do not have appreciable reliance interests that favor a given interpretation. USCIS emphasizes that the method of approximating investors described above is meant to be a general guide to USCIS adjudicators in this calculation. USCIS adjudicators retain discretion to evaluate the Integrity Fund fee due and the number of investors on a case-by-case basis, accounting for any other facts or evidence in the record in the totality of the circumstances, including any evidence provided by a regional center that believes it has greater or fewer total investors.

USCIS considered alternative methods of calculating when a noncitizen generally would no longer be deemed an “investor”; however, those options generally would either not capture the entire population or involve manual calculations that USCIS believes would place an unreasonable burden on the Agency’s limited resources as USCIS works to implement the 2022 Act. Additionally, those options might be confusing and burdensome to the investor or regional center populations. For example, USCIS considered generally counting only the Forms I–526 that were filed within two years of the applicable period used for determining the EB–5 Integrity Fund fee given the expected two-year minimum timeframe for the investment, or sustainment period, under the 2022 Act. INA section 203(b)(5)(A)(i); 8 U.S.C. 1153(b)(5)(A)(i). However, that would likely be underinclusive given that many investors are actively in the process of investing (*i.e.* not yet fully invested) when they file their Form I–526 petition as permitted under applicable requirements and, additionally, would not align with the sustainment period for those who filed prior to the 2022 Act, which runs approximately to the point of the Form I–829 filing, regardless of when they filed their Form I–526 or made their investment. For Form I–526 petitions filed after the 2022 Act, USCIS also considered generally

counting only Form I–526 petitions whose investments were still within the two-year period of investment expected under INA 203(b)(5)(A)(i); however, manual verification of the time period of investment for each regional center investor, rather than conducting a systems inquiry for total petition filings, would exhaust valuable and significant USCIS resources that the agency believes, in the balance, are better utilized in service of other adjudicatory priorities. USCIS acknowledges the practical limitations of determining how many “total investors” may be in a new commercial enterprise during any given fiscal year to ensure that the correct fee is paid. We believe the general method we are announcing in this notice, subject to case-by-case analysis, reflects both a reasonable interpretation of the statute and ensures that USCIS’ limited resources are used most efficiently to ensure compliance with the 2022 Act.

B. Fee Payment Process

Before April 3, 2023, and between October 1 and October 31 of each following year (FY 2024 onward), each designated regional center must pay the fee to USCIS online via the online form hosted on [Pay.gov](https://pay.gov) at [Pay.gov](https://pay.gov)—EB5—Annual Fee for Regional Center. Payment of this fee must be made by an authorized individual on behalf of a regional center. Each designated regional center must pay the fee with either a valid credit or debit card or by authorizing an ACH Debit transaction where the regional center provides its U.S. bank routing and checking account numbers to have money debited directly from its U.S. bank account. Please note that the U.S. Department of Treasury guidelines permit USCIS to accept a maximum payment amount of \$24,999 from one credit card in one day, and a single obligation cannot be split into multiple credit card payments over multiple days in order to evade this limit.⁷

The 2022 Act and this notice represent the constructive notice to designated regional centers of the amount they owe and when it is due. USCIS will also post information on its website and issue a press release but will not send an invoice to the regional centers beyond this notice. Each regional center is responsible for determining their amount owed based

on the number of total investors and for submitting the appropriate fee before the due date. If a regional center is required to provide evidence of payment of this fee, USCIS will accept proof that the fee is paid in the form of, for example, a copy of the *Pay.gov* payment confirmation email or a notice or statement from the payer’s credit card issuer or financial institution.

C. Late Fee

The 2022 Act requires DHS to impose a reasonable penalty fee (to be paid to USCIS and deposited into the Fund when collected) on a regional center that does not pay the annual Integrity Fund fee within 30 days after the date on which such fee is due. INA section 203(b)(5)(J)(iv), 8 U.S.C. 1153(b)(5)(J)(iv). USCIS must terminate the designation of any regional center that does not pay the fee within 90 days after the date on which such fee is due. *Id.*

DHS has decided, in exercising its discretionary enforcement authority articulated above, that USCIS will not charge the late penalty in 2022 for the following reasons: (1) the Fund and Integrity Fund fee are new program requirements; and (2) USCIS must determine an amount that is a “reasonable” penalty to charge. Therefore, DHS has decided and USCIS is announcing that, as a matter of discretionary enforcement policy, we will not charge a late fee until we take further action to set the amount of the late fee, as well as the process for collecting the late fee.

However, USCIS will, as authorized by the 2022 Act, terminate the designation of any regional center that does not pay the full fee within 90 days after the date on which such fee is due (*i.e.*, a regional center does not make payment, or a regional center pays \$10,000 when it owes \$20,000). Termination will not be automatic and USCIS will provide a notice of intent to terminate and the opportunity for a regional center to prove that the fee was paid in the proper amount by the due date before sending a notice of termination. Again, USCIS recognizes that the 2022 Act requires collection of the fee on October 1, 2022 and imposition of termination after 90-days. Because this notice published after October 1, 2022, USCIS will maintain the statutory 90-day termination period and will not begin taking steps to terminate a regional center until May 31, 2023. For all subsequent years, USCIS will take steps to terminate the regional center if the regional center

⁷ See U.S. Department of the Treasury, Bureau of the Fiscal Service, Treasury Financial Manual, Chapter 7000, section 7055.20, available at <https://tfm.fiscal.treasury.gov/v1/p5/c700#:~:text=Federal%20entities%20must%20limit%20their,are%20no%20more%20than%20%2410%2C000.00> (last viewed Oct. 12, 2022).

does not pay the full fee by December 31st.⁸

III. Regulatory Requirements.

A. Administrative Procedure Act

DHS and USCIS are taking this action without prior notice and opportunity for comment because this document is a general statement of policy supported by its discretionary enforcement authority and an interpretive rule. 5 U.S.C. 553(b)(A) (notice and comment requirements do not apply to “general statements of policy” and “interpretive rules”).

The Homeland Security Act authorized the Secretary with “[e]stablishing national immigration enforcement policies and priorities.”⁹ In accordance with these authorities, and in attempting to quickly effectuate as much of the 2022 Act’s statutory requirements as possible, DHS is exercising its discretionary authority to explain how it will evaluate whether a regional center has paid the correct fee, and will not impose a reasonable penalty fee on a regional center that does not pay the annual Integrity Fund fee within 30 days until it can pursue additional rulemaking. The Supreme Court explained in *Heckler v. Chaney*, 470 U.S. 821, 831–32 (1985), that “an agency decision not to enforce often involves a complicated balancing of a number of factors which are peculiarly within its expertise . . . we note that when an agency refuses to act it generally does not exercise its *coercive* power over an individual’s liberty or property rights.” DHS has balanced the impact to the public of imposing a “reasonable penalty,” the timeliness of complying with the statutory mandates, and the agency delays in providing notice to regional centers regarding how to submit the fee. Ultimately, DHS decided that the discretionary policy of non-enforcement presented in this Notice was the most equitable path forward.

Alternatively, this agency action is an interpretive rule. Whether a rule is legislative or interpretive turns on “the prior existence or non-existence of legal duties and rights.” *Am. Mining Congr. v. Mine Safety & Health Admin.*, 995 F.2d 1106, 1110 (D.C. Cir. 1993). *See, e.g., United Tech. Corp. v. EPA*, 821 F.2d 714, 719–20 (D.C. Cir. 1987) (“[W]hat distinguishes interpretative from legislative rules is the legal base upon which the rule rests. If the rule is based on specific statutory provisions, and its validity stands or falls on the correctness of the agency’s interpretation of those provisions, it is an interpretative rule. If, however, the rule is based on an agency’s power to exercise its judgment as to how best to implement a general statutory mandate, the rule is likely a legislative one.”). By law, USCIS is required to collect the Integrity Fund Fee on an annual basis. *See* INA section 203(b)(5)(J)(ii), 8 U.S.C. 1153(b)(5)(J)(ii). The statutory provision that requires the \$20,000 and \$10,000 fees contains little ambiguity for USCIS to resolve or explain:

(I) ANNUAL FEE.—On October 1, 2022, and each October 1 thereafter, the Secretary of Homeland Security shall collect for the Fund an annual fee—

(aa) except as provided in item (bb), of \$20,000 from each regional center designated under subparagraph (E); and
(bb) of \$10,000 from each such regional center with 20 or fewer total investors in the preceding fiscal year in its new commercial enterprises.

INA section 203(b)(5)(J)(ii)(I), 8 U.S.C. 1153(b)(5)(J)(ii)(I). To the extent that there is minimal ambiguity regarding the calculation of “total investors” because the statute does not explicitly include a calculation, USCIS’s interpretation is only intended to guide adjudicators in the performance of their duties and not remove their discretion in making adjudicatory decisions. This interpretation does not create any substantive or procedural right or benefit that is legally enforceable, because the fees are explicitly provided

for in statute; but rather provides notice to the public regarding this explicit statutory fee requirement. USCIS imposes no additional duties or rights, beyond what the 2022 Act has already imposed.

Therefore, USCIS is imposing this fee without soliciting public comment prior because this is a general statement of policy and an interpretive rule exempt from notice and comment procedures. 5 U.S.C. 553(b)(A).

B. Other Regulatory Requirements

Because this action is not subject to the notice-and-comment requirements under the Administrative Procedure Act, a final regulatory flexibility analysis is not required. *See* 5 U.S.C. 604(a). In addition, this notice is not a “major rule” as defined by the Congressional Review Act, 5 U.S.C. 804(2), and thus is not subject to a 60-day delay in the rule becoming effective. This action is not subject to the written statement requirements of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Orders 13132 or 13175. This notice also does not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). *See* 40 CFR 1507.3(b)(2)(ii) and 1508.4. This action does not affect the quality of the human environment and fits within Categorical Exclusion number A3(d) in Dir. 023–01 Rev. 01, Appendix A, Table 1, for rules that interpret or amend an existing regulation without changing its environmental effect.

This notice does not require review by the Office of Management and Budget (OMB) under Executive Order 12866. As previously discussed, USCIS is required to collect the Integrity Fund Fee. Nonetheless, for illustrative purposes Table 1 shows the total number and aggregate amount of Integrity Fund Fees that USCIS estimates it will receive in 2022.

TABLE 1—2022 PROJECTED INTEGRITY FUND FEES

Size of RC	Number	Fee in \$	Total in \$
>20 investors	246	\$20,000	\$4,920,000
<= 20 investors	384	10,000	3,840,000
Total	630	.....	8,760,000

⁸ The 2022 Act provides that DHS may increase the annual Integrity Fund fee as necessary to ensure that the Fund is sufficient to carry out its purposes. INA section 203(b)(5)(J)(ii)(III), 8 U.S.C.

1153(b)(5)(J)(ii)(III). DHS may increase the amount of the Integrity Fund fees through future regulations if the collections are inadequate.

⁹ Public Law 107–296, sec. 402(5), 116 Stat. 2135, 2178 (codified at 6 U.S.C. 202(5)).

Finally, this notice and the Integrity Fund Fees are not subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3521 (PRA). The PRA does not preclude the imposition of a penalty on an entity for failing to comply with a collection of information that is imposed on the entity by statute as is the case with the Integrity Fund Fees. See 5 CFR 1320.6(e).

Ur M. Jaddou,
Director.

[FR Doc. 2023–04295 Filed 3–1–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[Docket No. BIA–2022–0005; 234A2100DD/
AAKC001030/A0A501010.999900; OMB
Control Number 1076–0122]

Agency Information Collection Activities; Data Elements for Bureau- Funded Schools

AGENCY: Bureau of Indian Affairs,
Interior.

ACTION: Notice of information collection;
request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Education (BIE) are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before May 1, 2023.

ADDRESSES: To submit a comment, please visit <https://www.regulations.gov/docket/BIA-2022-0005> or use the search field on <https://www.regulations.gov> to find the “BIA–2022–0005” docket. Please follow the comment instructions on [Regulations.gov](https://www.regulations.gov) and reference the applicable OMB Control Number within your comment submission.

FOR FURTHER INFORMATION CONTACT: Steven Mullen, Information Collection Clearance Officer, by email at comments@bia.gov or telephone at (202) 924–2650. 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. You may also view the ICR at <https://www.reginfo.gov/public/Forward?SearchTarget=PRA&textfield=1076-0122>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all

information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public’s reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

- (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) The accuracy of our estimate of the burden for the collection of information, including the validity of the methodology and assumptions used;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

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

OMB Control Number 1076–0122

Abstract: The Secretary of the Interior, through the Bureau of Indian Education (BIE), is required by the Snyder Act (25 U.S.C. 13), Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 5301), Education Amendments of 1978 (25 U.S.C. 2001), Augustus F. Hawkins-Robert T. Stafford

Elementary and Secondary School Improvement Amendments of 1988 (20 U.S.C. 6301 *et seq.*), and Every Student Succeeds Act (20 U.S.C. 6301) to provide educational services to federally recognized Indians and Alaska Natives. In addition, 25 CFR 43, Maintenance and Control of Student Records in Bureau Schools, contain regulations governing the maintenance, control, and accessibility of student records.

BIE’s Student Enrollment Application is utilized by schools operated or funded by BIE. The information is collected by school registrars to determine the student’s eligibility for enrollment in a bureau-operated school, and if eligible, is shared with appropriate school officials to identify the student’s base and supplemental educational and/or residential program needs. The information is compiled into a national database by the Bureau of Indian Education to facilitate budget requests and the allocation of congressionally appropriated funds.

BIE’s Behavioral Health and Wellness Program (BHWP) is focused on providing indigenous focused, evidence-based, and trauma-informed behavioral health and wellness services/resources for students and staff at all Bureau-funded programs, departments, and institutions including Bureau operated schools, Tribally controlled schools, post-secondary institutions, and Tribal colleges and universities.

Proposed Revisions

BIE proposes a referral intake form to facilitate virtual counseling and crisis services. All data collected for the BHWP will be utilized for establishing the appropriate level of care, assessing client safety, ensuring services are individualized to meet the client’s specific needs, and providing clients with external referrals, as needed.

Title of Collection: Data Elements for Bureau-Funded Schools.

OMB Control Number: 1076–0122.

Form Number: None.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals, Contract and Grant schools, and Bureau-funded schools.

Total Estimated Number of Annual Respondents: 49,000 per year, on average.

Total Estimated Number of Annual Responses: 49,000 per year, on average.

Estimated Completion Time per Response: 15 to 30 minutes.

Total Estimated Number of Annual Burden Hours: 12,500 hours.

Frequency of Collection: Occasionally, required to obtain a benefit.

Total Estimated Annual Nonhour Burden Cost: \$41,250.

Authority

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The authority for these ICR actions is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Steven Mullen,

*Information Collection Clearance Officer,
Office of Regulatory Affairs and
Collaborative, Office of the Assistant
Secretary—Indian Affairs.*

[FR Doc. 2023-04266 Filed 3-1-23; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM930000.L14400000.BJ0000.BX0000]

Notice of Filing of Plat of Survey; Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing of plat of survey; Oklahoma, suspended.

On Friday, June 19, 2015, there was published in the **Federal Register**, Volume 80, Number 118, on pages 35393–35394, a notice entitled “Notice of Filing of Plats of Survey, New Mexico”. In said notice was the following Plat:

Indian Meridian, Oklahoma

The plat, in three sheets, representing the dependent resurvey and survey in Township 9 North, Range 25 East, of the Indian Meridian, accepted April 15, 2015, for Group 220 OK.

The official filing of this plat, on July 20, 2015, is hereby suspended, pending further investigation by NMSO Cadastral Survey.

Authority: 43 U.S.C. chapter 3.

Michael J. Purtee,

Chief Cadastral Surveyor of New Mexico.

[FR Doc. 2023-04305 Filed 3-1-23; 8:45 am]

BILLING CODE 4310-FB-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0035423; PPWOCRADNO-PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California State University, Sacramento intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Amador County, CA.

DATES: Repatriation of the cultural items in this notice may occur on or after April 3, 2023.

ADDRESSES: Dr. Dianne Hyson, Dean of the College of Social Sciences and Interdisciplinary Studies, California State University, Sacramento, 6000 J Street Sacramento, CA 95819, telephone (916) 278-6504, email dhyson@csus.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 California State University, Sacramento. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the California State University, Sacramento.

Description

The 108 cultural items were removed from several sites in Amador County, CA, all of which are cataloged under accession number 81–95. In 1959 and through the early 1960s, Jerald Johnson, Patti Palumbo, Louis Payen, Lynn Kauffman, David Boloyan, Hansen, Gorman, and unnamed students of California State University, Sacramento collected various cultural items from CA-AMA-06, AMA-07, AMA-21, AMA-25, AMA-41, AMA-51, AMA-53, AMA-65, AMA-67, AMA-78, AMA-96, AMA-97, AMA-105, AMA-255, and four sites with no known trinomial: unnamed site, Rabbit Creek, Wrapped Stick Cave, and 3-118. All collections were curated at California State University, Sacramento. The 108 objects of cultural patrimony include faunal and flora remains, flaked and ground stone objects, historic objects, modified stone and wood, ochre, and thermally altered rocks.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable

earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, geographical, historical, kinship, linguistic, oral, traditional, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the California State University, Sacramento has determined that:

- The 108 cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Buena Vista Rancheria of Me-Wuk Indians of California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **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 April 3, 2023. If competing requests for repatriation are received, the California State University, Sacramento 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 California State University, Sacramento 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 10.8, § 10.10, and § 10.14.

Dated: February 22, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023-04262 Filed 3-1-23; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0035425;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California State University, Sacramento, Sacramento, CA 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. The cultural items were removed from Yolo County, CA.

DATES: Repatriation of the cultural items in this notice may occur on or after April 3, 2023.

ADDRESSES: Dr. Dianne Hyson, Dean of the College of Social Sciences and Interdisciplinary Studies, California State University, Sacramento, 6000 J Street Sacramento, CA 95819, telephone (916) 278-6504, email dhyson@csus.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 California State University, Sacramento. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by California State University, Sacramento.

Description

The 61 cultural items were removed from three sites in Yolo County, CA. Sometime in the 1950s, cultural items were removed from CA-YOL-16 (also known as the Kuchler Site) by students at Sacramento State College (now California State University, Sacramento) under the direction of Dr. Reeves. At all times thereafter, the collection has been

housed at California State University, Sacramento. In 1966, cultural items were removed from CA-YOL-71 by Harry Hanson. How this collection came into the possession of California State University, Sacramento is unknown. In 1973, cultural items were found during a survey of unknown sites in the Capay Valley. How this collection came into the possession of California State University, Sacramento is unknown. In total there are 61 unassociated funerary objects, of which six objects are currently missing from the collections. The 61 unassociated funerary objects include faunal and floral remains; flaked and ground stone; historic period materials; and modified bones, shells, and stones. California State University, Sacramento continues to look for the six missing objects.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, folkloric, geographical, historical, kinship, linguistic, oral, traditional, other relevant information, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the California State University, Sacramento, Sacramento, CA has determined that:

- The 61 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Yocha Dehe Wintun Nation, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **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 April 3, 2023. If competing requests for repatriation are received, California State University, Sacramento 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. California State University, Sacramento 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 10.8, § 10.10, and § 10.14.

Dated: February 22, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023-04261 Filed 3-1-23; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0035424;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California State University, Sacramento 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. The human remains and associated funerary objects were removed from Sacramento County, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after April 3, 2023.

ADDRESSES: Dr. Dianne Hyson, Dean of the College of Social Sciences and Interdisciplinary Studies, California State University, Sacramento, 6000 J

Street Sacramento, CA 95819, telephone (916) 278-6504, email dhysen@csus.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 California State University, Sacramento. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the California State University, Sacramento.

Description

In 1965, human remains representing, at minimum, one individual were removed from site CA-SAC-113 (known, variously, as Calhoun #1, Calquhoun 1, and *Sukididi*) in Sacramento County, CA, by Dr. William Beeson for Sacramento State College (now California State University, Sacramento). Occupation of site SAC-113 is estimated to have occurred during the Late Horizon, with possible use during the Historic period. No known individual was identified. The 323 associated funerary objects include baked clay; faunal remains; flaked and ground stone; historic material; and modified bone, stone, and shell. Of this number, 129 objects are currently missing from the collection. California State University, Sacramento continues to look for these 129 missing objects.

In 1967 and 1972-73, human remains representing, at minimum, 378 individuals were removed from site CA-SAC-127 (known, variously, as Augustine Mound, Rooney Site, and *Oo'Le-Waymah*), which is located along Deer Creek in Sacramento County, CA. The 1967 excavations, located in a cemetery area known as the Rooney Extension, were led by William Beeson and Mark Grady for Sacramento State College (now California State University, Sacramento). The 1972-73 excavations, located in an area adjacent to the cemetery, were led by Jerald Johnson for Sacramento State College (now California State University, Sacramento). The landowner, Rooney Brothers, Inc., gifted the collections to Sacramento State. Occupation of the site is estimated to range from the Middle Horizon through Historic periods. The 24,850 associated funerary objects include baked clay; faunal and floral remains; flaked and ground stones; historic materials; modified shells, bones, stone, and wood; non-cultural

items; soil samples; ash; charcoal; pigment; unidentified materials; unmodified stone; and thermally altered rock. Of this number, 136 objects are currently missing from the collection. California State University, Sacramento continues to look for these 136 missing objects.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, folkloric, geographical, historical, kinship, linguistic, oral, traditional, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the California State University, Sacramento has determined that:

- The human remains described in this notice represent the physical remains of 379 individuals of Native American ancestry.
- The 25,173 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Buena Vista Rancheria of Me-Wuk Indians of California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Band of Miwok Indians; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), 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 human remains and associated funerary objects 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 and associated funerary objects in this notice to a requestor may occur on or after April 3, 2023. If competing requests for repatriation are received, the California State University, Sacramento 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 California State University, Sacramento is responsible for sending a copy of this notice to the Indian Tribes 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: February 22, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023-04260 Filed 3-1-23; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0035426; PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California State University, Sacramento 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. The human remains and associated funerary objects were removed from Yolo County, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after April 3, 2023.

ADDRESSES: Dr. Dianne Hyson, Dean of the College of Social Sciences and Interdisciplinary Studies, California State University, Sacramento, 6000 J Street Sacramento, CA 95819, telephone (916) 278-6504, email dhyson@csus.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 California State University, Sacramento. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by California State University, Sacramento.

Description

Sometime in the 1950s, human remains representing, at minimum, five individuals were removed from two sites in Yolo County, CA, site CA-YOL-15 (also known as McCants Mound) and site CA-YOL-106 (also known as Jones 1), by students of Sacramento State College (now California State University, Sacramento) under the direction of Dr. Reeves. The collections have been housed at California State University, Sacramento since this excavation. No known individuals were identified. The 520 associated funerary objects removed from these sites include baked clay; faunal remains; flaked and ground stone; historic material; modified bone, stone, and shell; non-cultural objects; pigment; manuports; a geologic sample; and an ash sample. Of this number, 67 objects are currently missing from the collection. California State University, Sacramento continues to look for these 67 missing objects.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, folkloric, geographical, historical, kinship, linguistic, oral, traditional, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after

consultation with the appropriate Indian Tribes and Native Hawaiian organizations, California State University, Sacramento has determined that:

- The human remains described in this notice represent the physical remains of five individuals of Native American ancestry.
- The 520 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Kletsel Dehe Wintun Nation of the Cortina Rancheria (*Previously* listed as Kletsel Dehe Band of Wintun Indians); and the Yocha Dehe Wintun Nation, California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects 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 and associated funerary objects in this notice to a requestor may occur on or after April 3, 2023. If competing requests for repatriation are received, California State University, Sacramento 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. California State University, Sacramento is responsible for sending a copy of this notice to the Indian Tribes 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: February 22, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023-04259 Filed 3-1-23; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NRNL-DTS#-35415;
PPWOCRADIO, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before February 18, 2023, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by March 17, 2023.

ADDRESSES: Comments are encouraged to be submitted electronically to *National Register Submissions@nps.gov* with the subject line "Public Comment on <property or proposed district name, (County) State>." If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, sherry_frear@nps.gov, 202-913-3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before February 18, 2023. Pursuant to section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Nominations Submitted by State or Tribal Historic Preservation Officers

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

COLORADO

Denver County

Colorado Woman's College (Boundary Increase), 7110, 7150, 7190, 7196 Montview Blvd.; 1740, 1790, 1800 Pontiac St., Denver, BC100008760

Larimer County

Hollemon-Smith Homestead and Ranch, 6671 Stove Prairie Rd., Bellvue, SG100008783

KANSAS

Douglas County

Anderson, Knud, Farmstead (Agriculture-Related Resources of Kansas MPS), 1862 North 700 Rd., Vinland vicinity, MP100008784

NEW JERSEY

Morris County

St. Mary's Church Historic District, South Main St. bounded by US 46 and St. Mary's St., Borough of Wharton, SG100008766

OHIO

Cuyahoga County

Droppers, Carl, House, 345 Prospect Rd., Berea, SG100008761

OKLAHOMA

Atoka County

Claud Collier Chevrolet & Buick Company, 115 East Court St., Atoka, SG100008767

Kay County

Cleary, John and Helen, House, 45 Hillcrest Dr., Ponca City, SG100008768
Gill, Meade and Eudora, House, 418 North 2nd St., Ponca City, SG100008769

TENNESSEE

Shelby County

Griggs Business and Practical Arts College, 492 Vance Ave., Memphis, SG100008765

UTAH

Box Elder County

Brigham City Historic District (Brigham City MPS), Roughly bounded by 700 South, 500 East, 500 North and 300 and 500 West Sts., Brigham City, MP100008770

VERMONT

Franklin County

St. Albans Historic District (Boundary Increase), All or parts of: Academy Dr, Bank, Catherine, Center, Church, Congress, Fairfield, Federal, Kingman, Lake, North Main, and South Main Sts., Lincoln Ave., Hampton and Maiden Lns., St. Albans, BC100008758

WISCONSIN

Washington County

West Bend Downtown Historic District, 102–337 North Main, 101–162 South Main, 508 and 519 Hickory, 607 and 623–627 Elm, 623–629 Cedar Sts., 108–112 5th, 100–228 6th Aves., West Bend, SG100008763

A request for removal has been made for the following resources:

MAINE

Aroostook County

Oakfield Grange, #414, 89 Ridge Rd., Oakfield, OT06000920
Watson Settlement Bridge, Crossing Meduxnekeag R. north of Carson Rd., Littleton vicinity, OT70000039

Cumberland County

Babb's Bridge, Over Presumpscot River, west of River Rd., east of Cane Rd., Gorham vicinity, OT09000088

Kennebec County

Shurtleff, Jonas R., House, 461 Augusta Rd., Winslow, OT74000173
Dinsmore Grain Company Mill, 142 Branch Mills Rd., China, OT79000147

Somerset County

Steward-Emery House, 46 North Main St., North Anson, OT92001705

York County

Perkins Tide Mill, 8 Mill Ln., Kennebunkport, OT73000160
Sanford Naval Air Station Administration Building-Control Tower, Former SW corner of Sanford Municipal Airport, SW of jct. of ME 99 and ME 109, South Sanford vicinity, OT97000603

Additional documentation has been received for the following resources:

COLORADO

Denver County

Colorado Woman's College (Additional Documentation) 7110, 7150, 7190, 7196 Montview Blvd.; 1740, 1790, 1800 Pontiac St., Denver, AD78000855

UTAH

Salt Lake County

Fitzgerald House (Additional Documentation) (Draper, Utah MPS), 1160 E Pioneer Ave., Draper, AD16000679

VERMONT

Franklin County

St. Albans Historic District (Additional Documentation) All or parts of: Academy Dr, Bank, Catherine, Center, Church, Congress, Fairfield, Federal, Kingman, Lake, North Main, and South Main Sts., Lincoln Ave., Hampton and Maiden Lns., St. Albans, AD80000335

Nomination submitted by Federal Preservation Officer:

The State Historic Preservation Officer reviewed the following nomination and responded to the

Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

DISTRICT OF COLUMBIA

District of Columbia

National Museum of Natural History, 10th St. and Constitution Ave. NW, Washington, SG100008754

Authority: Section 60.13 of 36 CFR part 60.

Dated: February 22, 2023.

Sherry A. Frear,

Chief, National Register of Historic Places/
National Historic Landmarks Program.

[FR Doc. 2023–04269 Filed 3–1–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Migrant and Seasonal Farmworker Monitoring Report and Complaint/Apparent Violation Form

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, "Migrant and Seasonal Farmworker (MSFW) Monitoring Report and Complaint/Apparent Violation Form." This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by May 1, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Laura Tramontana by telephone at 202–693–0383 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at NMA@dol.gov.

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce

Investment, Room C 4510, 200 Constitution Avenue NW, Washington, DC 20210; by email: 202-693-0383; or by fax: 202-693-3890.

FOR FURTHER INFORMATION CONTACT:

Laura Tramontana by telephone at 202-693-0383 (this is not a toll-free number) or by email at NMA@dol.gov.

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure 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 can be properly assessed.

Pursuant to 20 CFR 653.109, State Workforce Agencies (SWA) use ETA Form 5148 to submit to DOL quarterly data on the services they provide to MSFWs. DOL uses that data to monitor and measure the extent and effectiveness of SWA service delivery to MSFWs and overall compliance with 20 CFR 651, 653, and 658. SWAs use the Complaint/Apparent Violation Form, ETA Form 8429 to record and process complaints.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205-0039.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters

not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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).

Agency: DOL-ETA.

Type of Review: Extension without changes.

Title of Collection: Migrant and Seasonal Farmworker Monitoring Report and Complaint/Apparent Violation Form.

Forms: ETA 5148, ETA 8429.

OMB Control Number: 1205-0039.

Affected Public: Individuals or households; State, local, and Tribal governments; private sector.

Estimated Number of Respondents: 2,671.

Frequency: 6 times annually.

Total Estimated Annual Responses: 6,572.

Estimated Average Time per Response: 7.93 hours.

Estimated Total Annual Burden Hours: 7,715.5 hours.

Total Estimated Annual Other Cost Burden: \$0.

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023-04320 Filed 3-1-23; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2012-0034]

Hexavalent Chromium Standards for General Industry, Shipyard Employment, and Construction; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Hexavalent Chromium Standards.

DATES: Comments must be submitted (postmarked, sent, or received) by May 1, 2023.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at <https://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA-2012-0034) for the Information Collection Request (ICR). OSHA will place all comments, including personal information you provide, in the public docket without change, which may be made available online at <https://www.regulations.gov>. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates. For further information on submitting comments, see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to <https://www.regulations.gov>. All documents in the docket (including this **Federal Register** notice) are listed in the <https://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627) for

assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693-2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The Hexavalent Chromium Standards for General Industry (29 CFR 1910.1026), Shipyard Employment (29 CFR 1915.1026), and Construction (29 CFR 1926.1126) (the standards) protect workers from the adverse health effects that may result from occupational exposure to hexavalent chromium. The major information collection requirements in the standards include conducting worker exposure monitoring, notifying workers of their chromium exposures, implementing medical surveillance of workers, providing examining physicians with specific information, implementing a respiratory protection program, notifying laundry personnel of chromium hazards, and maintaining workers' exposure monitoring and medical surveillance records for specific periods.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply. For example, by using automated or other technological information collection, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in the Hexavalent Chromium Standards for General Industry (29 CFR 1910.1026), Shipyard Employment (29 CFR 1915.1026), and Construction (29 CFR 1926.1126). The agency is requesting a 5,715-hour decrease (from 429,318 hours to 423,603 hours) in the number of burden hours approved in the previous package. This reduction is based on the agency's updated rounding methods. The agency is requesting to maintain the previously approved estimate for capital costs, at \$43,439,901.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Hexavalent Chromium Standards for General Industry (29 CFR 1910.1026), Shipyard Employment (29 CFR 1915.1026), and Construction (29 CFR 1926.1126).

OMB Control Number: 1218-0252.

Affected Public: Business or other for-profits.

Number of Respondents: 78,321.

Number of Responses: 923,898.

Frequency of Responses: On occasion; Quarterly; Semi-annually; Annually.

Average Time per Response: Varies.

Estimated Total Burden Hours: 423,603.

Estimated Cost (Operation and Maintenance): \$43,439,901.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at <https://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (fax); if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at 202-693-1648; or (3) by hard copy. Please note: While OSHA's Docket Office is continuing to accept and process submissions by regular mail due to the COVID-19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the docket by hand, express mail, messenger, and courier service. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA-2012-0034). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so that the agency can attach them to your comments.

Due to security procedures, the use of regular mail may cause a significant delay in the receipt of comments.

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (*e.g.*, copyrighted material) is not publicly available to read or download from this website.

All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> website to submit comments and access the docket is available at the website's "User Tips" link. Contact the OSHA Docket Office for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the

preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506, *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on February 24, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–04319 Filed 3–1–23; 8:45 am]

BILLING CODE 4510–26–P

MARINE MAMMAL COMMISSION

Request for Nominations; Committee of Scientific Advisers on Marine Mammals

AGENCY: Marine Mammal Commission.

ACTION: Notice.

SUMMARY: The Marine Mammal Commission was created under title II of the Marine Mammal Protection Act of 1972, as amended. The Commission is assisted in its duties by the Committee of Scientific Advisers on Marine Mammals. The Committee consists of nine members, appointed by the Chair of the Commission. As a general rule, Committee Members are appointed for three-year terms, which may be extended, but vacancies do not occur on a regular basis. To assist the Commission in identifying qualified candidates for appointment to the Committee if and when vacancies occur, the Commission is soliciting nominations from the public.

DATES: Nominations for this solicitation should be received 30 days after publication of this notice. Nominations also will be accepted at other times on an ongoing basis.

ADDRESSES: Catherine Shrestha, Administrative Officer, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda, Maryland 20814. Nominations (Word, PDF, in text of email) may be sent via email to cshrestha@mmc.gov (<mailto:cshrestha@mmc.gov>). Nominations should include a brief statement of the nominee's qualifications and should include a copy of the nominee's curriculum vitae. Self-nominations are acceptable.

FOR FURTHER INFORMATION CONTACT:

Peter O. Thomas, Ph.D., Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda, Maryland 20814; (301) 504–0087.

SUPPLEMENTARY INFORMATION: Section 203 of the Marine Mammal Protection Act directs the Commission to establish a nine-member Committee of Scientific

Advisers on Marine Mammals. The Committee is to consist of scientists knowledgeable in marine ecology and marine mammal affairs. Members are appointed by the Chair of the Commission after consultation with the Chairman of the Council on Environmental Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences. The Commission is required to consult with the Committee on all studies and recommendations that it may propose to make or has made, on research programs conducted or proposed to be conducted under the authority of the Act, and on all applications for permits for scientific research.

In selecting individuals to serve on the Committee, the Commission seeks to ensure that the Committee membership as a whole possesses a high level of expertise with respect to scientific disciplines, marine mammal species, and geographic areas of importance to the Commission's responsibilities. In particular, the Commission requires a high level of knowledge with respect to the biology and ecology of certain marine mammal species that, due to their small population levels and/or threats they face, require special attention. In addition, Committee members are selected to provide broad familiarity with marine mammal species and issues from a range of geographic regions where Commission responsibilities are especially great. A listing of the current members of the Committee is available on the Commission's website at <https://www.mmc.gov/>.

Dated: February 21, 2023.

Peter O. Thomas,

Executive Director.

[FR Doc. 2023–04101 Filed 3–1–23; 8:45 am]

BILLING CODE 6820–31–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: (23–011)]

Request for Information: DRAFT Federal Strategy to Advance an Integrated U.S. Greenhouse Gas Monitoring and Information System; Number NNH23ZDA009L

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Request for Information (RFI).

SUMMARY: The National Aeronautics and Space Administration (NASA) has issued a Request for Information (RFI)

on behalf of the Biden-Harris Administration's Greenhouse Gas Monitoring & Measurement Interagency Working Group (GHG IWG), established by the Office of Science & Technology Policy, White House Climate Policy Office, and Office of Management and Budget. The GHG IWG seeks to receive input from the public on the draft *Federal Strategy to Advance an Integrated U.S. Greenhouse Gas Monitoring & Information System (GHGMIS Strategy)* that is posted on the NASA Solicitation and Proposal Integrated Review and Evaluation System's (NSPIRES). The GHG IWG will use information received to 1) inform the drafting of the final version of the *GHGMIS Strategy* and 2) in discussions on potential partnerships related to demonstration projects.

DATES: Comments are requested on or before April 4, 2023. Early comments are encouraged. Comments received after this date will be considered to the extent practicable.

ADDRESSES:

- All responses to this RFI must be submitted in an electronic format only via the NASA Solicitation and Proposal Integrated Review and Evaluation System (NSPIRES) located at <https://go.nasa.gov/USGGMIDraftFederalStrategy>. A copy of the draft *GHGMIS Strategy* is posted as a separate PDF file at the same location.

- *Mail:* Comments submitted in a manner other than the one listed above, including emails or letters sent to SMD or other GHG IWG officials may not be accepted.

- *Hand Delivery:* Please note that NASA cannot accept any comments that are hand delivered or couriered. In addition, NASA cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives.

FOR FURTHER INFORMATION CONTACT:

Issues regarding clarifications or questions on this RFI can be sent to Ken Jucks, Program Manager, Earth Science Division, at kenneth.w.jucks@nasa.gov. Phone: 202–358–0476. For submission help or for any questions regarding the NSPIRES website, contact nspires-help@nasaprs.com Phone: (202) 479–9376, M–F, 8 a.m. to 6 p.m. EST/EDT

SUPPLEMENTARY INFORMATION:

I. Background

The Greenhouse Gas Monitoring & Measurement Interagency Working Group (GHG IWG) was established by the Office of Science & Technology Policy, White House Climate Policy Office, and Office of Management and Budget in 2022 to enhance coordination

on existing capabilities and opportunities for enhancing measurement and quantification of GHG emissions and removals. In addition to the White House offices mentioned above, the GHG IWG includes the following United States (U.S.) federal agencies listed in alphabetical order: Department of Agriculture (USDA), Department of Commerce (including the National Institute of Standards and Technology, NIST, and the National Oceanic and Atmospheric Administration, NOAA), Department of Defense (DOD), Department of Energy (DOE), Department of Interior (DOI), Department of State (State), Environmental Protection Agency (EPA), NASA, and the National Science Foundation (NSF).

The draft *GHGMIS Strategy* developed by the GHG IWG outlines a framework for an integrated U.S. GHG monitoring & information system, near-term strategies to advance the system, and areas of interest for demonstration projects.

The GHG IWG is seeking public comments on the draft *GHGMIS Strategy* in recognition of the significant expertise on this topic that exists outside of government and the growing interest by companies, non-governmental organizations, and local and state agencies in generating or using GHG emissions data. A copy of the draft *GHGMIS Strategy* is posted as a PDF file on the NASA Solicitation and Proposal Integrated Review and Evaluation System's (NSPIRES) landing page for this RFI at <https://go.nasa.gov/USGGMIDraftFederalStrategy>.

II. Discussion of Questions

The RFI requests information on the following themes:

1. Does the draft *GHGMIS Strategy* contain any significant omissions, gaps or errors that would impede effectiveness?
2. What opportunities exist for federal agencies to partner with external entities on the framework, strategies, or demonstration projects outlined in the draft *GHGMIS Strategy* in ways that they have not previously done?
3. What coordination mechanisms, including existing convening or organizing bodies with current limited federal government engagement, should the GHG IWG agencies consider to enhance collaboration with external entities to advance U.S. greenhouse gas monitoring and information capabilities?

III. Written Comments

Written responses should not exceed 4 pages, excluding a cover page and any

references as described in the NSPIRES solicitation number: NNH23ZDA009L entitled *Request for Information: DRAFT Federal Strategy to Advance an Integrated U.S. Greenhouse Gas Monitoring and Information System (GHGM&IS)*. You may respond to some or all questions listed in the RFI. There is no limit on the number of responses from an individual or an institution or its organizational units. The RFI should not be construed as a solicitation for proposals or an obligation on the part of the government. Interested parties who respond to this RFI may be contacted for a follow-on strategic dialogue, discussion, or event.

IV. Review of Public Feedback

NASA will share the public's feedback with the GHG IWG members, who will use the feedback to help to develop the final *GHGMIS Strategy* and discuss potential partnerships related to demonstration projects. This notice is issued solely for information and program-planning purposes. Public input provided in response to this notice does not bind NASA or other GHG IWG members to any further actions, to include publishing a formal response or agreement to initiate a recommended change. The GHG IWG, including NASA, will consider the feedback and make changes or process improvements at its sole discretion.

Any public discussion by NASA or the other GHG IWG members of the results of this RFI will not disclose the identities of the respondents. It is not NASA's or other GHG IWG members' intent to disclose publicly respondents' proprietary information obtained in response to this RFI. To the full extent that it is protected pursuant to the Freedom of Information Act and other laws and regulations, information identified by a Respondent as "Proprietary or Confidential" will be kept confidential.

Cheryl Parker,
NASA Federal Liaison Officer.

[FR Doc. 2023-04328 Filed 3-1-23; 8:45 am]

BILLING CODE 7510-13-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52-025; NRC-2008-0252]

Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant, Unit 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Combined license amendment; issuance and opportunity to request a

hearing and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued License Amendment No. 190 to Combined License (COL) NPF-91. The COL amendment involved changes to Vogtle Electric Generating Plant (VEGP), Unit 3, COL Appendix A, Technical Specifications (TS). The amendment involved changes to remove operability requirements prior to initial criticality for (1) the In-containment Refueling Water Storage Tank (IRWST) in Mode 5 (TS 3.5.7) and Mode 6 (TS 3.5.8), and (2) various Protection and Safety Monitoring System and Diverse Actuation System (DAS) automatic and/or manual actuation signals that initiate IRWST, Automatic Depressurization System (ADS) stage 4, and Chemical and Volume Control System (CVS) letdown isolation valves in Modes 5 and 6. These changes allow disabling the IRWST injection and recirculation function during the repair activities on VEGP Unit 3 IRWST injection isolation valve 3-PXS-V123A. Southern Nuclear Operating Company, Inc., (SNC) is licensed to operate VEGP, Unit 3, located in Burke County, Georgia.

DATES: The amendment was issued on February 8, 2023. A request for a hearing or petition for leave to intervene must be filed by May 1, 2023.

ADDRESSES: Please refer to Docket ID NRC-2008-0252 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2008-0252.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. 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:

William (Billy) Gleaves, Vogtle Project Office, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-5848; email: Bill.Gleaves@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

With the requested amendment, SNC sought proposed changes to COL, Appendix A, TSs in an application dated January 31, 2023 (ADAMS Accession No. ML23031A359), titled, “Exigent License Amendment Request: Technical Specification Exceptions for In-containment Refueling Water Storage Tank Operability Prior to Initial Criticality,” designated as license amendment request (LAR) 23-004. Specifically, the changes add notes (and footnotes) to modify the Modes 5 and 6 operability requirements for the IRWST injection and recirculation flow paths, the IRWST and ADS Stage 4 actuation instrumentation and controls, and the CVS automatic isolation function so that they would not be required to be operable in Modes 5 and 6 prior to initial criticality of the core. Specifically, the licensee proposed revising the Applicability of the Limiting Condition for Operation (LCO) for the following LCOs:

(1) LCO 3.3.8, “Engineered Safety Feature Actuation System (ESFAS) Instrumentation,” Table 3.3.8-1:

(a) Function 14, “RCS Wide Range Pressure—Low,”

(b) Function 16, “CMT [Core Makeup Tank] Level—Low 6,” and

(c) Function 18, “IRWST Lower Narrow Range Level—Low 3”;

(2) LCO 3.3.9, “ESFAS Manual Initiation,” Table 3.3.9-1:

(a) Function 7, “ADS Stage 4 Actuation—Manual Initiation,”

(b) Function 12, “In-Containment Refueling Water Storage Tank (IRWST) Injection Line Valve Actuation—Manual Initiation,” and

(c) Function 13, “IRWST Containment Recirculation Valve Actuation—Manual Initiation”;

(3) LCO 3.3.10, “ESFAS Reactor Coolant System (RCS) Hot Leg Level Instrumentation,” Table 3.3.10-1:

(a) Function 1, “Hot Leg Level—Low 4,” and

(b) Function 2, “Hot Leg Level—Low 2”;

(4) LCO 3.3.19, “DAS Manual Controls”;

(a) Function 7, “ADS stage 4 valves,”

(b) Function 8, “IRWST injection squib valves,” and

(c) Function 9, “Containment recirculation valves”;

(5) LCO 3.3.20, “ADS and IRWST Injection Blocking Device,” Table 3.3.20-1:

(a) Function 2, “ADS and IRWST Injection Block Switches for Manual Unblocking”;

(6) LCO 3.5.7, “IRWST—Shutdown, MODE 5”;

(7) LCO 3.5.8, “IRWST—Shutdown, MODE 6”;

(8) LCO 3.3.16, “ESFAS Actuation Logic—Shutdown.”

For items one through five previously listed, the Modes 5 and 6 Applicability for each of the instrument channel actuation functions would be modified by a footnote that states, “For Unit 3 only, not required to be OPERABLE prior to initial criticality.” For items six and seven previously listed, the licensee’s proposed changes would modify the Applicability for Modes 5 and 6 for the IRWST by adding a note to LCOs 3.5.7 and 3.5.8 that states, “For Unit 3 only, not required to be OPERABLE prior to initial criticality.” Similarly, for LCO 3.3.16 (item eight), the proposed changes would rename the current “NOTE” to be “NOTES,” number the current note to be “1.” and add a note “2.” that states, “For Unit 3 only, ESF Actuation Function for ADS Stage 4 flow paths, In-containment Refueling Water Storage Tank injection and recirculation flow paths, and CVS letdown isolation valves, not required to be OPERABLE prior to initial criticality.”

The NRC has issued License Amendment No. 190 to COL NPF-91 for VEGP, Unit 3. The NRC letter to SNC, the safety evaluation, and the amendment document are available in ADAMS under Package Accession No. ML23037A082.

II. Notice of Issuance of Amendment to Combined License, Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Circumstances)

By letter dated January 31, 2023, SNC requested that the NRC amend COL NPF-91 for VEGP, Unit 3. The Commission has issued the amendment, which is described in section I of this **Federal Register** notice.

The Commission has determined for this amendment that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954 (the Act), as amended, and the Commission’s rules and regulations. The Commission has

made appropriate findings as required by the Act and the Commission’s rules and regulations in chapter 1 of title 10 of the *Code of Federal Regulations* (10 CFR), which are set forth in the license amendment.

There were exigent circumstances associated with the date the amendment was needed, in that the Commission and the licensee had to act quickly, and time did not permit the Commission to publish before issuance its usual notice of consideration of issuance of amendment, proposed no significant hazards consideration (NSHC) determination and opportunity for public comment, and opportunity for a hearing. The Commission did publish a local media notice in *The Augusta Chronicle* on February 5 and 6, 2023, that provided notice of the licensee’s proposed amendment and the proposed NSHC determination and provided a reasonable opportunity for public comment. The Commission was able to consult the State official before issuance. The State of Georgia had no comment.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that NSHC is involved. The Commission has applied the standards of 10 CFR 50.92, “Issuance of amendment,” and has made a final determination that the amendment involves NSHC. The basis for this determination is contained in the NRC documents listed in section I of this notice. Accordingly, the amendment has been issued and made effective as indicated. Because the amendment was issued in exigent circumstances without prior notice of an opportunity for hearing, the Commission is, with this notice, providing an opportunity for hearing on the amendment. A request for a hearing or petition for leave to intervene must be filed by May 1, 2023, as discussed later in this notice.

The Commission has determined that the amendment satisfies the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared for this amendment.

For further details with respect to this action, including the Commission’s final NSHC determination or discussion of exigent circumstances, see the amendment and associated documents such as the Commission’s letter and

safety evaluation, which are referenced in section I of this notice.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and a petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's public website at <https://www.nrc.gov/reading-rm/doc-collections/cfr>. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053>) and the NRC's public website at <https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate>.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must

be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the "Guidance for Electronic Submissions to the NRC" (ADAMS Accession No. ML13031A056) and on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at Hearing.Docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore,

applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>, by email to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)-(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

V. Conclusion

For the reasons set forth in the safety evaluation, the NRC staff issued the amendment that SNC requested on February 8, 2023, as part of a package to SNC.

Dated: February 24, 2023.

For the Nuclear Regulatory Commission.

Victor E. Hall,

Director, Vogtle Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 2023-04232 Filed 3-1-23; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023-114 and CP2023-117; MC2023-115 and CP2023-118]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 6, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal

Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* MC2023-114 and CP2023-117; *Filing Title:* USPS Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 15 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* February 24, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* March 6, 2023.

2. *Docket No(s):* MC2023-115 and CP2023-118; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 135 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* February 24, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* March 6, 2023.

¹ See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2023-04325 Filed 3-1-23; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service™.

ACTION: Notice of a revised system of records.

SUMMARY: The United States Postal Service® (USPS) is proposing to revise a General Privacy Act System of Records to support the upgrade of a secure board portal software that provides leadership with instant access to the information they need before, during and after meetings, making board and committee interactions more efficient and productive.

DATES: These revisions will become effective without further notice on April 3, 2023 unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be submitted via email to the Privacy and Records Management Office, United States Postal Service Headquarters (uspsprivacyfedregnotice@usps.gov). To facilitate public inspection, arrangements to view copies of written comments received may be made upon request.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, uspsprivacyfedregnotice@usps.gov.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records.

I. Background

The Postal Service is proposing to modify USPS System of Records (SOR) 550.100 Commercial Information Technology Resources—Applications. USPS will enhance functionality of current software used for leadership collaboration. This collaboration-focused software will provide leadership with instant access to the information they need before, during, and after meetings, making board and committee meetings more efficient and productive.

II. Rationale for Changes to USPS Privacy Act Systems of Records

The Postal Service is proposing to modify USPS System of Records (SOR) 550.100 Commercial Information Technology Resources—Applications to support an upgrade of collaboration software that provides leadership with instant access to the information they need before, during and after meetings, making board and committee meetings more efficient and productive.

III. Description of the Modified System of Records

The Postal Service is proposing modifications to USPS SOR 550.100 Commercial Information Technology Resources—Applications in the summary of changes listed below:

- Added PURPOSE #11
- Added CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM #3
- Added new CATEGORIES OF RECORDS IN THE SYSTEM as #11
- Added RECORD SOURCE CATEGORY for Board of Governors
- Added Board of Governors and corresponding data elements to POLICIES AND PRACTICES FOR RETRIEVAL OF RECORD #11
- Added #11 to POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS for new retention period
- Added employees to NOTIFICATION PROCEDURE

Pursuant to 5 U.S.C. 552a (e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect this amended system of records to have any adverse effect on individual privacy rights. The notice for USPS 550.100 Commercial Information Technology Resources—Applications, is provided below in its entirety:

SYSTEM NAME AND NUMBER:

550.100 Commercial Information Technology Resources—Applications.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

All USPS facilities and contractor sites.

SYSTEM MANAGER(S) AND ADDRESS:

For records of computer access authorizations: Chief Information Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, and 404.

PURPOSE(S) OF THE SYSTEM:

1. To provide event registration services to USPS customers, contractors, and other third parties.
2. To allow task allocation and tracking among team members.
3. To allow users to communicate by telephone, instant-messaging, and email through local machine and web-based applications on desktop and mobile operating systems.
4. To share your personal image via your device camera during meetings and web conferences, if you voluntarily choose to turn the camera on, enabling virtual face-to-face conversations.
5. To provide for the creation and storage of media files, including video recordings, audio recordings, desktop recording, and web-based meeting recordings.
6. To provide a collaborative platform for viewing video and audio recordings.
7. To create limited use applications using standard database formats.
8. To review distance driven by approved individuals for accurate logging and compensation.
9. To develop, maintain, and share computer code.
10. To comply with Security Executive Agent Directive (SEAD) 3 requirements for self-reporting of unofficial foreign travel pertaining to covered individuals who have access to classified information or who hold a sensitive position.
11. To administer and maintain a secure board portal software that provides leadership with instant access to information they need before, during and after meetings, making board and committee interactions more efficient and productive by promoting collaboration and information sharing among USPS Board of Governors (BOG) and Executive Leadership Team (ELT).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Individuals with authorized access to USPS computers, information resources, and facilities, including employees, contractors, business partners, suppliers, and third parties.
2. Individuals participating in web-based meetings, web-based video conferencing, web-based communication applications, and web-based collaboration applications.
3. USPS Board of Governors, administrators, and USPS Executive Leadership Team.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *Third-party Information records:* Records relating to non-Postal, third-

party individuals utilizing an information system, application, or piece of software, including: Third-Party Name, Third Party Date Request, Third Party Free Text, Guest User Information.

2. *Collaboration application records:*

Records relating to web-conferencing and web-collaboration applications, including; Collaborative Group Names, Collaborative Group IDs, Action Name, Number Of Actions Sent, Number Of Action Responses, Employee Phone Number, Collaborative Group Chat History, Profile Information, Collaborative Group Membership, Contacts, Project Owner, Project Creator, Event Start Time, Event Status, Event Organizer, Event Presenter, Event Producer, Event Production Type, Event Recording Setting, Total Number Of Event Media Viewings, Number Of Active Users, Number Of Active Users In Collaborative Groups, Number Of Active Collaborative Group Communication Channels, Number Of Messages Sent, Number Of Calls Participated In, Last Activity Date Of A User, Number Of Guest Users In A Collaborative Group, Event Name, Event Description, Event Start Date, Event End Date, Video Platform Group Name, Video Platform Group Email Alias, Video Platform Group Description, Video Platform Group Classification, Video Platform Group Access Level, Video Platform Channel Name, Video Platform Channel Description, Video Platform Channel Access, Video Platform Live Event Recording, Total Number Of Video Conferences, Add Room Member To Collaborative Group, Attachment Downloaded From Collaborative Group, Attachment Uploaded From Collaborative Group, Direct Message Started From Collaborative Group, Invite Sent From Collaborative Group, Message Edited From Collaborative Group, Message Posted In Collaborative Group, Remove Room Member From Collaborative Group, Room Created In Collaborative Group, Add Service Account Permission To Enterprise Collaborative Group, Remove Service Account Permission To Enterprise Collaborative Group, Added User To Enterprise Collaborative Group, Added User Role To Enterprise Collaborative Group, Removed User From Enterprise Collaborative Group, Request To Join Enterprise Collaborative Group, Approve Join Request From Enterprise Collaborative Group, Reject Join Request From Enterprise Collaborative Group, Invite User To Enterprise Collaborative Group, Accept Invitation For Enterprise Collaborative Group, Reject Invitation For Enterprise Collaborative Group, Revoke Invitation

For Enterprise Collaborative Group, Join Enterprise Collaborative Group, Ban User Including With Moderation In Enterprise Collaborative Group, Unban User From Enterprise Collaborative Group, Add All Users In Domain For Enterprise Collaborative Group, Create Group In Enterprise Collaborative Group, Delete Group In Enterprise Collaborative Group, Create Namespace In Enterprise Collaborative Group, Delete Namespace In Enterprise Collaborative Group, Change Info Setting In Enterprise Collaborative Group, Add Info Setting In Enterprise Collaborative Group, Remove Info Setting In Enterprise Collaborative Group, Add Member Role In Enterprise Collaborative Group, Remove User Role In Enterprise Collaborative Group, Membership Expiration Added In Enterprise Collaborative Group, Membership Expiration Removed In Enterprise Collaborative Group, Membership Expiration Updated In Enterprise Collaborative Group, ACL Permission Changed In Collaborative Group, Collaborative Group Invitation Accepted, Join Request Approved, User Joined Collaborative Group, User Requested To Join Collaborative Group, Collaborative Group Basic Setting Changed, Collaborative Group Created, Collaborative Group Deleted, Collaborative Group Identity Setting Changed, Collaborative Group Info Setting Added, Collaborative Group Info Setting Changed, Collaborative Group Info Setting Removed, Collaborative Group New Member Restriction Changed, Collaborative Group Post Reply Settings Changed, Collaborative Group Spam Moderation Settings Changed, Collaborative Group Topic Setting Changed, Collaborative Group Message Moderated, User Posts Will Always Be Posted, User Added To Collaborative Group, User Banned From Collaborative Group, User Invitation Revoked From A Collaborative Group, User Invited To Collaborative Group, User Join Request Rejected From A Collaborative Group, User Reinvited To Collaborative Group, User Removed From Collaborative Group, Call Event Abuse Report Submitted, Call Event Endpoint Left, Call Event Livestream Watched, Individual Form Response, Form Respondent Email Address, Whiteboard Software Updated, Whiteboard Reboot Requested, Whiteboard Export Requested, Attachment Deleted, Attachment Uploaded, Note Content Edited, Note Created, Note Deleted, Note Permissions Edited.

3. *Communication Application*

Records: Enterprise Social Network User

Name, Enterprise Social Network User State, Enterprise Social Network User State Change Date, Enterprise Social Network User Last Activity Date, Number Of Messages Posted By An Enterprise Social Network User In Specified Time Period, Number Of Messages Viewed By An Enterprise Social Network User, Number Of Liked Messages By An Enterprise Social Network User, Products Assigned To A Enterprise Social Network User, Home Network Information, External Network Information, External Network Name, External Network Description, External Network Image, Network Creation Date, Network Usage Policy, External Network User Name, External Network User Email Address, External Group Name, Number Of Users On A Network, Network ID, Live Event Video Links, Files Added Or Modified In Enterprise Social Network, Message ID, Thread ID, Message Privacy Status, Full Body Of Message, Chat User Action, Chat Room Member Added, Chat Attachment Downloaded, Chat Attachment Uploaded, Chat Room Blocked, Chat User Blocked, Chat Direct Message Started, Chat Invitation Accepted, Chat Invitation Declined, Chat Invitation Sent, Chat Message Edited, Chat Message Posted, Chat Room Member Removed, Chat Room Created.

4. *Multimedia records:* Records relating to media associated with or originating from an information system, including: Video Platform User ID, Video Name, Videos Uploaded By User, Videos Accessed By User, Channels Created By User, User Group Membership, Comments Left By User On Videos, Screen Recordings, Video Transcript, Deep Search Captions, Video Metadata, Audio Metadata, Phone Number, Time Phone Call Started, User Name, Call Type, Phone Number Called To, Phone Number Called From, Called To Location, Called From Location, Telephone Minutes Used, Telephone Minutes Available, Charges For Use Of Telephone Services, Currency Of Charged Telephone Services, Call Duration, Call ID, Conference ID, Phone Number Type, Blocked Phone Numbers, Blocking Action, Reason For Blocking Action, Blocked Phone Number Display Name, Date And Time Of Blocking, Call Start Time, User Display Name, SIP Address, Caller Number, Called To Number, Call Type, Call Invite Time, Call Failure Time, Call End Time, Call Duration, Number Type, Media Bypass, SBC FQDN, Data Center Media Path, Data Center Signaling Path, Event Type, Final SIP, Final Vendor Subcode, Final SIP Phrase, Unique Customer Support ID.

5. *Limited Use Application records:* Records relating to applications with a specific, limited use, including: Application Authoring Application Name, Application Authoring Application Author, Voice Search Text Strings, Miles Driven, Mileage Rates, Country Currency, Destination, Destination Classification, Car Make, Car Model, Working Hours, Total Number Of Monthly Drives, Total Number Of Monthly Miles, Total Number Of Personal Drives, Total Number Of Personal Drives, Users Allowed To Access Application, Application Authoring Application Security Settings, Total Number Of Cloud-Based Searches Performed, Total Number Of Cloud-Based Search Queries From Web Browsers, Total Number Of Cloud-Based Search Queries From Android Operating Systems, Total Number Of Cloud-Based Search Queries From iOS Operating Systems, Data Visualization Report Email Delivery Added, Data Visualization Asset Created, Data Visualization Data Exported, Data Visualization Asset Deleted, Data Visualization Report Downloaded, Data Visualization Asset Edited, Data Visualization Asset Restored, Data Visualization Report Email Delivery Stopped, Data Visualization Asset Trashed, Data Visualization Report Email Delivery Updated, Data Visualization Asset Viewed, Data Visualization Link Sharing Access Type Changed, Data Visualization Link Sharing Visibility Changed, Data Visualization User Sharing Permissions Changed.

6. *Development Records:* Records relating to applications used for the creation, sharing, or modification of software code, including: Data Repository User ID, Data Repository Password, Data Repository User Address, Data Repository Payment Information, Data Repository User First Name, Data Repository User Last Name, Data Repository Profile Picture, Data Repository Profile Biography, Data Repository Profile Location, Data Repository User Company, Data Repository User Preferences, Data Repository User Preference Analytics, Data Repository Transaction Date, Data Repository Transaction Time, Data Repository Transaction Amount Charged, Data Repository web pages Viewed, Data Repository Referring website, Data Repository Date Of web page Request, Data Repository Time Of web page Request, Data Repository User Commits, Data Repository User Commit Comment Body Text, Data Repository Pull Request Comment Body Text, Data Repository Issue Comment Body Text,

Data Repository User Comment Body Text, Data Repository User Authentication, Language Of Device Accessing Data Repository, Operating System Of Device Accessing Data Repository, Application Version Of Device Accessing Data Repository, Device Type Of Device Accessing Data Repository, Device ID Of Device Accessing Data Repository, Device Model Of Device Accessing Data Repository, Device Manufacturer Of Device Accessing Data Repository, Browser Version Of Device Accessing Data Repository, Client Application Information Of Device Accessing Data Repository, Data Repository User Usage Information, Data Repository Transactional Information, Data Repository API Notification Status, Data Repository API Issue Status, Data Repository API Pull Status, Data Repository API Commit Status, Data Repository API Review Status, Data Repository API Label, Data Repository API User Account Signin Status, Data Repository API Schedule Status, Data Repository API Schedule List.

7. *Unofficial Foreign Travel*

Monitoring: Records relating to covered individuals for the administration of the SEAD 3 program, including: Title, Name Of Traveler, Information Type: Pre-Travel And Post-Travel, Start Date Of Travel, End Date Of Travel, Carrier Of Transportation, Countries You Are Visiting, Passport Number, Passport Expiration Date, Names And Association Of Foreign National Travel Companions, Planned Foreign Contacts, Emergency Contact Name, Emergency Contact Phone Number, Emergency Contact Relationship, Post-Travel Questions Relating To Activity, Events, And Interactions.

8. *Cloud-based storage records:*

Records relating to activity within cloud-based storage systems, including: Number Of Files Made Publicly Available, Number Of Files Made Available With A Link, Number Of Files Shared With Domain Users, Number Of Files Shared With Domain Users Through Link, Number Of Files Shared With Users Outside Domain, Number Of Files Shared With User Or Group In Domain, Number Of Files Not Shared At All, Number Of Spreadsheet Documents Added, Number Of Text Documents Added, Number Of Presentation Documents, Number Of Form Documents Added, Number Of Other Files Added, Number Of Files Edited, Number Of Files Viewed, Number Of Files Added, Total Cloud Storage Space Used, Last Time Storage Accessed By User, Item Added To Folder, Item Approval Cancelled, Comment Added On Approval Of Item, Due Date Time

Change Requested, Item Approval Requested, Reviewer Change Requested For Item Approval, Item Approval Reviewed, Document Copy Created, Document Created, Document Deleted, Document Downloaded, Document Shared As Email Attachment, Document Edited, Label Applied, Label Value Changed, Label Removed, Item Locked, Item Moved, Item Previewed, Item Printed, Item Removed From Folder, Item Renamed, Item Restored, Item Trashed, Item Unlocked, Item Uploaded, Item Viewed, Security Update Applied To File, Security Update Applied To All Files In Folder, Publish Status Changed, Editor Settings Changed, Link Sharing Access Type Changed, Link Sharing Access Changed From Parent Folder, Link Sharing Visibility Changed, Link Sharing Visibility Changed From Parent Folder, Security Update Removed From File, Membership Role Changed, Shared Storage Settings Changed, Spreadsheet Range Enabled, User Sharing Permissions Changed, User Sharing Permissions Changed From Parent Folder, User Storage Updated, File Viewed, File Renamed, File Created, File Edited, File Previewed, File Printed, File Updated, File Deleted, File Uploaded, File Downloaded, File Shared.

9. *Email Application records:* Records relating to regular use of email applications, including: Email Body Text, Email Metadata, Total Number Of Emails Sent, Total Number Of Emails Received, Total Number Of Emails Sent And Received, Last Time User Accessed Email Client Through A Post Office Protocol (POP) Mail Server, Last Time User Accessed Email Client Through An internet Message Access Protocol (IMAP) Mail Server, Last Time User Accessed Through Web-Based Server, Total Email Client Storage Space Used, Calendar Access Level(S) Changed, Calendar Country Changed, Calendar Created, Calendar Deleted, Calendar Description Changed, Calendar Location Changed, Calendar Time zone Changed, Calendar Title Changed, Calendar Notification Triggered, Calendar Subscription Added, Calendar Subscription Deleted, Calendar Event Created, Calendar Event Deleted, Calendar Event Guest Added, Calendar Event Guest Auto-Response, Calendar Event Guest Removed, Calendar Event Guest Response Changed, Calendar Event Modified, Calendar Event Removed From Trash, Calendar Event Restored, Calendar Event Start Time Changed, Calendar Event Title Modified, Successful Availability Lookup Of A Calendar Between Email

Clients, Successful Availability Lookup Of Email Client Resource, Successful Email Client Resource List Lookup, Unsuccessful Availability Lookup Of A Calendar On Email Client, Unsuccessful Availability Lookup Of Email Client Resource, Unsuccessful Email Client Resource List Lookup.

10. *Web Browser Records:* Records relating to activity within a web browser, including: Web Browser Password Changed, Web Browser Password Reused, Malware Detected in Transferred Content for User, Sensitive Data Detected In Transferred Content, Unsafe website Visit Detected For User.

11. USPS Board of Governors name, email, and collaborative meeting records used to store meeting material such as presentations, briefing documents/ memos, meeting minutes/notes, and responses to various board inquiries, presentation briefing documents, and memos.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply. In addition:

(a) To appropriate agencies, entities, and persons when (1) the Postal Service suspects or has confirmed that there has been a breach of the system of records; (2) the Postal Service has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Postal Service (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Postal Service's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

RECORD SOURCE CATEGORIES:

Employees; contractors; customers; USPS Board of Governors.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, and paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

1. Records relating to third-parties are retrievable by name and email address.

2. Records relating to collaboration are retrievable by name, email address, and user ID.

3. Records relating to communication are retrievable by name, email address, and user ID.

4. Records pertaining to multimedia are retrievable by username and media title.

5. Records relating to application development are retrievable by user ID and application name.

6. Records relating to limited use applications are retrievable by name, email address, and user ID.

7. Records relating to Unofficial Foreign Travel Monitoring for covered individuals are retrievable by name.

8. Records relating to Cloud-based storage are retrievable by name, email address, and user ID.

9. Records relating to Email Applications are retrievable by name, email address, and user ID.

10. Records relating to Web Browsers are retrievable by name, email address, and user ID.

11. USPS Board of Governors secure board portal collaboration software data is retrievable by date, meeting information, committee name, and other session collaboration details.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Records relating to third parties are retained for twenty-four months.

2. Records relating to collaboration are retained for twenty-four months.

3. Records relating to communication are retained for twenty-four months.

4. Multimedia recordings are retained for twenty-four months.

5. Records relating to application development are retained for twenty-four months.

6. Records relating to limited use applications are retained for twenty-four months.

7. Records relating to Unofficial Foreign Travel Monitoring for covered individuals are retained for twenty-five years.

8. Records relating to Cloud-based storage are retained for twenty-four months.

9. Records relating to Email Applications are retained for twenty-four months.

10. Records relating to Web Browsers are retained for twenty-four months.

11. USPS Board of Governors secure board portal collaboration software data is retained up to twelve months from the close of the corresponding event.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Computer access is limited to authorized personnel with a current security clearance, and physical access is limited to authorized personnel who must be identified with a badge.

Access to records is limited to individuals whose official duties require

such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by encryption, mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

NOTIFICATION PROCEDURE:

Customers and employees wanting to know if other information about them is maintained in this system of records must address inquiries in writing to the Chief Information Officer and Executive Vice President and include their name and address.

EXEMPTION(S) PROMULGATED FROM THIS SYSTEM:

None.

HISTORY:

May 11, 2021; 86 FR 25899; January 31, 2022; 87 FR 4957.

Tram T. Pham,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023-04225 Filed 3-1-23; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* March 1, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on February 24, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 135 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2023-115, CP2023-118.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2023-04213 Filed 3-1-23; 8:45 am]

BILLING CODE 7710-12-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96980; File No. SR-Phlx-2023-07]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Proposed Rule Change To Make Permanent Certain P.M.-Settled Pilots

February 24, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 23, 2023, Nasdaq PHLX LLC (“Phlx” 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 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 proposes to make permanent the pilot to permit the listing and trading of options based on 1/100 the value of the Nasdaq-100 Index (“Nasdaq-100” or “NDX”) and the Exchange's nonstandard expirations pilot program which are both currently set to expire on May 4, 2023.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Phlx proposes to make permanent 2 pilots, which are both set to expire on May 4, 2023: (1) the Exchange's pilot to permit the listing and trading of options based on 1/100 the value of the Nasdaq-100 Index ("XND Pilot"), and (2) the Exchange's nonstandard expirations pilot program ("Nonstandard Pilot").

XND Pilot

Phlx filed a rule change to permit the listing and trading of index options on the Nasdaq 100 Micro Index Options ("XND") on a pilot basis.³ XND options trade independently of and in addition to NDX options, and the XND options are subject to the same rules that presently govern the trading of index options based on the Nasdaq-100 Index, including sales practice rules, margin requirements, trading rules, and position and exercise limits. Similar to NDX, XND options are European-style and cash-settled, and have a contract multiplier of 100. The contract specifications for XND options mirror in all respects those of the NDX options contract already listed on the Exchange, except that XND options are based on 1/100th of the value of the Nasdaq-100 Index, and are p.m.-settled pursuant to Options 4A, Section 12(a)(5).

The Exchange proposes to amend Phlx Options 4A, Section 12(a)(6) to make permanent the current XND Pilot. The XND Pilot was extended various times with the last extension through May 4, 2023.⁴ The Exchange continues

to have sufficient capacity to handle additional quotations and message traffic associated with the listing and trading of XND options. In addition, index options are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. The Exchange also continues to have adequate surveillance procedures to monitor trading in XND options thereby aiding in the maintenance of a fair and orderly market. Additionally, there is continued investor interest in XND.

Nonstandard Pilot

Phlx filed a proposed rule change for the listing and trading on the Exchange, on a twelve month pilot basis, of p.m.-settled options on broad-based indexes with nonstandard expirations dates.⁵ The Nonstandard Pilot permits both Weekly Expirations and End of Month ("EOM") expirations similar to those of the a.m.-settled broad-based index options, except that the exercise settlement value of the options subject to the pilot are based on the index value derived from the closing prices of component stocks. The Nonstandard Pilot was extended various times and is currently extended through May 4, 2023.⁶

Phlx Options 4A, Section 12(b)(5)(A) provides that the Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). Weekly Expirations are subject to all provisions of Options 4A, Section 12 and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations are p.m.-settled.

Pursuant to Options 4A, Section 12(b)(5)(B) the Exchange may open for trading EOM expirations on any broad-

based index eligible for standard options trading to expire on the last trading day of the month. EOM expirations are subject to all provisions of Options 4A, Section 12 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, the EOM expirations are p.m.-settled.

At this time, the Exchange proposes to make permanent the Nonstandard Pilot. The Exchange has sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them. Additionally, there is continued investor interest in these products.

In support of the permanency of the XND Pilot and the Nonstandard Pilot, the Exchange empirically assessed the impact of p.m.-settled NDX options on options market quality and examined market capacity around the market close.⁷ Specifically, the Exchange analyzed trading volume, open interest, spreads, and closing auction volumes. In recent years, Phlx has implemented changes and introduced new types of index options tied to the Nasdaq-100 Index® (ticker symbol "NDX"). This report presents a set of empirical findings relating the impact of these changes, submitted in support of a request for permanency of the XND Pilot and the Nonstandard Pilot.

A general timeline of events since 2017 is as follows:

- In January 2017, the Exchange discontinued licensing agreements with competing options exchanges for the listing and trading of NDX options. This discontinuation led to a gradual reduction in the number of NDX expiries listed on these exchanges. By 2019 trading in NDX-related options therefore became exclusively done on three Nasdaq-affiliated exchanges: Phlx, Nasdaq ISE, LLC ("ISE") and Nasdaq GEMX, LLC ("GEMX").
- In January 2018, the expiration of NDX options on Fridays, other than the third Friday-of-the-month, was changed from a.m.-settled to p.m.-settled. Third-Friday expirations continued to be a.m.-settled as before. The p.m.-settled index options were given the new trading symbol "NDXP". These contracts were exclusively listed on Phlx and ISE.
- In June 2018, a new contract was introduced based on the Nasdaq-100

⁷ This includes p.m.-settled products trading on Phlx (XND Pilot and the Nonstandard Pilot) as well as p.m.-settled products trading on ISE (NQX Pilot and the Nonstandard Pilot). ISE filed a similar request for permanency of its p.m.-settled pilots. See SR-ISE-2023-07 (not yet noticed).

³ See Securities Exchange Act Release No. 91524 (April 9, 2021), 86 FR 19909 (April 15, 2021) (SR-Phlx-2021-07) (Approval Order).

⁴ See Securities Exchange Act Release No. 93447 (October 28, 2021), 86 FR 60719 (November 3, 2021) (SR-Phlx-2021-66); 94631 (April 7, 2022), 87 FR 21990 (April 13, 2022) (SR-Phlx-2022-16); and 95993 (October 6, 2022), 87 FR 62161 (October 13, 2022) (SR-Phlx-2022-39).

⁵ See Securities Exchange Act Release No. 82612 (February 1, 2018), 83 FR 5470 (February 7, 2018) (approving SR-ISE-2017-111) (Order Approving a Proposed Rule Change To Establish a Nonstandard Expirations Pilot Program).

⁶ See Securities Exchange Act Release Nos. 84835 (December 17, 2018), 83 FR 65773 (December 21, 2018) (SR-Phlx-2018-80); 85669 (April 17, 2019), 84 FR 16913 (April 23, 2019) (SR-Phlx-2019-13); 87381 (October 22, 2019), 84 FR 57788 (October 28, 2019) (SR-Phlx-2019-43); 88684 (April 17, 2020), 85 FR 22781 (April 23, 2020) (SR-Phlx-2020-24); 90256 (October 22, 2020), 85 FR 68393 (October 28, 2020) (SR-Phlx-2020-48); 91484 (April 6, 2021), 86 FR 19050 (April 12, 2021) (SR-Phlx-2021-21); 93464 (October 29, 2021), 86 FR 60952 (November 4, 2021) (SR-Phlx-2021-65); 94631 (April 7, 2022), 87 FR 21990 (April 13, 2022) (SR-Phlx-2022-16) and 95993 (October 6, 2022), 87 FR 62161 (October 13, 2022) (SR-Phlx-2022-39).

Index but with reduced notional value. The underlying index of the new contract, symbol “NQX,” was set at one-fifth the value of the NDX (with contract multiplier remaining at \$100). This contract trades exclusively on ISE, and is p.m. settled on Fridays.

- In September 2018, a p.m.-settled index option, “NDXP,” was introduced that expired on Wednesdays of each week. It was listed exclusively on Phlx and ISE.

- In February 2020, a p.m.-settled NDXP index option was introduced that expired on Mondays of each week. It was listed exclusively on Phlx and ISE.

- In April 2021, a second reduced value contract was introduced. The underlying index, “XND”, is set at one-hundredth (1%) of the NDX (with contract multiplier remaining at \$100). The notional value is therefore equal to the level of the Nasdaq-100 Index. This contract trades on Phlx and is p.m.-settled.

- On July 29, 2022, ISE received approval to list and trade p.m.-settled NDX index options that expire on Tuesday or Thursday under its Nonstandard Expirations Pilot Program.⁸

- On October 3, 2022, ISE commenced listing p.m.-settled quarterly option on the Nasdaq-100 Index.

Following terminological convention, the Exchange refers to the traditional third Friday expiration series as “monthly” contracts, while the other series are referred to as “weekly” contracts. In this report, the new p.m.-settled index options will be written as NDXP-Fri, NDXP-Wed, and NDXP-Mon based on their expiration day. The NDX contracts that formerly expired on Fridays, other than the third Friday-of-the-month, will be referred to as NDX-Weekly, indicating their status as weekly contracts. The monthly third Friday NDX contract will be denoted NDX-Monthly. NQX and XND are considered weekly contracts. It may be noted that when Friday is a market holiday, the expiration moves to the prior Thursday.⁹ When Wednesday is a holiday, expiration of Wednesday contracts moves forward to Tuesday. When Monday is a holiday, Monday expirations move back to Tuesday.¹⁰

The purpose of this report is to empirically assess the impact of these changes on NDX options markets, with

a special focus on the market quality of the incumbent a.m.-settled NDX index options and market capacity around the market close. The Exchange provides a comprehensive analysis in this report on the impact of p.m.-settled index options on a.m.-settled NDX index options, including option trading volume, option open interests and option liquidity.¹¹ In assessing the impact of the innovations on market quality, the Exchange uses options on the Invesco QQQ Trust Series 1 (“QQQ”) ¹² as a control group. While activity in QQQ options would capture trading interest in the Nasdaq-100 Index generally and may reflect market conditions, it would be largely unaffected by the innovations considered in this report. QQQ options include monthly third Friday expirations, weekly non-third Friday expirations, and contracts expiring the end of the quarter.¹³

Historically there have been concerns that p.m.-settled index options could result in increased market and price volatility in the underlying component stocks, due to the unwinding of hedge-related positions at the close on expiration. A study conducted on behalf of the Securities and Exchange Commission’s Division of Economic and Risk Analysis ¹⁴ shows that the market share for p.m.-settled options on S&P 500® Index has grown substantially since 2007. As the expiration date for p.m.-settled index options is more scattered compared to that for a.m.-settled options, only a smaller percentage of open interest expires on each date. As a result, p.m.-settled index option expirations are unlikely to cause any disruptive effect on the market. The DERA Staff PM Pilot Memo also shows that expiring open interest of a.m.-settled options may have had an economically small impact on the volatility of the Nasdaq-100 index around the open.¹⁵ The DERA Staff PM

¹¹ Today, NDX options are a.m.-settled and p.m.-settled.

¹² Invesco QQQ™ is an exchange-traded fund based on the Nasdaq-100 Index.

¹³ For the purpose of spread analysis we match on option price, moneyness category, time to maturity and option’s expiration month.

¹⁴ See Securities and Exchange Commission, Division of Economic Risk and Analysis, Memorandum, Cornerstone Analysis of PM Cash-Settled Index Option Pilots (February 2, 2021) (“DERA Staff PM Pilot Memo”), available at: <https://www.sec.gov/dera/staff-papers/studies-and-reports/analysis-of-pm-cash-settled-index-option-pilots>.

¹⁵ Table 20 of the DERA Staff PM Pilot Memo suggests that a \$10 billion increase in option settlement quantity is associated with an increase in absolute return of 0.025% near the open. The report also shows that expiring open interest of a.m.-settled options had no significant impact on

Pilot Memo further shows that, although p.m.-settled index option trading volume may have a statistically significant relationship with the volatility of the underlying index around the market close, the economic significance was generally small. In its report, the Exchange provides additional analysis on market capacity around the market close. As the closing auction price is the most widely used reference price for mutual funds and for many exchange-traded products, closing auction volume has grown substantially in recent years. In this report, the Exchange shows that the closing auction volume on the equity market have become much larger than the opening auction, which may indicate that there is sufficient liquidity in closing auctions to absorb liquidity demand associated with p.m.-settlement of NDX and XND index options.

In addition to analysis on closing auctions, the report presents findings on three market characteristics: trading volume, open interest, and spreads. The Exchange finds that the trading volume and the notional open interests for options that had NDX and XND as the underlying increased during our sample period. In conclusion, there is no evidence that NDX and XND options contracts, which are p.m.-settled, would result in reduced trading activity or degradation in market quality of the a.m.-settled index options.

Analysis of Volume

The introduction of p.m.-settled index options and its impact on the trading activity of a.m.-settled options is likely the single most important factor under consideration. Volume is the primary indicator of trading interest and it drives market quality to a large extent. Consolidated volume information is available from The Options Price Reporting Authority (“OPRA”), the source of information used in this section. The sample period used for this report is 2017 through April 2022.

Consolidation of Trading on Nasdaq Affiliated Exchanges

As noted above, trading in NDX options began to consolidate exclusively onto Nasdaq-owned affiliated exchanges starting in 2017; the impact on volume was not immediate. Since January 2017, non-Nasdaq exchanges ceased listing new NDX options series, but continued with previously listed NDX options. The following table shows the percentage of NDX options contract volume traded on non-Nasdaq exchanges, which at the

the volatility of the underlying index near the open for the S&P 500 Index.

⁸ The Exchange notes that Tuesday and Thursday weeklies on the Nasdaq-100 Index have been trading for less than one month. See <http://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2022-26>.

⁹ See Phlx Options 4A, Section 12(b)(5)(A).

¹⁰ *Id.*

time included Cboe Exchange, Inc. (“Cboe”), NYSE American LLC, and NYSE Arca, Inc. Of these three markets, Cboe was the largest in volume. The Nasdaq affiliated exchanges trading NDX options were Phlx, ISE and GEMX.

TABLE 1—NDX VOLUME ON NON-NASDAQ EXCHANGES		
Year	Quarter	Non-Nasdaq share (percent)
2017	1	22.2
	2	16.4
	3	2.2
	4	5.5
2018	1	0.3
	2	0.7
	3	0.1
	4	4.2

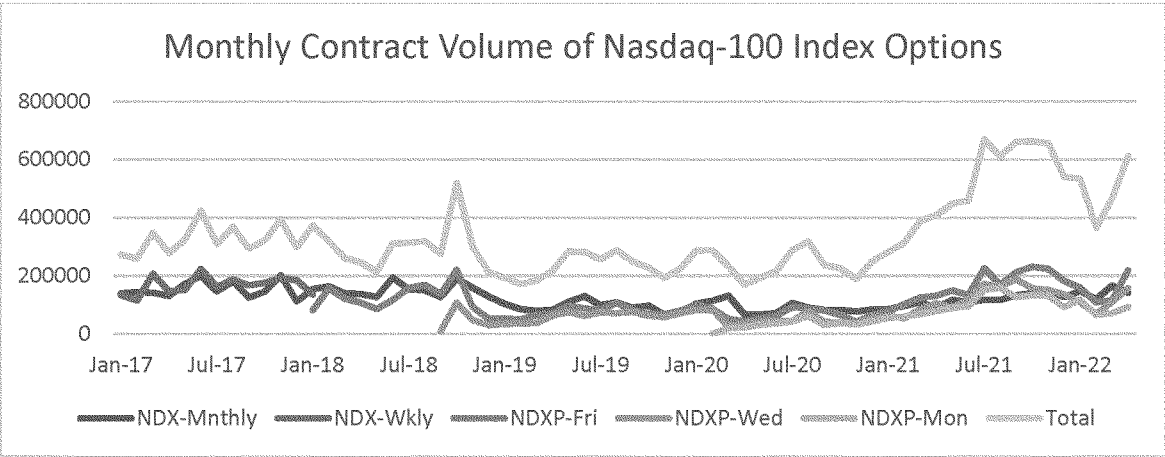
By 2018 volume on the non-Nasdaq exchanges had largely disappeared. The

surge in volume during the final quarter of 2018 was likely due to the end-of-year final closing of positions—note the similar bump in 2017. There was no NDX options volume from non-Nasdaq exchanges after 2018.

Contract Volume and Notional Volume

Contract volume in the regular-sized Nasdaq-100 Index contracts may be broken down into five time series: (1) the incumbent NDX-Monthly;¹⁶ (2) the NDX-Weekly contract transitioning to NDXP-Fri;¹⁷ and (3) the introduction of NDXP-Wed and NDXP-Mon.¹⁸ The following graph shows monthly totals for each of these five groups.¹⁹

Figure 1. Monthly Contract Volume of Nasdaq-100 Index Options



A number of observations can be drawn from the graph.

- The overall total contract volume remained almost flat until the pandemic market recovery started in the Spring of 2020. From Fall 2020 forward there has been substantial growth in volume. It appears that most of the recent growth has come from the NDX-Weekly contracts.
- The volumes of NDX-Monthly and NDX-Weekly were roughly equivalent during 2017. This is noteworthy for the fact that for any given month there would usually be at least three, and sometimes four times, the number of front-month expiries for the weekly

contract. The Exchange can infer, then, that the monthly contracts tend to have substantially higher volume per series than the weekly contracts.

- When NDX-Weekly transitioned to NDXP-Fri, the volume relationship with NDX-Monthly remained roughly the same.
- Soon after launch, the NDXP-Wed contracts achieved volume levels not much lower than the NDXP-Fri contracts, and, in turn, not much lower than the monthly contracts.
- Soon after launch, the NDXP-Monday contracts achieved volume levels not much lower than the NDXP-

Fri contracts, and, in turn, not much lower than the monthly contracts.

- By the end of the sample period, each of the four remaining contract types had roughly the same value (again recognizing the differing number of expiries). Each of the current contract types garner substantial trading volume.

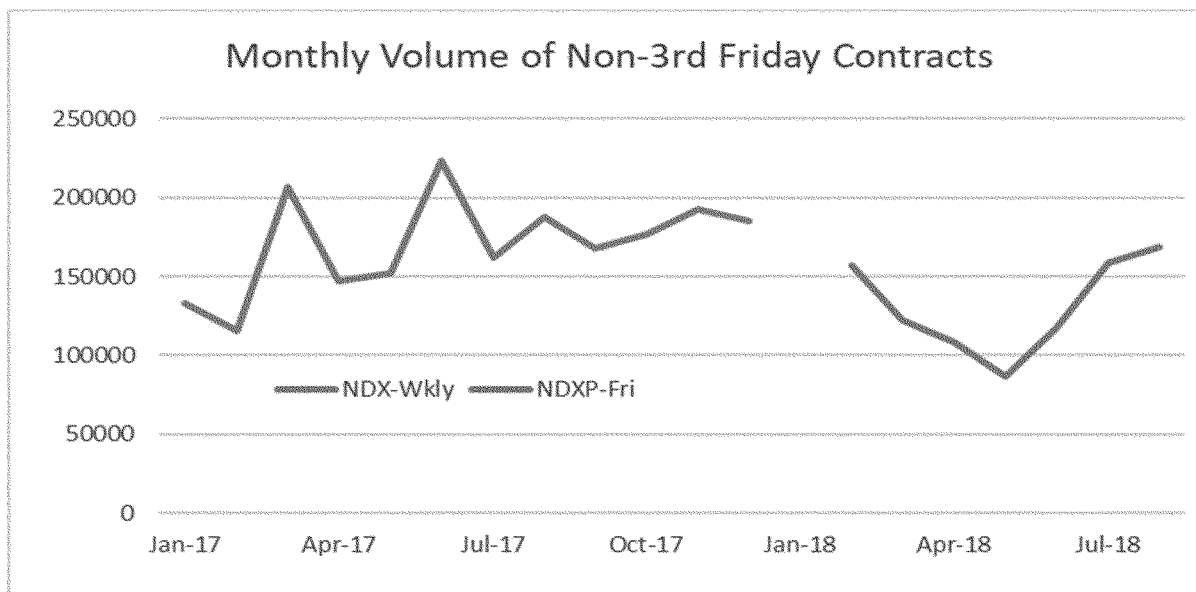
Regarding the NDX-Weekly/NDXP-Fri transition, Figure 2, which ends in August 2018, takes a closer look at the timeframe immediately prior to the launch of NDXP-Wed. The transition month of January 2018 is not shown (both contract types had volume during January).

¹⁶ As noted herein, this refers to the monthly third Friday a.m.-settled NDX contract.

¹⁷ As noted above, this refers to the p.m.-settled NDX contracts that formerly expired on Fridays, other than the third Friday-of-the-month.

¹⁸ NDXP-Wed and NDXP-Mon are the p.m.-settled NDX contracts expiring on Wednesday and Monday, respectively.

¹⁹ The full data supporting the graph is shown in the appendix.

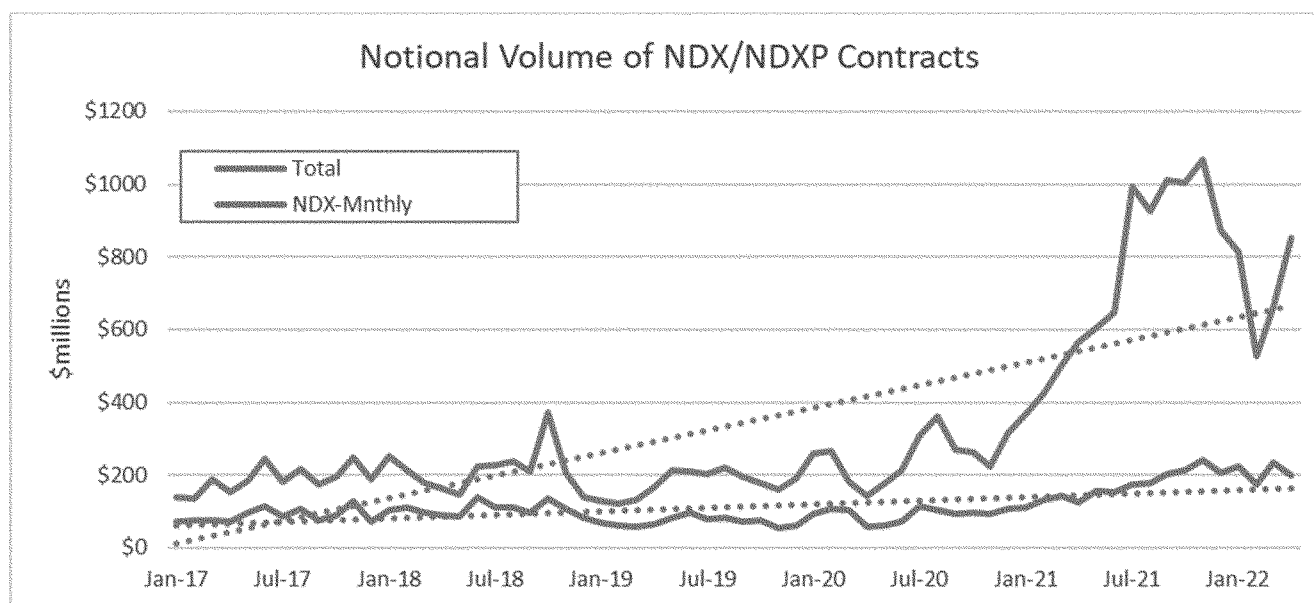
Figure 2. Monthly Volume of Non-3rd Friday Contracts

Though NDXP-Fri volume was relatively low in May 2018, there is no sign of a substantial sustained drop in volume accompanying the transition.

During the timeframe under consideration in this report there has been a remarkable increase in the level of the Nasdaq-100 Index, a rough tripling of the index from early 2017 to

April 2022. The notional value of a regular-sized contract is \$100 times the level of the index, and so it has tripled during the sample period, and is currently roughly \$1.3 million. In light of these changes, it is useful to consider volume from the perspective of notional value traded rather than contracts.

Figure 3 shows the sum of monthly notional value traded for NDX-Monthly and for the total of all five of the contract types. The notional value traded was computed as the sum of contracts traded times the monthly average value of the Nasdaq-100 Index times \$100. The graph also shows linear trend lines for each time series.

Figure 3. Notional Volume of NDX/NDXP Contracts

It appears that while the notional volume of the incumbent monthly contract has been flat, the total volume of all contract types exhibit a positive

trend, with remarkable growth since the Fall of 2020. It appears, therefore, that the introduction of p.m.-settlement is

associated with an increase in NDX options trading.

Comparison With QQQ Volume

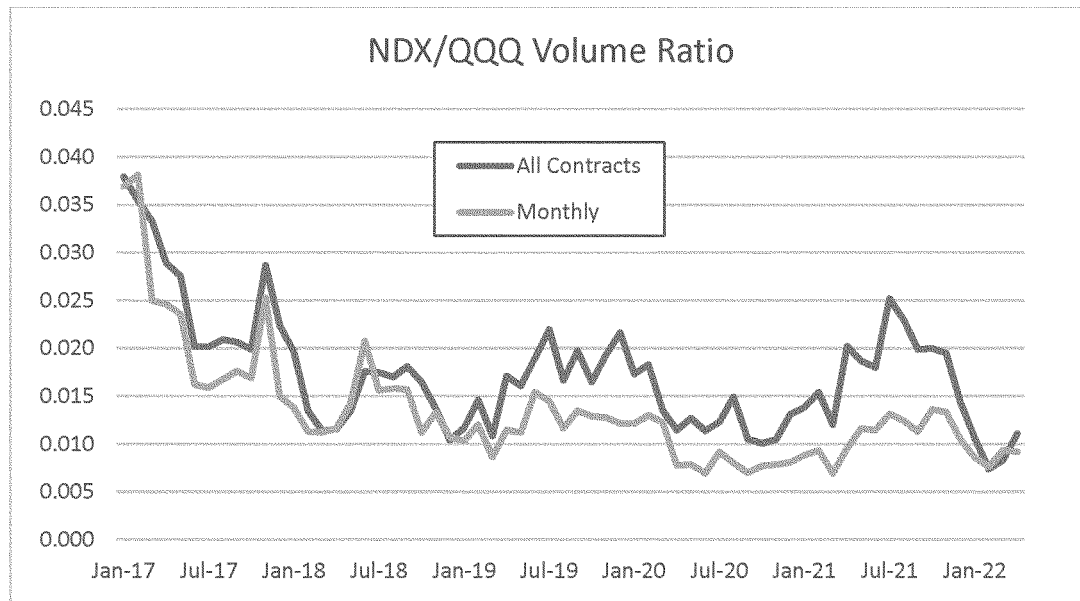
The positive volume trend may be due to the remarkable performance of the Nasdaq-100 Index during this timeframe. To rule out this alternative explanation, the exchange compare the volume in NDX/NDXP index options to QQQ ETF options. It is worth noting that the notional volume of a QQQ

option contract has been much lower than that of an index option. During the sample period, the average notional value of an index option contract was about \$936,000, while a single QQQ contract had notional value of about \$23,000.

Figure 4 presents a time series of the ratio of the sum of monthly contract

volume in the indicated index option contracts to the sum of contract volume in QQQ options. For NDX-Monthly index options, only QQQ volume from third Friday expiring contracts was used. Since both the index and ETF options have the same underlying index, the observed trend is similar if notional volumes were used instead.

Figure 4. NDX/QQQ Volume Ratio

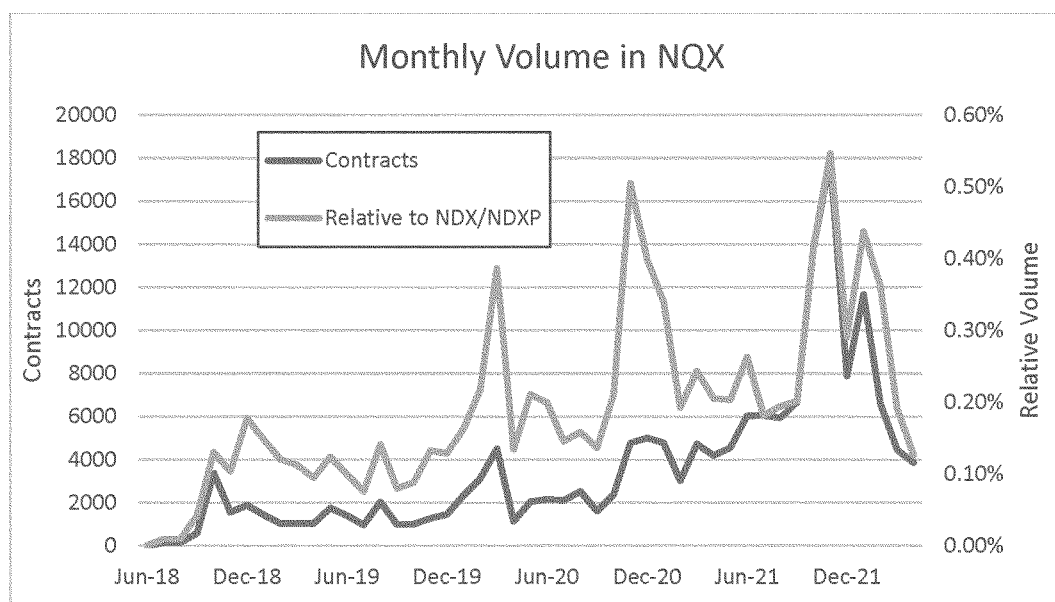


The graph shows a substantial decline in the relative level of the index option volume during 2017. This decline is too large to be explained by the reduction in the share of options trading on non-Nasdaq exchanges. The decline stabilized at the start of 2018.

NQX Volume

In spite of the very high notional volume of NDX/NDXP options, volume in the reduced-value NQX options has never been higher than NDXP trading volume (perhaps due to the availability of QQQ options). Figure 5 shows

monthly volume for all NQX contracts. Shown are both the volume in terms of contracts traded, as well as NQX volume relative to the total volume of NDX/NDXP contracts. For the latter calculation, the NQX contract volume was divided by 5 to reflect its reduced notional value.

Figure 5. Monthly Volume in NQX

Since launch, NQX volume has grown, both in absolute terms and relative to NDX/NDXP volume. The period of extreme market volatility surrounding the pandemic crisis in the Spring of 2020 led to a volume spike, as did the market recovery of the Fall of 2020. Even so, the relative level of NQX volume was very low relative to that of the regular-valued indexes. Due to the low level of NQX volume, it seems unlikely that its introduction had a significant impact on the market quality of the full-sized NDX contracts. Therefore, no further analysis was attempted on NQX options.

XND Volume

Trading in XND options contracts is relatively new.²⁰ The following table

shows XND monthly contract volume for the first year of trading.

Table 2. XND Trading Volume

Apr 2021	292
May 2021	1,128
Jun 2021	4,334
Jul 2021	6,452
Aug 2021	3,222
Sep 2021	5,319
Oct 2021	3,860
Nov 2021	2,700
Dec 2021	2,492
Jan 2022	4,941
Feb 2022	3,634
Mar 2022	6,593
Apr 2022	12,990

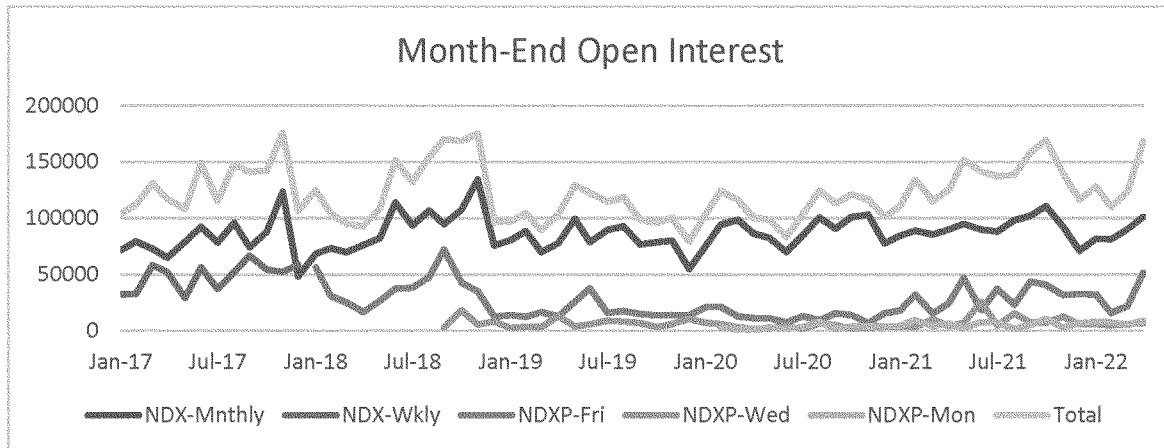
The low level of XND options volume suggests that the introduction of XND did not have a noticeable impact on the trading of the incumbent NDX/NDXP contracts.

Analysis of Open Interest

The Exchange next considered trends in open interest for the Nasdaq-100 Index options. The Options Clearing Corporation ("OCC") data was utilized as source data for this analysis. Open interest measures positions held overnight; positions that are established and closed during the day are not captured.

Figure 6 shows the open interest, in contracts, as of the last trading day of the indicated month.

²⁰ As noted herein, XND began trading in April 2021.

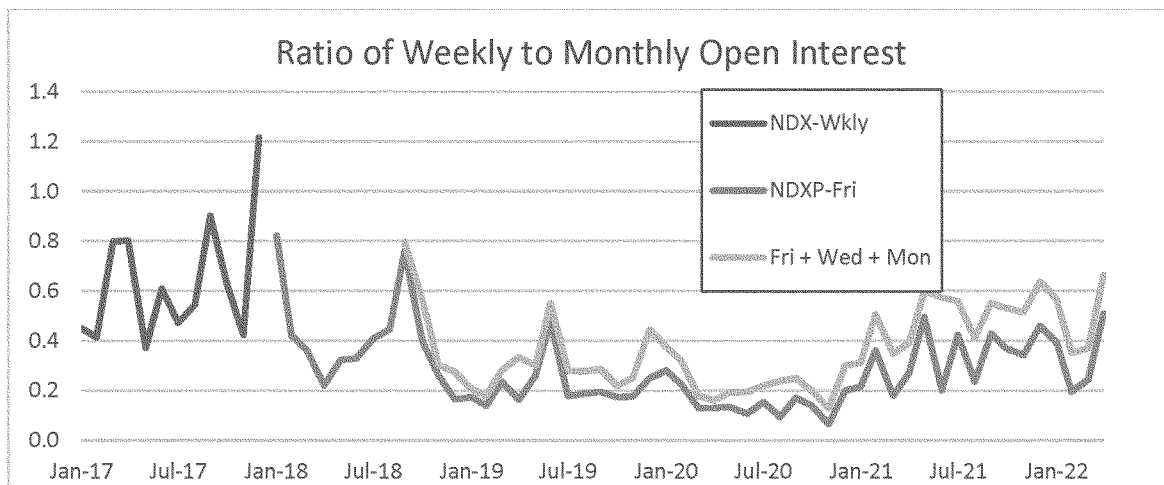
Figure 6. Month-End Open Interest

The open interest in NDX-Monthly is remarkably stable during this timeframe, and is substantially higher than that of the weekly contracts. After transitioning to p.m.-settlement, the open interest in NDXP-Fri contract started to decline

while it increased in the second half of 2022. The open interest in the Wednesday and Monday contracts has always been relatively low.

Further insight is shown in the following graph, which shows the ratio

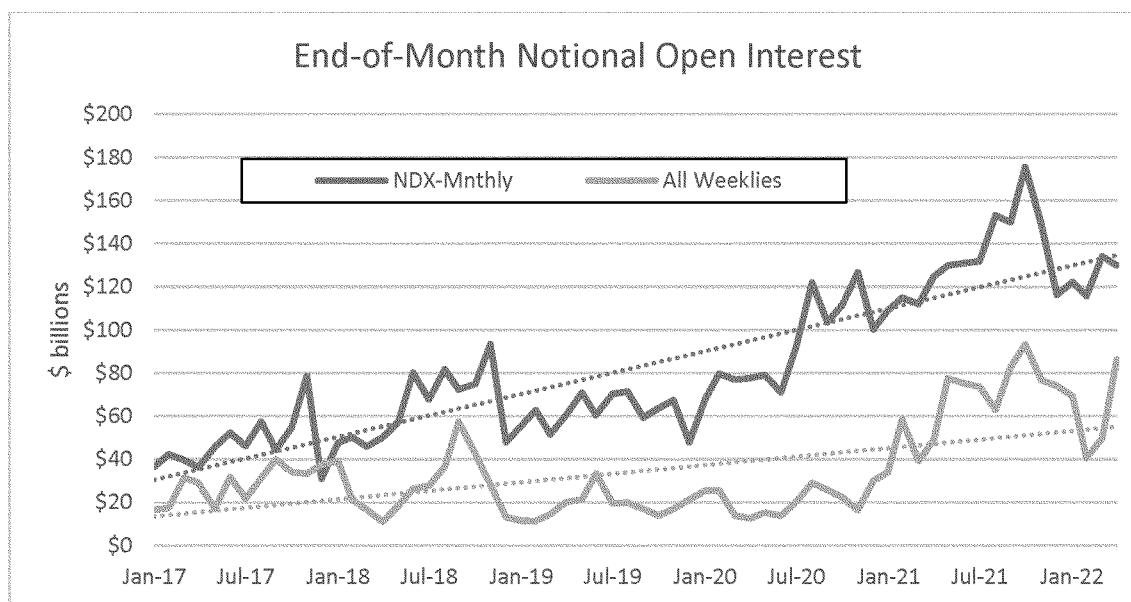
of open interest in weekly contracts to that of the monthly contract (that is, the open interest sum of NDX-Weekly, NDXP-Fri, -Wed, and Mon divided by the open interest in NDX-Monthly).

Figure 7. Ratio of Weekly to Monthly Open Interest

The graph shows a clear decline in the ratio of weekly to monthly open interest, starting at the beginning of 2018, but the declining trend stabilized at the end of Q1 2018. When considered with the volume information shown above, this may be because options traders with longer holding horizons may be more likely to trade the monthly

contract, while those with shorter intra-day positions are more likely to use the weekly contracts. This tendency is reflected in the listing of expiries. At any given time, expirations out to a year or more are available for the monthlies, while expirations only out a month or so are available for the weeklies.

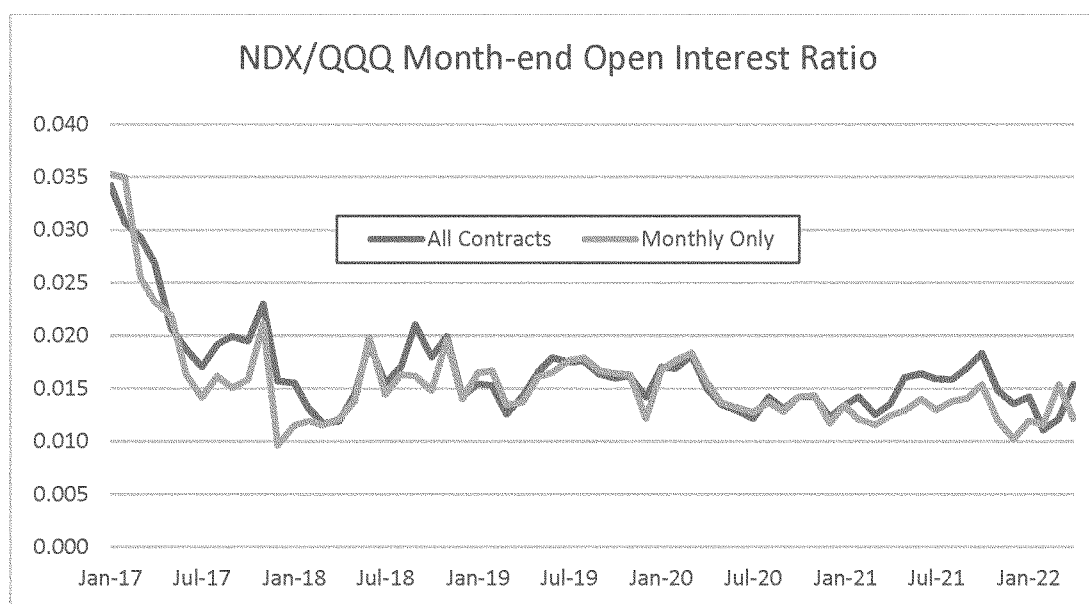
As noted above, the notional value of Nasdaq-100 Index options has roughly tripled during this timeframe. It is therefore useful to consider the trends in open interest from a notional perspective, as shown in the following graph.

Figure 8. End of Month Notional Open Interest

A clear positive trend is evident for the monthly contract in terms of notional value. The weeklies showed a flat trend that has increased since the Fall of 2020.

As discussed above, we designate QQQ options as a control group for our analysis. Figure 9 shows the ratio (in contracts) of Nasdaq-100 Index options to QQQ options. As noted herein, the

trend is unaffected when measuring open interest in contracts or notional value. The graph shows the ratio for monthly contracts for NDX and QQQ, as well as for NDX/NDXP and QQQ.

Figure 9. NDX/QQQ Month-End Open Interest Ratio

This graph closely mirrors the volume graph shown above in Figure 8. There was a distinct decline during 2017 in month-end open interest, but the trend stabilized at the start of 2018 and has remained flat since then.

Analysis of Spreads

An important dimension of market quality is the cost of trading. Following Holden and Jacobsen (2014),²¹ the

²¹ See Holden, C. and Jacobsen, S., 2014, Liquidity Measurement Problems in Fast, Competitive Markets: Expensive and Cheap

Exchange used duration weighted relative quoted spread as a measure of the cost of trading. In this section, the Exchange examines whether there is any

Solutions. Journal of Finance. 69, 1747–17852 (<https://onlinelibrary.wiley.com/doi/abs/10.1111/jofi.12127>).

deterioration of spreads to a.m.-settled Nasdaq-100 Index options by introducing p.m.-settled index options. A particular challenge for measuring quoted spreads is created by the large number of options series tied to a particular underlying. In addition to the range of expiries, a given expiration will have many available strike prices. This set of combinations then is doubled by considering calls and puts. Many listed options series will be very infrequently traded. For example, at the start of the sample period on January 3, 2017, there were 3,720 individual options series that had NDX as the underlying, made up from 14 expiration dates and 382 strike prices. Of these listed options series, only 458 had traded volume on that date, with 233 options series with volume of at least 10 contracts. Nearer to the end of the sample period, on April 29, 2022, there were 16,624 listed options series with NDX or NDXP as the underlying, consisting of 33 expiration dates and 675 strikes. Of the listed options series, 2,192 had some volume and 538 had volume of at least 10 contracts.

To assess the trend in the relative NBBO quoted spread, the Exchange limited the number of options series under consideration by reviewing

spreads in the front-month contracts (contract nearest expiration) on the first trading day of each month.²² The Exchange considered an NBBO quotation to be “live” and used in the computation when the National Best Offer (NBO) was non-zero.

In the following section, the Exchange shows the impact of the introduction of p.m.-settled index options on the liquidity of NDX contracts by showing the average monthly NDX spread over time (in Figure 10) as well as comparing the trend of relative quoted spread of NDX contracts with that of QQQ contracts (Figures 11 and 12). Figure 10 shows the average monthly relative quoted spread for all options with NDX as the underlying. To better reflect the trend of the relative quoted spread, the Exchange plotted the average relative quoted spread benchmarked against (subtracted by) the average spread of 2017 as the dotted line in Figure 10. The dotted vertical line highlights the time when p.m.-settled index options were introduced. Specifically, the time series in the dotted line was computed using the following steps. First, the Exchange calculated the duration weighted average relative quoted spread for each contract on each day. Second, the

Exchange took the average of the above daily spread across all contracts with NDX as the underlying for each day. Third, the Exchange calculated the average relative quoted spread for all months in 2017. Finally, the 2017 average was subtracted from the monthly average to create a time series dataset. As can be seen from the plot, a consistent decrease in the relative quoted spread is prevalent from 2017 to 2022 and most importantly, there is no obvious change in the trend following the introduction of p.m.-settled index options.

Although the above method is intuitive, it is well known that the option premia are correlated with option characteristics such as expiry, strike price, and whether the contract is a put or a call option. Also, option premia tend to increase when the expected volatility of the underlying asset increases, and premia increase may in turn cause the spread to increase. Inspired by Kaul, Nimalendran and Zhang (2004)²³ and Albuquerque, Song and Chen (2020),²⁴ the Exchange also employed the following regression model to control for factors related to option characteristics unrelated to the XND Pilot and the Nonstandard Pilot:²⁵

$$\text{Spread} = \alpha + \text{InverseofPrice} + \text{Call/Put Dummy} + \text{Expiry} + \text{Moneyness} \\ \text{Categories} + \text{Month Fixed Effect} + \varepsilon \quad (1)$$

In the above model, *Spread* is the relative quoted spread. *InverseofPrice* is the inverse of the option price. *Call/Put Dummy* is a dummy variable that equals 1 for call options and 0 otherwise. *Expiry* is the number of the days to the expiration date. *Moneyness* is a dummy variable for moneyness category of each option. Specifically, all option contracts were classified into 5 moneyness categories. The moneyness for call options was calculated as:

$$\frac{S-X}{X} * 100\%$$

and

$$\frac{X-S}{X} * 100\%,$$

for put options, where “S” is the stock price and “X” is the exercise price. The cut-offs for the five moneyness groups were: –30%; –10%; 10%; and 30%. Month Fixed Effect is a dummy variable for each month.

In constructing the plot, the coefficients for those month fixed effects were adjusted. The raw coefficients for each month were collected from the

regression output. The first month in the sample, January 2017, implicitly had a coefficient of zero. The average coefficient for the 12 months in 2017 was then calculated. Finally, the average coefficients across all 12 months in 2017 were subtracted from the raw coefficients to create a time series dataset, which is depicted as the unbroken line in Figure 10.

As can be seen from the plot, there is a steady decrease in the relative quoted spread for NDX option contracts. The average relative quoted spread for NDX contracts decreased by about 30%–40% from the beginning of 2017 until the end of the sample period. Since the regression model controls for factors that affect the spread, the unbroken line

²² Although the Exchange believes that sampling the first trading day of each month between date January 2017 and April 2022 would reflect the trend of market quality, the Exchange acknowledges that in some cases there may be some information loss given a particular trading day. For example, a volatile trading day may not be representative of the market for that trading month.

²³ See Kaul, G., Nimalendran, m., and Zhang D., 2004, Informed Trading and Option Spreads

Working Paper (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=547462).

²⁴ See Albuquerque, R., Song, S., and Yao, C., 2020, The Price Effects of Liquidity Shocks: A Study of SEC’s Tick-Size Experiment. *Journal of Financial Economics*. 138, 700–724 (<https://www.sciencedirect.com/science/article/pii/S0304405X20301884>).

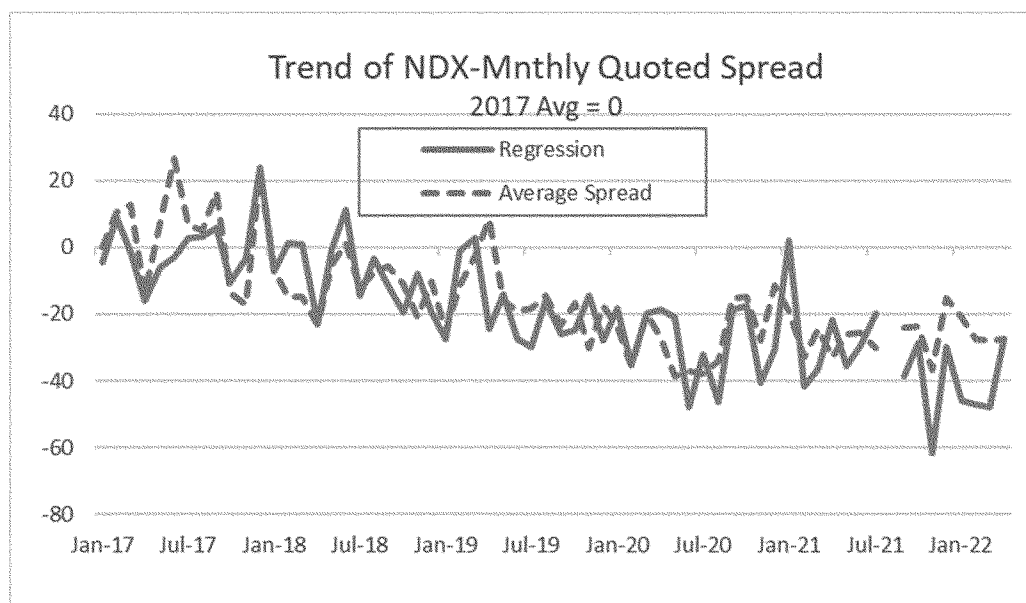
²⁵ The calculation was inspired by Kaul, G., Nimalendran, m., and Zhang D., and Albuquerque, R., Song, S., and Yao, C. See notes 21 and 22 above. The Exchange includes control variables used in Albuquerque, R., Song, S., and Yao, C. (2020) liquidity analysis and constructs *Moneyness Categories* following Kaul, Nimalendran and Zhang (2004).

based on the regression model tends to be less volatile. However, there is no large difference in the results between the average spread and results based on the regression models, but there is some

divergence at certain points in time. The Exchange conjectures that the divergence is due to higher option premia caused by the elevated levels of volatility. In summary, based on both

methods, a consistent decrease in relative quoted spread is observed from 2017 to 2022.

Figure 10. Trend of NDX-Monthly Quoted Spread²⁶



The Exchange then compared the spread trend of NDX monthly contracts to that of QQQ monthly contracts. The average monthly spread for QQQ contracts was constructed the same way as that for the NDX monthly contracts (as described in detail above). Figure 11, below, displays the patterns of relative quoted spread for NDX and QQQ, which are remarkably similar and decreased during the sample period. Figure 12, below, highlights the difference in

Figure 11 as between NDX and QQQ. Relative to a QQQ control, there is therefore no evidence of a deterioration of NDX monthly spreads during the sample period. In summary, the results suggest that there is gradual decrease in both the NDX monthly contracts spread and the QQQ contracts spread during the sample period.

As the introduction of p.m.-settled index options may affect the transaction cost for NDX monthly contracts, it is unlikely to affect the spread of QQQ

options. Therefore, the Exchange uses the following regression to formally test whether the spread of NDX contract changed after the introduction of p.m.-settled index options. NDX and QQQ options are included in the sample for the period between January 2017 and December 2018. This regression looks at a sample period starting from one year before and ending one year after the introduction of p.m.-settled index options.

$$\text{Spread} = \alpha + \text{NDX} + \text{Post} + \text{NDX} * \text{Post} + \text{InverseofPrice} + \text{Call/Put Dummy} + \text{Expiry} \\ + \text{Moneyness Categories} + \text{Month Fixed Effect} + \varepsilon$$

(2)

Similar to regression model (1), *Spread* is the relative quoted spread. *InverseofPrice* is the inverse of the option price. *Call/Put Dummy* is a dummy variable that equals 1 for call options and 0 otherwise. *Expiry* is the number of days to the expiration

date.²⁷ *Moneyness* is a dummy variable for moneyness category of each option. *NDX* is a dummy variable that equals one if the underlying asset of the option is NDX index and zero otherwise. *Post* is a dummy variable that equals to one for days after January 2018 and zero

otherwise. The Exchange also includes the interaction terms of the post dummy and the NDX dummy (*NDX * Post*).

²⁶ NBBO data was unavailable between August 1, 2021 and August 11, 2021, and, therefore, August 2021 was excluded from the plot. Also, with respect to Figure 10, Regression plots the coefficients of

dummies for each month (*i.e.*, fixed effects). Average Spread plots the average monthly relative quoted spread subtracted by the 2017 average relative quoted spread.

²⁷ The Exchange notes that there was no transformation.

Table 3 shows that the coefficient of the interaction term is negative but it is statistically insignificant. Therefore, the

Exchange concludes that the introduction of p.m.-settled index

options did not negatively affect the liquidity of a.m.-settled NDX options.²⁸

Figure 11. Trend of NDX-Monthly and QQQ Quoted Spread²⁸

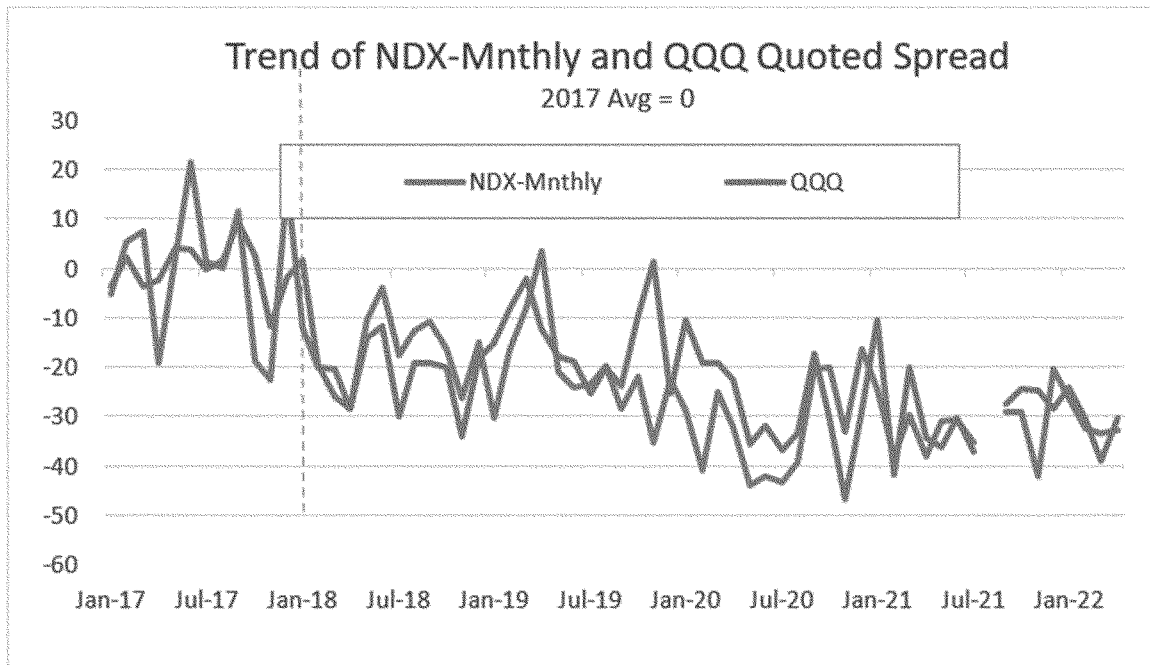
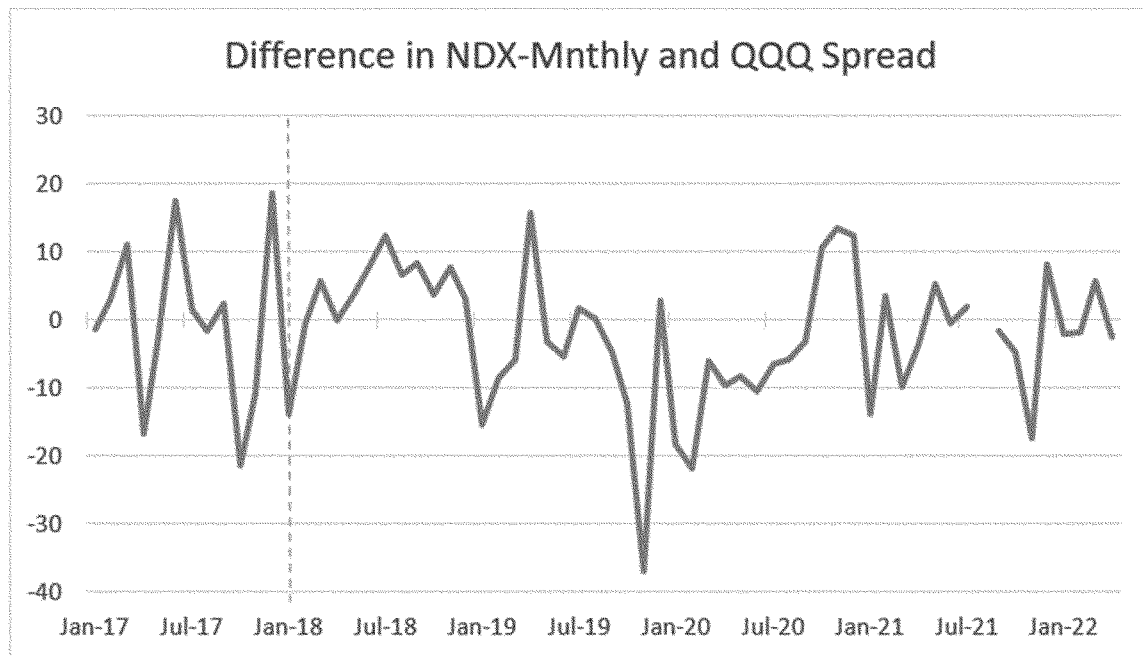


Figure 12. Difference in NDX-Monthly and QQQ Spread²⁹



²⁸ *Id.*

²⁹ *Id.*

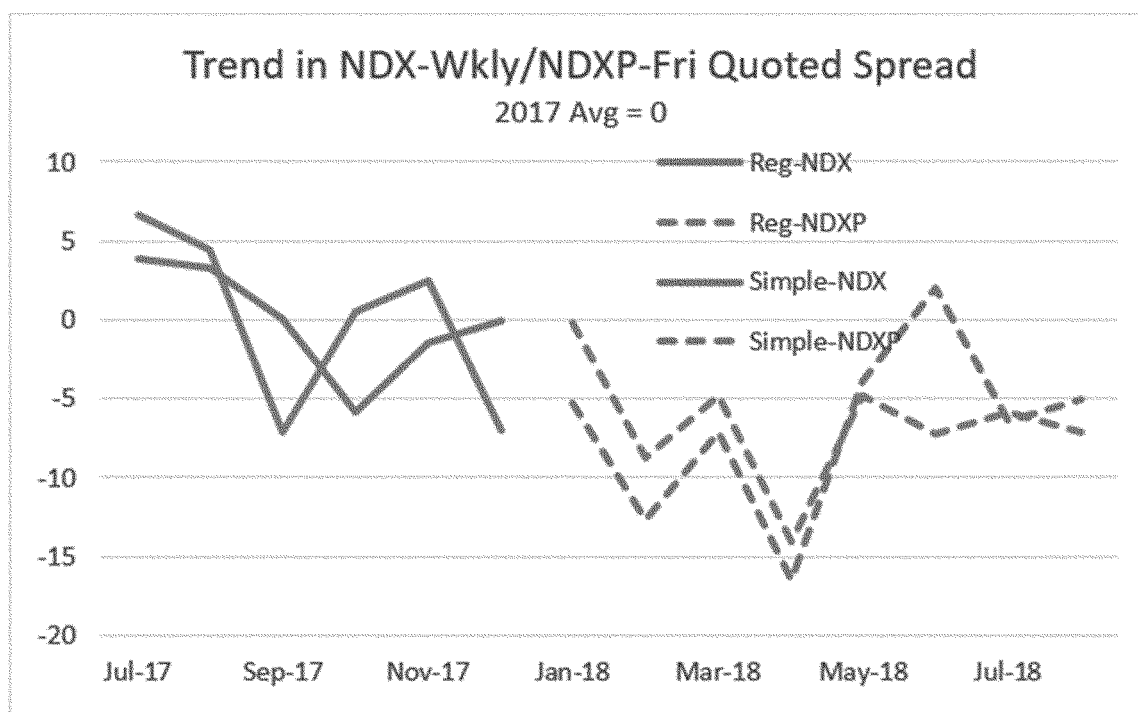
TABLE 3—REGRESSION RESULTS

	coef	std	t
Constant	*** 0.26	0.01	37.50
NDX	*** 0.28	0.01	28.62
Post	− 0.01	0.02	− 0.80
NDX * Post	* − 0.02	0.01	− 1.73
InverseofPrice	*** 0.00	0.00	48.65
Call/Put Dummy	*** 0.26	0.01	37.77
Expiry	*** 0.00	0.00	46.29
Moneyiness Categories			
Fixed Effect	Yes	.....	.....
Month Fixed Effect	Yes	.....	.....

The report considered one additional question regarding quoted spreads—whether the move from a.m.-settlement to p.m.-settlement for Friday weeklies (NDX-Weekly to NDXP-Fri) led to

changes in spreads for those contracts. This sample timeframe was from July 2017 through August 2018, prior to the launch of NDXP-Wed contracts. As before, the Exchange presented both the

simple average monthly relative quoted spread as well as the average spread calculated using the regression model.

Figure 13. Trend in NDX-Wkly/NDXP-Fri Quoted Spread³⁰

The relative quoted spread went down at the first part of 2018 and up in May and June 2018; it remained comparable to the 2017 average.

Overall, the Exchange sees no evidence of deterioration of spreads

associated with the introduction of p.m.-settled NDX options.

Market Capacity Around the Market Close

The Exchange next analyzed the impact that p.m.-settled index options may have on the closing process of the equity markets.³¹ The DERA Staff PM Pilot Memo concluded that while p.m.-settled index options activity may have had a statistically detectable impact on

volatility, the economic significance was generally small. The DERA Staff PM Pilot Memo provided.

However, the report suggests that the magnitude of the effect of expiring p.m. cash-settled index options open interest on the measure of volatility and price reversals for index futures, the underlying cash index, and index component securities is economically very small.³²

The following provides an illustration using some of the regression results

³⁰ With respect to Figure 13, Reg-NDX plots the coefficients of dummies for each month for NDX contracts. Reg-NDXP plots the coefficients of dummies for each month for NDXP contracts. Simple-NDX plots the average monthly relative quoted spread subtracted by the 2017 average relative quoted spread for NDX contracts. Simple-NDXP plots the average monthly relative quoted spread subtracted by the 2017 average relative quoted spread for NDXP contracts.

³¹ This analysis considers the DERA Staff PM Pilot Memo.

³² See DERA Staff PM Pilot Memo at page 1.

from the DERA Staff PM Pilot Memo. Among the volatility variables analyzed by the DERA Staff PM Pilot Memo was the “Magnitude of Maximum Reversal Overlapping Close” of index futures prices. The DERA Staff PM Pilot Memo

found that this metric was higher when the options settlement volume was higher, for both the S&P 500 and the Nasdaq-100 Index options. Using data provided in the DERA Staff PM Pilot Memo, the Exchange can estimate the

impact of a very large increase in settlement volume: an increase from its 25th percentile to its 75th percentile. The following table shows the steps of the calculation.

TABLE 4³³

	Settlement volume			Regression coefficient	Impact	Median of variable	Rel. impact (percent)
	25th	75th	Diff.				
S&P 500	0.40	1.66	1.26	0.317	0.40	1.96	20.4
Nq-100	0.07	0.17	0.10	2.39	0.24	1.58	15.4

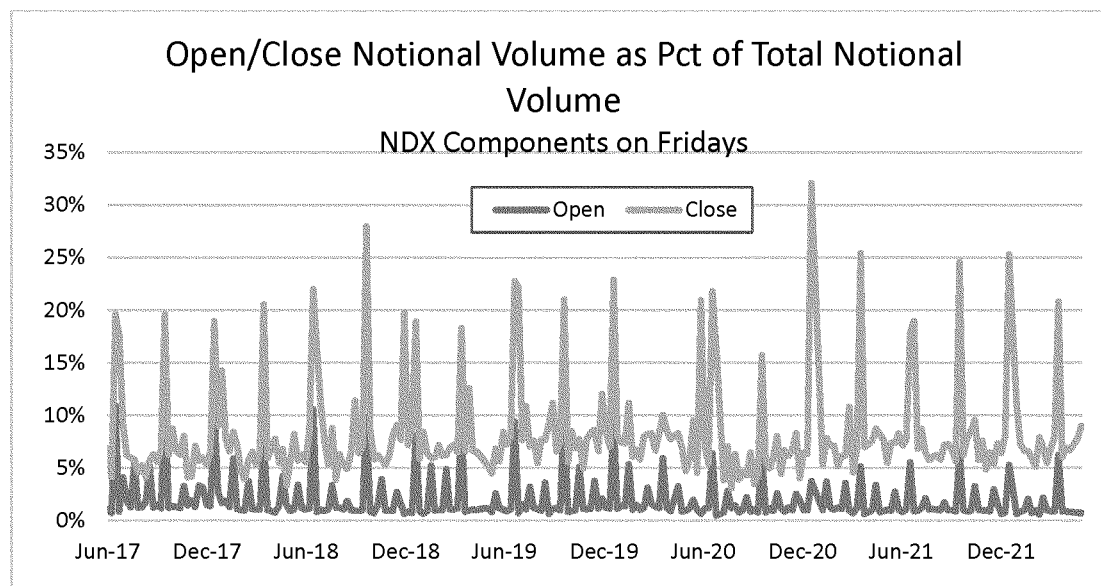
The percentiles of settlement volume (in units of \$10 billion notional) are shown in Table 25 of the DERA Staff PM Pilot Memo, which indicated that the volume of S&P 500 contracts was much higher than that of Nasdaq-100 contracts. The regression coefficients are from Table 5 (S&P 500) and Table 19 (Nasdaq-100) of the DERA Staff PM Pilot Memo. The estimated impact is the product of the volume difference times the coefficient. Table 5 of the DERA

Staff PM Pilot Memo provided the median of the volatility metric during the sample period. The relative impact is the estimated impact divided by the sample median, *i.e.*, the estimated change in the volatility metric, relative to its median value, due to an increase in settlement volume. As shown, the relative impact was small for both indexes, about 20% for the S&P 500 and 15% for the Nasdaq-100.

The Exchange provides some additional analysis on market capacity

around the market close. Specifically, the Exchange believes it is important to recognize that in recent years the closing auctions on the equity markets have steadily grown to a point where they are much larger than the opening auctions. To illustrate this point, the following chart shows the percentage of dollar volume of Nasdaq-100 Index components executed in the opening and closing auctions on Fridays.

Figure 14. Open/Close Dollar Volume as Pct of Total Dollar Volume NDX Components on Fridays



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The percentage of volume executed in the close is uniformly higher than that of the open. The spikes in the closing percentages represent third Fridays, and in a few cases Fridays that corresponded to the end of a month. The opening

percentage is slightly declining, the closing percentage slightly increasing during this timeframe. As another illustration, consider the opening and closing dollar volume percentages for Fridays, other than the third Friday-of-the-month, from the second half of 2017

compared with the first half of 2018. This timeframe corresponds to the introduction of NDXP options,³⁴ in which non-third Friday series moved to p.m.-settled. The following table present the average percentages.

³³ See DERA Staff PM Pilot Memo.

³⁴ NDXP options are p.m.-settled index options on broad-based indexes with nonstandard expirations

dates which are also the subject of a pilot program. NDXP are listed on ISE and Phlx.

TABLE 5—DOLLAR VOLUME FOR NASDAQ-100 COMPONENTS ON NON-3RD FRIDAYS

	Auction vol. as pct of total vol.	
	Opening (percent)	Closing (percent)
Jul–Dec 2017	1.48	6.40
Jan–Jun 2018 ...	1.13	6.76
Difference	– 0.35	0.36

As would be expected, the relative size of the opening auction declined, and the closing auction increased by roughly the same amount. The

percentage of about 0.35% would be an estimate of the volume impact of NDX/NDXP options settlement on the equity market auctions. This percentage is small to begin with, but it is a much smaller proportion of the closing auction than the opening auction. Therefore, the Exchange believes that the liquidity available at or around the close would be able to mitigate any excess volatility created by the options settlement at the market close.

As a third example, the Exchange considered the level of options settlement volume relative to the size of the closing and opening auctions.³⁵ To provide the most up-to-date view of the

current situation, the Exchange examined activity from the start of 2021 through April 2022. The below table shows the notional settlement volume (in billions of dollars) along with the notional volume in the auctions for Nasdaq-100 Index components. Settlement volume is the average dollar volume settled at OCC, Closing Auction is the average dollar volume executed in the closing auction, Pct of Close is calculated as Settlement Volume divided by Closing Auction, Open Auction is the average notional volume executed in the open auction, and Pct of Open is calculated as Settlement Volume divided by Opening Auction.

TABLE 6—SETTLEMENT VOLUME FOR NDX/NDXP VS AUCTIONS: JAN 2021–APR 2022

Exp. day	Settlement volume	Closing auction	Percentage of close	Opening auction	Percentage of open
NDXP					
Monday	\$2.4	\$9.9	25.9	.....	.....
Wed	2.7	9.0	30.2	.....	.....
Non 3rd Fri	4.1	9.6	44.7	.....	.....
NDXP					
3rd Friday	13.1	23.0	78.0	\$6.6	230.4

Table 6 shows that the settlement volume for NDXP settlements averages between 26% and 45% of the closing auction volume, the Friday NDXP settlements being the largest. NDX settlement volumes are larger, and relative to the opening auction—the relevant auction—they average more than twice the size of the auctions. By contrast, the relative size of the settlement volume would be about a third less if it were compared to the closing auctions on the third Fridays. As documented in the DERA Staff PM Pilot Memo, p.m.-settled option activities only have a very small impact on the volatility of the underlying index. Additionally, the size of the option settlement value is relatively small compared with the size of the closing auction value. Therefore, the Exchange believes that it is difficult to manipulate the underlying Nasdaq-100 Index during the closing auction. The equity closing auctions have grown to be substantial liquidity events (for the period examined the closing auction volume is larger than the opening auction volume) and would therefore be suited for

handling the excess liquidity demand created by index options settlement.

Technical Amendment to Rule Text

The Exchange proposes to amend Options 4A, Section 12(b)(5) to remove “C” and re-letter “D” as “C.”

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,³⁷ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest by proposing to make permanent the XND Pilot and the Nonstandard Pilot.

Previously, the Commission has raised concerns about expanding p.m. settlement.³⁸ Specifically, the Commission noted in the Cboe Pilot Order that it had concerns about the adverse effects and impact of p.m. settlement upon market volatility and the operation of fair and orderly markets

on the underlying cash market at or near the close of trading.³⁹ The Commission noted in the Cboe Pilot Order that the information requested of Cboe would enable the Commission to evaluate whether allowing p.m. settlement for EOW and EOMs will result in increased market and price volatility in the underlying component stocks.⁴⁰ Further, the p.m. settlement Pilot information should help the Commission assess the impact on the markets and determine whether other changes are necessary.⁴¹ Furthermore, the Exchange’s ongoing analysis of the Pilot should help it monitor any potential risks from large p.m.-settled positions and take appropriate action if warranted.⁴²

Similar to Cboe, Phlx has provided pilot data to the Commission with respect to its XND Pilot and Nonstandard Pilot. The Exchange’s analysis presents data that the introduction of p.m.-settlement has led to an increase in options trading tied to the Nasdaq-100 Index. The Exchange notes within its analysis that it seems unlikely that the introduction of XND

³⁵ Options settlement volume is the primary size metric used in the DERA Staff PM Pilot Memo. Options settlement volume is the notional volume settled in the closing auction.

³⁶ 15 U.S.C. 78f(b).

³⁷ 15 U.S.C. 78f(b)(5).

³⁸ See Securities Exchange Act Release No. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (SR-CBOE-2009-075) (Order Approving Notice of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Establish a Pilot Program To List P.M.-Settled End of Week and End

of Month Expirations for Options on Broad-Based Indexes) (“Cboe Pilot Order”).

³⁹ *Id.* at 57540.

⁴⁰ *Id.* at 57540.

⁴¹ *Id.* at 57540.

⁴² *Id.* at 57540.

option contracts or NQX contracts⁴³ had a significant impact on the market quality of the full-sized Nasdaq-100 Index option contracts. The Exchange observed a consistent decrease in relative quoted spread is observed from 2017 to 2022 for NDX options. When the Exchange compared the spread trend of NDX monthly contracts to that of QQQ monthly contracts, the results suggest that there is gradual decrease in both the NDX monthly contracts spread and the QQQ contracts spread during the sample period.

The Exchange also considered whether the move from a.m.-settlement to p.m.-settlement for Friday weeklies (NDX-Weekly to NDXP-Fri) led to changes in spreads for those contracts. Overall, the Exchange sees no evidence of deterioration of spreads associated with the changes the Exchange has made to its Nasdaq-100 Index product offering by introducing p.m.-settled products.

Finally, in considering impact on the closing process in equity markets, the Exchange concluded that it is difficult to manipulate the underlying Nasdaq-100 Index. Specifically, the equity closing auctions have grown to be substantial liquidity events that are much larger than the opening auctions, and would therefore be better suited for handling the excess liquidity demand created by index options settlement. The Exchange believes the expiration of p.m.-settlement options would not adversely affect the options market or the underlying cash equities market.

Further, the Exchange has sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them.

Accordingly, the Exchange believes that weekly expirations and EOMs, including the XND expirations, in the p.m.-settled products should create greater trading and hedging opportunities and flexibility and provide customers with the ability to more closely tailor their investment objectives.

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. Making permanent the XND Pilot and the Nonstandard Pilot will not impose an undue burden on competition, rather, it will continue to provide investors with

greater trading and hedging opportunities and flexibility, as well as the ability to more closely tailor their investment objectives.

Additionally, the Exchange does not believe the proposal will impose any burden on intermarket competition as market participants are welcome to become members or member organizations and trade at Phlx if they determine that this proposed rule change has made Phlx more attractive or favorable. Finally, all options exchanges are free to compete by listing and trading their own broad-based index options with weekly or end of month expirations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the 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-Phlx-2023-07 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-Phlx-2023-07. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2023-07, and should be submitted on or before March 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁴

J. Matthew DeLesDernier,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96976; File No. SR-CboeBZX-2023-012]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rules 11.9, 11.12, and 11.13

February 24, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 15, 2023, Cboe BZX Exchange, Inc. ("Exchange" or "BZX") filed with the Securities and Exchange Commission

⁴⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴³ See note 7 above.

(“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) proposes to amend Rule 11.9(e)(3) to provide that orders may be modified from either sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) using a Replace Message. The Exchange also proposes to amend Rule 11.12(a)(4) to provide that a change in position from either sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) will result in a loss of time priority if made when a short sale circuit breaker pursuant to Rule 201 of Regulation SHO is in effect. Additionally, the Exchange proposes to amend Rule 11.13(b)(1) to provide when the Exchange may route orders with a short sale instruction when a short sale circuit breaker pursuant to Rule 201 of Regulation SHO is in effect. 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 11.12(a)(4) to reflect that if a User⁵ changes the position of an order from either sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) while a Regulation SHO Rule 201⁶ short sale circuit breaker (the “SSCB”) is in effect, the change will result in a loss of time priority. This proposed change is substantially similar to MIAx PEARL, LLC (“MIAx Pearl”) Rule 2616 (discussed *infra*).⁸ The Exchange also proposes to amend Rule 11.9(e)(3) to provide that an order may be modified from sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) using a Replace Message. Additionally, the Exchange proposes to amend Rule 11.13(b)(1) (Regulation SHO) to make clear that short sale orders⁹ entered with an order instruction to post to an away trading center when an SSCB is in effect are eligible for routing by the Exchange.

Priority Loss for Position Changes During an SSCB

Pursuant to Exchange Rule 11.9(e)(3), certain order modifications may be made via a Replace Message (*i.e.*, other than changing a limit order to a market order, only the price, stop price, the sell long or sell short indicator, Max Floor of a Reserve Order, and size of the order may be changed by a Replace Message), while other modifications require that the existing order be cancelled, and a new order be entered. Furthermore, pursuant to Rule 11.12(a)(4), when an order is cancelled or replaced in accordance with Rule 11.9(e)(3), such

order will retain its priority only for certain types of modifications (*e.g.*, changing an order’s position from sell long to sell short or a decrease in the size of the order). Certain other types of order modifications¹⁰ (*e.g.*, a change in the order’s price) will otherwise receive a new timestamp and lose priority on the BZX Book.¹¹ For example, if pursuant to Rule 11.9(e)(3) an order is modified from sell long to sell short, such modification may be accomplished via a Replace Message, and the System will, pursuant to Rule 11.12(a)(4), allow such order to retain its original timestamp and priority on the BZX Book.

The Exchange first proposes to amend Rule 11.9(e)(3) to provide that an order’s position may be modified from sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) through the use of a Replace Message. The Exchange notes that Users complete a position modification from sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) using the same functionality to mark an order as either sell long or sell short under Rule 11.9(e)(3). The Exchange believes this change will provide additional specificity to the rule and ensure the rule uses terminology consistent with the description of Replace Messages and their impact on an order’s priority under Exchange Rule 11.12(a)(4) (discussed *infra*).

The Exchange also proposes to amend Rule 11.12(a)(4) in order to align the Rule text with how the System currently behaves when an SSCB is in effect, and to provide clarification to Users that when an SSCB is in effect that changing an order’s position from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) will instead result in such order receiving a new timestamp and losing its original priority. The Exchange is not proposing to change the timestamp for modifications from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) when an SSCB is *not* in effect. Additionally, the Exchange is also proposing to add language to Rule 11.12(a)(4) stating that a modification from sell long to sell short exempt (or vice versa) is a type of order modification that would retain time priority and would not receive a new timestamp, regardless of whether an SSCB is in effect (discussed *infra*).

The Exchange also proposes a non-substantive change to Rule 11.12(a)(4) to provide that an order is being modified

⁵ See Exchange Rule 1.5(cc).

⁶ See 17 CFR 242.201; Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010).

⁷ For any execution of a short sale order to occur on the Exchange when a short sale price test restriction is in effect, the price must be better than the national best bid (“NBB”), unless the sell order was initially displayed by the System at a price above then the current NBB or is market “short exempt” pursuant to Regulation SHO. See Exchange Rule 11.13(a)(1).

⁸ See Securities Exchange Act Release No. 93506 (November 2, 2021), 86 FR 61796 (November 8, 2021) (SR-PEARL-2021-35) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Changes, as Modified by Amendment No. 1, To Amend Exchange Rule 2616, Priority of Orders).

⁹ See 17 CFR 242.200(a). The term “short sale” is defined as “any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.”

¹⁰ See Rule 11.12(a)(4).

¹¹ See Rule 1.5(e).

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

by a Replace Message rather than cancelled and replaced with a new order. This change is intended to provide that an order does not need to be cancelled and replaced with a new order, but rather includes modifications to orders via the use of a Replace Message. The proposed changes to Exchange Rule 11.12(a)(4) are based on previously-approved changes to MIAX Pearl Rule 2616(a)(5), which is substantially similar to Exchange Rule 11.12(a)(4).¹²

In the event that a User requests an order modification using a Replace Message, the System will first determine whether the modification is of a kind that may result in a loss of time priority in order to determine how the modification will be handled by the System. For example, as noted in Exchange Rule 11.12(a)(4), a modification to the price of an order will cause the loss of time priority. Therefore, in the event of a modification of the price of an order, the System will first determine that the type of modification may result in a loss of time priority and then handle the order accordingly by giving it a new timestamp.¹³ Since an order modification from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) may result in a change in price of the order when an SSCB is in effect, the Exchange immediately gives the order a new timestamp. As previously discussed, a modification from sell long to sell short (or vice versa) or a modification from sell short exempt to sell short (or vice versa) requires the System to determine whether an order must be re-priced to be compliant with the requirements of Regulation SHO. The Exchange notes, however, that an order modification from sell long to sell short exempt (or vice versa) does not require the System to determine whether the order shall be re-priced as a result of the modification, as both a sell long and a sell short exempt order may execute at a more aggressive price than a sell short order when an SSCB is in effect. Given that the System does not have to evaluate whether a price change is required as part of an order modification from sell long to sell short exempt (or vice versa),

this specific order modification does not lose priority on the BZX Book.

Specifically, if a sell long order is modified to a sell short order (or vice versa) or a sell short exempt order is modified to a sell short order (or vice versa) while an SSCB is in effect, the Exchange cannot simply change the order from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) while resting on the book, but rather must verify that the sell short order would not violate Rule 201(b)(1)(ii)¹⁴ of Regulation SHO before the order is re-added to the BZX Book. Therefore, as such a modification may result in a change of the order's price, the System gives the order a new timestamp, resulting in a loss of priority. Similarly, if a sell short order is modified to a sell long order (or vice versa) or a sell short order is modified to a sell short exempt (or vice versa) order while an SSCB is in effect, the order may be eligible to display at a more aggressive price. As such, the System gives the order a new timestamp, again resulting in a loss of time priority, but potentially in improved price priority. However, if an order is modified from sell long to sell short exempt (or vice versa) when an SSCB is in effect, the System does not have to take an additional step to evaluate whether the modification violates Rule 201(b)(1)(ii) of Regulation SHO given that sell long and sell short exempt orders may execute at more aggressive prices that sell short orders during an SSCB. Accordingly, an order modification from sell long to sell short exempt (or vice versa) would not result in a loss of priority. Stated differently, the System treats orders marked sell long and sell short exempt the same, and only order modifications from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) would cause an order to lose priority during an SSCB because the System is required to determine whether a change in the order's price is required as a consequence of the change in status from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa). This order price analysis by the System is required in order to prevent potential violations of Rule 201(b)(1)(ii) of Regulation SHO as orders may be required to be re-

priced to prevent potential violations of Rule 201 when the SSCB is in effect.

To illustrate order behavior with a modification from sell long to sell short during an SSCB, consider the following example:

Assume the National Best Bid and Offer ("NBBO")¹⁵ in a given covered security¹⁶ is \$5.00 × \$5.10 while an SSCB is in effect. A User enters a non-displayed sell long order with a limit price of \$5.00. Subsequently, the User modifies the position of the order from sell long to sell short, while the NBBO has remained the same. In order to effect the modification, the System determines that a modification from sell long to sell short may result in a change in the order's price in order to prevent potential violations of Rule 201(b)(1)(ii) of Regulation SHO, as orders may be required to be repriced to prevent potential violations of Rule 201 when the SSCB is in effect. Accordingly, the order loses its time priority in order for the System to handle the potential price change. In this example, the subject order resulted in a change of the order's price as the sell short order was not eligible for execution at a price equal to the NBB. Nonetheless, even if the modification would not have ultimately resulted in a price change, the modification would have necessarily caused the System to evaluate whether a price change was necessary and, thus, required a new timestamp, resulting in a loss of time priority.

Order modifications from sell long to sell short (or vice versa), sell long to sell short exempt (or vice versa), or sell short exempt to sell short (or vice versa) that occur when an SSCB is not in effect will not be subject to a loss of priority on the Exchange, as orders may be required to be re-priced to prevent potential violations of Rule 201 of Regulation SHO, only when an SSCB is in effect. When an SSCB is not in effect the System does not have to take the additional step of determining whether a price change is required before effecting a position modification from sell long to sell short (or vice versa), sell long to sell short exempt (or vice versa),

¹⁵ See Exchange Rule 1.5(o).

¹⁶ Rule 201(a)(1) of Regulation SHO defines the term "covered security" to mean any "NMS stock" as defined under Rule 600(b)(48) of Regulation NMS. Rule 600(b)(48) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." Rule 600(b)(47) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." See 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(47); and 17 CFR 242.600(b)(48).

¹² *Supra* note 8.

¹³ Alternatively, as noted in Rule 11.12(a)(4) a modification that involves a decrease in the size of the order will not cause the loss of time priority. Therefore, in order to decrease the size of the order, the System will first determine that the type of modification will not result in a loss of time priority and will handle the order in a completely different manner than it would if the order would have resulted in a loss of time priority.

¹⁴ Pursuant to Rule 201(b)(1)(ii) of Regulation SHO, the Exchange must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current NBB during an SSCB.

or sell short exempt to sell short (or vice versa) and as such, these order modifications can be processed without a loss of priority.

Routing Clarification for Orders That Will Post to an Away Trading Center

The Exchange is also proposing to amend Rule 11.13(b)(1) in order to codify that any sell short order that will post to an away Trading Center¹⁷ will be routed when an SSCB is in effect. Given that sell short orders that post to an away Trading Center are subjected to the receiving Trading Center's processes for handling sell short orders in compliance with Rule 201 of Regulation SHO,¹⁸ the Exchange believes the capability to route all sell short orders with the ability to post to an away market center during an SSCB is appropriate and that Exchange Rules should be amended to codify such functionality.¹⁹

The proposed rule change would provide Users with clarity as how the Exchange will handle routable sell short orders when the SSCB is in effect. For instance, Rule 11.13(b)(1) explicitly states that the Post to Away²⁰ or ROOC²¹ routing options will post an order to another Trading Center's book

when the SSCB is in effect.²² However, while Rule 11.13(b)(3)(K) provides that the RDOT²³ routing option may post an order to another Trading Center's book (which could occur if the order is entered with a time-in-force ("TIF") of Day),²⁴ Rule 11.13(b)(1) does not state that the RDOT routing option is available to orders marked sell short during an SSCB. The Exchange seeks to provide that *any* routing strategy that would post the remainder of the routed order to another Trading Center's book is eligible for routing during an SSCB. Under Exchange Rule 11.13(b)(1), IOC²⁵ orders marked "short" that are not eligible for routing during an SSCB will continue to be cancelled. The unfilled portions of limit orders marked "short" that are ineligible for routing due to an SSCB will continue to be posted to the BZX Book subject to the price sliding process as defined in Exchange Rule 11.9(g).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁷ 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)²⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change to Rule 11.9(e)(3) is consistent with the protection of investors and the public interest because it aligns the rule text with the how the System currently operates and helps to eliminate any potential confusion Users may have regarding current Rule 11.9(e)(3). This proposed amendment will not change existing System behavior and Users will have more certainty about how orders may be modified, which is related to the proposed changes to Rule 11.12(a)(4).

Additionally, the proposed rule change to Rule 11.12(a)(4) is designed to ensure all sell short orders are subjected to the Exchange's process for ensuring that the order would not violate Rule 201(b)(1)(ii) of Regulation SHO during an SSCB. In order to verify the displayed price of an order with a position modification from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) during an SSCB, the System handles the modification as if a price change would occur, even if the modification does not ultimately result in a price change. If the System permitted such order modifications to forego this process, no order modifications from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) during an SSCB would result in a loss of time priority, and as a result, certain sell short orders could be permitted to display or execute at an impermissible price that would not comply with Rule 201(b)(1)(ii). The Exchange's process is designed to ensure compliance with Rule 201(b)(1)(ii) of Regulation SHO and is consistent with the protection of investors and the public interest. As designed, during an SSCB, the System determines up front whether an order modification could result in a price change before it can properly effect the modification. If the modification is of a type that may result in a price change to comply with Regulation SHO, the

¹⁷ Rule 600(b)(82) of Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." See 17 CFR 242.201(a)(9); 17 CFR 242.600(b)(82).

¹⁸ Rule 201(b)(1) of Regulation SHO requires a Trading Center (e.g., Cboe BZX) to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the national best bid if the price of that covered security decrease by 10% or more from the covered security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day. See 17 CFR 242.201(b)(1).

¹⁹ See, e.g., Nasdaq Rule 4763; NYSE Rule 440B; and Nasdaq's Regulation SHO Frequently Asked Questions (updated March 10, 2011), available at <https://nasdaqtrader.com/content/marketregulation/regsho/regshoFAQs.pdf>.

²⁰ See Exchange Rule 11.13(b)(3)(H). Post to Away is a routing option that routes the remainder of a routed order to and posts such order on the order book of a destination on the System routing table as specified by the User.

²¹ See Exchange Rule 11.13(b)(3)(N). ROOC is a routing option for orders that the entering firm wishes to designate for participation in the opening, re-opening (following a halt, suspension, or pause), or closing process of a primary listing market other than the Exchange (IEX, NYSE, Nasdaq, NYSE American, or NYSE Arca) if received before the opening/re-opening/closing time of such market. If shares remain unexecuted after attempting to execute in the opening, re-opening, or closing process, they are either posted to the BZX Book, executed, or routed to destinations on the System routing table.

²² The Exchange notes that orders routed pursuant to the Post to Away routing option that include a short sale instruction are identified as "short" and are subject to the receiving Trading Center's processes for handling sell short orders in compliance with Rule 201 of Regulation SHO. See Securities Exchange Act Release No. 79149 (October 25, 2016) 81 FR 75464 (October 31, 2016) (SR-BatsBZX-2016-65) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to BZX Rule 11.13, Order Execution and Routing).

²³ See Exchange Rule 11.13(b)(3)(K). RDOT is a routing option under which an order checks the System for available shares and then is sent to destinations on the System routing table. If shares remain unexecuted after routing, they are sent to the NYSE and can be re-routed by the NYSE. If shares remain unexecuted after routing, they are posted to the NYSE, unless otherwise instructed by the User.

²⁴ A "Day Order" refers to a limit order to buy or sell which, if not executed, expires at the end of Regular Trading Hours. See Exchange Rule 11.9(b)(2). Day Orders routed pursuant to the RDOT routing option that include a short sale instruction are identified as "short" and are subject to the receiving Trading Center's processes for handling short sale orders in compliance with Rule 201 of Regulation SHO.

²⁵ An "IOC Order" refers to a limit order that is to be executed in whole or part as soon as such order is received and the portion not immediately executed on the Exchange or another trading center is treated as cancelled and is not posted to the BZX Book. See Exchange Rule 11.9(b)(1).

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ *Id.*

System gives the order a new timestamp. As a result, such a modification from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) always results in a loss of time priority even if the modification did not result in a change of the order's price. Conversely, an order modification from sell long to sell short exempt (or vice versa) does not result in an order losing priority because the System does not conduct an order price analysis to ensure compliance with Rule 201(b)(1)(ii) of Regulation SHO as both sell long and sell short exempt orders may execute at more aggressive prices than sell short orders during an SSCB.

Moreover, the Exchange processes billions of order modifications each month, with only a limited amount of modifications involving a change from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) during an SSCB. Out of the billions of order modifications processed by the Cboe affiliated equity exchanges during the months of May, June, and July 2022, the Exchange identified approximately 369,884 order modifications from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) across the Cboe affiliated equity exchanges during an SSCB that would potentially be affected by the proposed amendment to Rule 11.12(a)(4).²⁹ Given that 369,884 order modifications during an SSCB across the Cboe affiliated equity exchanges is an extremely small percentage of the billions of order modifications that the Cboe affiliated equity exchanges processed during the months of May, June, and July 2022, the Exchange believes that any benefit from restoring priority to this limited amount of order modifications is outweighed by the burden of changing the System to be able to conduct an order price analysis in real time to prevent potential violations of Rule 201(b)(1)(ii) of Regulation SHO and to permit these orders to retain priority.

In addition, the proposed change to Rule 11.12(a)(4) will also protect investors and the public interest because it continues to promote compliance with Regulation SHO, including Regulation SHO's order

marking requirements³⁰ and Users' compliance with any applicable exemptions. Users are currently able to modify their order's position using a Replace Message and the proposed rule change does not alter a User's ability to do so. Users are required to mark their orders properly upon entry and upon modification³¹ and the proposed amendment to Rule 11.12(a)(4) does not change this obligation. As they are required to do today, Users must also continue to ensure that their order complies with any applicable exemption from Regulation SHO that they seek to avail themselves of, not only at the time of entry, but also at the time they change an order's position via a Replace Message.³² The Exchange notes that it will continue to surveil for compliance with Exchange Rules 11.19 and 11.21 as well as Regulation SHO.

The proposed amendment to Rule 11.9(e)(3) is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system because it does not seek to change how order modifications from either sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) are accomplished. Instead, the proposed change provides clarity to Users that a position change from either sell long to sell short exempt (or vice versa) or from sell short exempt to sell short (or vice versa) may be accomplished through the use of a Replace Message and does not require an order to be cancelled and a new order submitted in order to modify an order's position to sell short exempt. The proposed change to Rule 11.9(e)(3) will also provide continuity between Rule 11.9(e)(3) and the proposed changes to Rule 11.12(a)(4), and as such are directly intended to remove impediments to and perfect the

mechanism of a free and open market and national market system.

The proposed change to Rule 11.12(a)(4) removes impediments to and perfects the mechanism of a free and open market and a national market system because it addresses a limited scenario when a User modifies an order's position using a Replace Message during an SSCB. The proposed rule change specifically states that orders whose positions are modified from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) using a Replace Message when an SSCB is not in effect will not receive a new timestamp and will not lose priority as compared to other orders on the BZX Book. Further, the proposed rule change provides that order modifications from sell long to sell short exempt (or vice versa) using a Replace Message will not lose priority as compared to other orders on the BZX Book, regardless of whether an SSCB is in effect. Additionally, the proposed change to Rule 11.12(a)(4) removes impediments to and perfects a free and open market system because it is designed to make clear to Users that orders may be modified using a Replace Message without losing priority subject to the limitations named in Rule 11.12(a)(4). This change does not amend the meaning or operation of Rule 11.12(a)(4).

The proposed changes to Rule 11.13(b)(1) are designed to provide that any sell short order that will post to an away Trading Center will be routed when an SSCB is in effect. In addition, providing Users the ability to send sell short orders that will post to an away Trading Center, and thus are routable when an SSCB is in effect provides them additional flexibility with regard to the handling of their orders, and may provide additional execution opportunities for those orders. Given this, the proposed amendments to Rule 11.13(b)(1) are directly targeted at removing impediments to and perfecting the mechanism of a free and open market and national market system, as well as to assure fair competition among brokers and dealers and among exchange markets.

The proposed change to Rule 11.13(b)(1) further promotes just and equitable principles of trade and perfects a free and open market system by identifying which orders containing routing instructions are eligible to route and post to an away market center during an SSCB. As all Trading Centers are required to comply with Rule 201(b)(1)(ii) of Regulation SHO, a User can expect that an order routed from the Exchange to an away market center will

³⁰ 17 CFR 242.200(g).

³¹ See Exchange Rule 11.19 ("Short Sales"). The rule provides that "[a]ll short sale orders shall be identified as 'short' or 'short exempt' when entered into the System. If marked 'short exempt,' the Exchange shall execute, display and/or route an order without regard to any short sale price test restriction in effect under Regulation SHO. The Exchange relies on the marking of an order as 'short exempt' when handling such order, and thus, it is the entering Member's responsibility, not the Exchange's responsibility, to comply with the requirements of Regulation SHO relating to marking of orders as 'short exempt.'"

³² A change in an order's price or position as well as an increase in an order's size via a Replace Message implicitly results in a new order. All Users must, therefore, ensure continued compliance with the order marking and locate requirements of Regulation SHO (17 CFR 242.201) including compliance with Question 2.6 of the Commission's "Responses to Frequently Asked Questions Concerning Regulation SHO" available at <https://www.sec.gov/divisions/marketreg/mrfraqregsho1204.htm> (last accessed October 3, 2022).

²⁹ When identifying orders impacted by this functionality during May, June, and July 2022, the Exchange broadly identified any orders regardless of whether those orders were at or near the NBBO (i.e., marketable orders) at the time of the event. The Cboe affiliated equities exchanges refers to the Exchange, Cboe BYX Exchange, Inc. ("BYX"), Cboe EDGX Exchange, Inc. ("EDGX"), and Cboe EDGA Exchange, Inc. ("EDGA").

be treated similarly on the away market center as it would on the Exchange during an SSCB. There is no change to the meaning or operation of this rule, but rather an amendment to make clear that an order that is eligible to post to an away market may be routed during an SSCB.

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 as the proposed rule changes are not being proposed for competitive reasons. Rather, the proposed amendment to Rule 11.9(e)(3) provides that modifications from sell long to sell short exempt (or vice versa) or from sell short exempt to sell short (or vice versa) may be accomplished through the use of a Replace Message. This proposed amendment will not change existing System behavior and Users will have more certainty about how orders may be modified, which is related to the proposed changes to Rule 11.12(a)(4). Order modifications from sell long to sell short (or vice versa) use the same Replace Message functionality as a modification from either sell long to sell short exempt (or vice versa) or from sell short exempt to sell short (or vice versa), and amending Rule 11.9(e)(3) to describe this behavior for Users is directly related to the Exchange's proposed changes to Rule 11.12(a)(4) and does not impose a burden on inter-market competition that is not necessary or appropriate in furtherance of the Act.

Additionally, the proposed amendments to Rule 11.12(a)(4) will enhance the transparency of the rules by revising the rule text. By revising the rule text to align with the current System behavior, Users will be aware that if they modify their orders from sell long to sell short (or vice versa) or from sell short exempt to sell short (or vice versa) and an SSCB is in effect, their orders will be given a new timestamp and lose time priority. Users are free to consider this proposed change as part of their overall experience with the Exchange, which also includes execution quality and functionality offerings, when making order routing decisions. Additionally, the Exchange notes that the proposed rule change applies equally to all Users, and all Users' orders are subject to the described functionality, regardless of their size. Users may not opt-out of this System functionality.

Furthermore, this loss of time priority for a position modification would only

occur when an SSCB is in effect and the Exchange is required to comply with Rule 201 of Regulation SHO. The impact of an order modification from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) using a Replace Message during an SSCB with respect to loss of time priority is no different than when a User seeks to increase the size of their order using a Replace Message or when a User seeks to change the position of their order by cancelling the existing order and entering a new order. In each instance, the order will receive a new timestamp reflecting the time the modification was made and the order would lose priority as compared to other orders on the BZX Book.

Furthermore, the proposed change to Rule 11.12(a)(4) does not impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the Act in that the proposed change does not present a novel approach to sell short order handling. Indeed, the proposed changes to Rule 11.12(a)(4) are consistent with a recently approved amendment³³ to MIAX Pearl Rule 2616(a).³⁴ Pursuant to MIAX Pearl Rule 2616(a), any position modification involving a change from sell long to either sell short exempt or sell short (or vice versa) will result in the order receiving a new timestamp and the order losing priority, as compared to other orders resting on the book while an SSCB is in effect. The Exchange's proposed Rule is also similar to MIAX Pearl Rule 2616(a) in that modifications from sell long to sell short (or vice versa) and modifications from sell short exempt to sell short (or vice versa) will be subject to a loss of priority during an SSCB.

While the proposed rule change is substantially similar to that of MIAX Pearl, the Exchange's proposal differs in that its proposal would not cause orders modified from sell long to sell short exempt (or vice versa) to lose priority during an SSCB, whereas MIAX Pearl Rule 2616(a) specifically states that a change from sell long to sell short exempt is a type of order modification that would be subject to a loss of

priority during an SSCB. The Exchange's System does not view an order modification from sell long to sell short exempt (or vice versa) as a type of change which requires an order price analysis in order to prevent potential violations of Rule 201(b)(1)(ii) of Regulation SHO, and as such does not cause these types of order modifications to result in a loss of priority.

In addition, the proposed rule change is more narrowly tailored than the rules of Investors Exchange LLC ("IEX"), which requires market participants to enter a new order where an order's position is changed even when an SSCB is not in effect³⁵ and Nasdaq Stock Market, LLC ("Nasdaq"), which requires orders to be cancelled if the order's position is redesignated as short during a Short Sale Period and the order is not priced at a Permitted Price or higher under Nasdaq Rule 4763(e).³⁶ In each instance mentioned above, the original order would need to be replaced with a new order and therefore would receive a new timestamp which would result in a loss of priority. The Exchange is seeking to only append a new timestamp and cause a loss of priority as compared to other orders on the BZX Book when an order's position is modified from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) during an SSCB, which is more narrowly-tailored than the rules governing similar order behavior on MIAX Pearl, IEX and Nasdaq.

Furthermore, the proposed change to Rule 11.13(b)(1) does not impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the Act as it makes clear that orders that may post to away market centers will be routed during an SSCB. Users will have the ability to take this factor into consideration when determining which routing strategy to use when entering an order on the Exchange and are able to consider this proposed change as part of their overall experience with the Exchange. If a User disfavors this proposed change they are free to use a different routing strategy or submit an order directly to an away market center. This proposed change is not being proposed for competitive reasons, but rather to make clear that any order eligible to be posted to an away market center will be routed during an SSCB. As each market center is required to comply with Rule 201 of Regulation SHO, the Exchange believes that any order eligible to be posted to an

³³ *Supra* note 8.

³⁴ MIAX Pearl Rule 2616(a) states: "[i]n the event an order has been modified via a Cancel/Replace message in accordance with Rule 2614(e) above, such order only retains its timestamp if such modification involves a decrease in the size of the order, a change to the Max Floor of an order with a Reserve Quantity, or when a Short Sale Period, as defined in Exchange Rule 2614(g)(3)(A), is not in effect, a change in position from (A) sell to sell short; (B) sell to sell short exempt; (C) sell short to sell; (D) sell short to sell short exempt; (E) sell short exempt to sell; and (F) sell short exempt to sell short."

³⁵ See IEX Rule 11.190(d)(3) and IEX Rule 11.190(d)(4).

³⁶ See Nasdaq Equity 4, Rule 4756(a)(3).

away market center should be permitted to route, as the order would be subject to the away market center's rules regarding compliance with Rule 201 of Regulation SHO upon posting.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act³⁷ and Rule 19b-4(f)(6) thereunder.³⁸

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³⁹ 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. The Exchange states the proposed rule change provides clarity on how orders modified to sell short exempt are accomplished and the priority of orders marked sell short exempt. The Exchange believes that the proposed rule change related to modifications from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) that occur during an SSCB will affect only a small percentage of overall order modifications.⁴⁰ Finally, the Exchange states that the proposed change to Rule 11.11(a) will permit orders containing routing instructions entered by all Users that would post to an away market during an SSCB to route to away market centers immediately upon becoming operative. The Commission believes that

waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.⁴¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2023-012.

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-2023-012. 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 (<http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2023-012, and should be submitted on or before March 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴²

J. Matthew DeLesDernier,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96979; File No. SR-ISE-2023-08]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Proposed Rule Change To Make Permanent Certain P.M.-Settled Pilots

February 24, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 23, 2023, Nasdaq ISE, LLC ("ISE" 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 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 proposes to make permanent the pilot to permit the listing and trading of options based on 1/5 the value of the Nasdaq-100 Index

³⁷ 15 U.S.C. 78s(b)(3)(A).

³⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁹ 17 CFR 240.19b-4(f)(6)(iii).

⁴⁰ See *supra* note 29.

⁴¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁴² 17 CFR 200.30-3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(“Nasdaq-100” or “NDX”) and the Exchange’s nonstandard expirations pilot program which are both currently set to expire on May 4, 2023.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, 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 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

ISE proposes to make permanent 2 pilots, which are both set to expire on May 4, 2023: (1) the Exchange’s pilot to permit the listing and trading of options based on $\frac{1}{5}$ the value of the Nasdaq-100 Index (“NQX Pilot”), and (2) the Exchange’s nonstandard expirations pilot program (“Nonstandard Pilot”).

NQX Pilot

ISE filed a rule change to permit the listing and trading of index options on the Nasdaq 100 Reduced Value Index (“NQX”) on a twelve month pilot basis.³ NQX options trade independently of and in addition to NDX options, and the NQX options are subject to the same rules that presently govern the trading of index options based on the Nasdaq-100, including sales practice rules, margin requirements, trading rules, and position and exercise limits. Similar to NDX, NQX options are European-style and cash-settled, and have a contract multiplier of 100. The contract specifications for NQX options mirror in all respects those of the NDX options contract listed on the Exchange, except that NQX options are based on $\frac{1}{5}$ of the value of the Nasdaq-100, and are p.m.-

settled pursuant to Options 4A, Section 12(a)(6).

The Exchange proposes to amend ISE Options 4A, Section 12(a)(6)(i) to make permanent the current NQX Pilot. The NQX Pilot was extended various times with the last extension through May 4, 2023.⁴ The Exchange continues to have sufficient capacity to handle additional quotations and message traffic associated with the listing and trading of NQX options. In addition, index options are integrated into the Exchange’s existing surveillance system architecture and are thus subject to the relevant surveillance processes. The Exchange also continues to have adequate surveillance procedures to monitor trading in NQX options thereby aiding in the maintenance of a fair and orderly market. Additionally, there is continued investor interest in NQX.

Nonstandard Pilot

ISE filed a proposed rule change for the listing and trading on the Exchange, on a twelve month pilot basis, of p.m.-settled options on broad-based indexes with nonstandard expirations dates.⁵ The Nonstandard Pilot permits both Weekly Expirations and End of Month (“EOM”) expirations similar to those of the a.m.-settled broad-based index options, except that the exercise settlement value of the options subject to the pilot are based on the index value derived from the closing prices of component stocks. The Nonstandard Pilot was extended various times with the last extension through May 4, 2023.⁶

⁴ See Securities Exchange Act Release Nos. 86071 (June 10, 2019), 84 FR 27822 (June 14, 2019) (SR-ISE-2019-18); 87379 (October 22, 2019), 84 FR 57793 (October 28, 2019) (SR-ISE-2019-27); 88683 (April 17, 2020), 85 FR 22768 (April 23, 2020) (SR-ISE-2020-18); 90257 (October 22, 2020), 85 FR 68387 (October 28, 2020) (SR-ISE-2020-33); 91485 (April 6, 2021), 86 FR 19052 (April 12, 2021) (SR-ISE-2021-05); 93448 (October 28, 2021), 86 FR 60717 (November 3, 2021) (SR-ISE-2021-22); 94632 (April 7, 2022), 87 FR 21940 (April 13, 2022) (SR-ISE-2022-09); and 96177 (October 28, 2022), 87 FR 66335 (November 3, 2022) (SR-ISE-2022-23).

⁵ See Securities Exchange Act Release No. 82612 (February 1, 2018), 83 FR 5470 (February 7, 2018) (approving SR-ISE-2017-111) (Order Approving a Proposed Rule Change to Establish a Nonstandard Expirations Pilot Program).

⁶ See Securities Exchange Act Release Nos. 85030 (February 1, 2019), 84 FR 2633 (February 7, 2019) (SR-ISE-2019-01); 85672 (April 17, 2019), 84 FR 16899 (April 23, 2019) (SR-ISE-2019-11); 87380 (October 22, 2019), 84 FR 57786 (October 28, 2019) (SR-ISE-2019-28); 88681 (April 17, 2020), 85 FR 22775 (April 23, 2020) (SR-ISE-2020-17); 90265 (October 23, 2020), 85 FR 68605 (October 29, 2020) (SR-ISE-2020-34); 91486 (April 6, 2021), 86 FR 19048 (April 12, 2021) (SR-ISE-2021-06); and 93449 (October 28, 2021), 86 FR 60679 (November 3, 2021) (SR-ISE-2021-23); 94632 (April 7, 2022), 87 FR 21940 (April 13, 2022) (SR-ISE-2022-09); and 95992 (October 6, 2022), 87 FR 62163 (October 13, 2022) (SR-ISE-2022-20).

Supplementary Material .07(a) to Options 4A, Section 12 provides that the Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). Weekly Expirations are subject to all provisions of Options 4A, Section 12 and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations are p.m.-settled.

Pursuant to Supplementary Material .07(b) to Options 4A, Section 12 the Exchange may open for trading EOM expirations on any broad-based index eligible for standard options trading to expire on the last trading day of the month. EOM expirations are subject to all provisions of Options 4A, Section 12 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, the EOM expirations are p.m.-settled.

At this time, the Exchange proposes to make permanent the Nonstandard Pilot. The Exchange has sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them. Additionally, there is continued investor interest in these products.

In support of the permanency of the NQX Pilot and the Nonstandard Pilot, the Exchange empirically assessed the impact of p.m.-settled NDX options on options market quality and examined market capacity around the market close.⁷ Specifically, the Exchange analyzed trading volume, open interest, spreads, and closing auction volumes. In recent years, ISE has implemented changes and introduced new types of index options tied to the Nasdaq-100 Index® (ticker symbol “NDX”). This report presents a set of empirical findings relating the impact of these changes, submitted in support of a request for permanency of the NQX Pilot and the Nonstandard Pilot.

⁷ This includes p.m.-settled products trading on ISE (NQX Pilot and the Nonstandard Pilot) as well as p.m.-settled products trading on Phlx (XND Pilot and the Nonstandard Pilot). Phlx filed a similar request for permanency of its p.m.-settled pilots. See SR-Phlx-2023-04 (not yet noticed).

³ See Securities Exchange Act Release No. 82911 (March 20, 2018), 83 FR 12966 (March 26, 2018) (SR-ISE-2017-106) (Approval Order).

A general timeline of events since 2017 is as follows:

- In January 2017, the Exchange discontinued licensing agreements with competing options exchanges for the listing and trading of NDX options. This discontinuation led to a gradual reduction in the number of NDX expiries listed on these exchanges. By 2019 trading in NDX-related options therefore became exclusively done on three Nasdaq-affiliated exchanges: Nasdaq Phlx, LLC (“Phlx”), ISE, and Nasdaq GEMX, LLC (“GEMX”).

- In January 2018, the expiration of NDX options on Fridays, other than the third Friday-of-the-month, was changed from a.m.-settled to p.m.-settled. Third-Friday expirations continued to be a.m.-settled as before. The p.m.-settled index options were given the new trading symbol “NDXP”. These contracts were exclusively listed on Phlx and ISE.

- In June 2018, a new contract was introduced based on the Nasdaq-100 Index but with reduced notional value. The underlying index of the new contract, symbol “NQX,” was set at one-fifth the value of the NDX (with contract multiplier remaining at \$100). This contract trades exclusively on ISE, and is p.m. settled on Fridays.

- In September 2018, a p.m.-settled index option, “NDXP,” was introduced that expired on Wednesdays of each week. It was listed exclusively on Phlx and ISE.

- In February 2020, a p.m.-settled NDXP index option was introduced that expired on Mondays of each week. It was listed exclusively on Phlx and ISE.

- In April 2021, a second reduced value contract was introduced. The underlying index, “XND”, is set at one-hundredth (1%) of the NDX (with contract multiplier remaining at \$100). The notional value is therefore equal to the level of the Nasdaq-100 Index. This contract trades on Phlx and is p.m.-settled.

- On July 29, 2022, ISE received approval to list and trade p.m.-settled NDX index options that expire on Tuesday or Thursday under its Nonstandard Expirations Pilot Program.⁸

- On October 3, 2022, ISE commenced listing p.m.-settled quarterly option on the Nasdaq-100 Index.

Following terminological convention, the Exchange refers to the traditional third Friday expiration series as “monthly” contracts, while the other

series are referred to as “weekly” contracts. In this report, the new p.m.-settled index options will be written as NDXP-Fri, NDXP-Wed, and NDXP-Mon based on their expiration day. The NDX contracts that formerly expired on Fridays, other than the third Friday-of-the-month, will be referred to as NDX-Weekly, indicating their status as weekly contracts. The monthly third Friday NDX contract will be denoted NDX-Monthly. NQX and XND are considered weekly contracts. It may be noted that when Friday is a market holiday, the expiration moves to the prior Thursday.⁹ When Wednesday is a holiday, expiration of Wednesday contracts moves forward to Tuesday. When Monday is a holiday, Monday expirations move back to Tuesday.¹⁰

The purpose of this report is to empirically assess the impact of these changes on NDX options markets, with a special focus on the market quality of the incumbent a.m.-settled NDX index options and market capacity around the market close. The Exchange provides a comprehensive analysis in this report on the impact of p.m.-settled index options on a.m.-settled NDX index options, including option trading volume, option open interests and option liquidity.¹¹ In assessing the impact of the innovations on market quality, the Exchange uses options on the Invesco QQQ Trust Series 1 (“QQQ”) ¹² as a control group. While activity in QQQ options would capture trading interest in the Nasdaq-100 Index generally and may reflect market conditions, it would be largely unaffected by the innovations considered in this report. QQQ options include monthly third Friday expirations, weekly non-third Friday expirations, and contracts expiring the end of the quarter.¹³

Historically there have been concerns that p.m.-settled index options could result in increased market and price volatility in the underlying component stocks, due to the unwinding of hedge-related positions at the close on expiration. A study conducted on behalf of the Securities and Exchange Commission’s Division of Economic and Risk Analysis ¹⁴ shows that the market

share for p.m.-settled options on S&P 500® Index has grown substantially since 2007. As the expiration date for p.m.-settled index options is more scattered compared to that for a.m.-settled options, only a smaller percentage of open interest expires on each date. As a result, p.m.-settled index option expirations are unlikely to cause any disruptive effect on the market. The DERA Staff PM Pilot Memo also shows that expiring open interest of a.m.-settled options may have had an economically small impact on the volatility of the Nasdaq-100 index around the open.¹⁵ The DERA Staff PM Pilot Memo further shows that, although p.m.-settled index option trading volume may have a statistically significant relationship with the volatility of the underlying index around the market close, the economic significance was generally small. In its report, the Exchange provides additional analysis on market capacity around the market close. As the closing auction price is the most widely used reference price for mutual funds and for many exchange-traded products, closing auction volume has grown substantially in recent years. In this report, the Exchange shows that the closing auction volume on the equity market have become much larger than the opening auction, which may indicate that there is sufficient liquidity in closing auctions to absorb liquidity demand associated with p.m.-settlement of NDX and NQX index options.

In addition to analysis on closing auctions, the report presents findings on three market characteristics: trading volume, open interest, and spreads. The Exchange finds that the trading volume and the notional open interests for options that had NDX and NQX as the underlying increased during our sample period. In conclusion, there is no evidence that NDX and NQX options contracts, which are p.m.-settled, would result in reduced trading activity or degradation in market quality of the a.m.-settled index options.

Memorandum, Cornerstone Analysis of PM Cash-Settled Index Option Pilots (February 2, 2021) (“DERA Staff PM Pilot Memo”), available at: <https://www.sec.gov/dera/staff-papers/studies-and-reports/analysis-of-pm-cash-settled-index-option-pilots>.

¹⁵ Table 20 of the DERA Staff PM Pilot Memo suggests that a \$10 billion increase in option settlement quantity is associated with an increase in absolute return of 0.025% near the open. The report also shows that expiring open interest of a.m.-settled options had no significant impact on the volatility of the underlying index near the open for the S&P 500 Index.

⁸ The Exchange notes that Tuesday and Thursday weeklies on the Nasdaq-100 Index have been trading for less than one month. See <http://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2022-26>.

⁹ See Supplementary Material .07(a) of ISE Options 4A, Section 12.

¹⁰ *Id.*

¹¹ Today, NDX options are a.m.-settled and p.m.-settled.

¹² Invesco QQQ™ is an exchange-traded fund based on the Nasdaq-100 Index.

¹³ For the purpose of spread analysis we match on option price, moneyness category, time to maturity and option’s expiration month.

¹⁴ See Securities and Exchange Commission, Division of Economic Risk and Analysis,

Analysis of Volume

The introduction of p.m.-settled index options and its impact on the trading activity of a.m.-settled options is likely the single most important factor under consideration. Volume is the primary indicator of trading interest and it drives market quality to a large extent. Consolidated volume information is available from The Options Price Reporting Authority (“OPRA”), the

source of information used in this section. The sample period used for this report is 2017 through April 2022.

Consolidation of Trading on Nasdaq Affiliated Exchanges

As noted above, trading in NDX options began to consolidate exclusively onto Nasdaq-owned affiliated exchanges starting in 2017; the impact on volume was not immediate. Since January 2017, non-Nasdaq exchanges ceased listing

new NDX options series, but continued with previously listed NDX options. The following table shows the percentage of NDX options contract volume traded on non-Nasdaq exchanges, which at the time included Cboe Exchange, Inc. (“Cboe”), NYSE American LLC, and NYSE Arca, Inc. Of these three markets, Cboe was the largest in volume. The Nasdaq affiliated exchanges trading NDX options were Phlx, ISE and GEMX.

TABLE 1—NDX VOLUME ON NON-NASDAQ EXCHANGES

Year	Quarter	Non-Nasdaq share %
2017	1	22.2
	2	16.4
	3	2.2
	4	5.5
2018	1	0.3
	2	0.7
	3	0.1
	4	4.2

By 2018 volume on the non-Nasdaq exchanges had largely disappeared. The surge in volume during the final quarter of 2018 was likely due to the end-of-year final closing of positions—note the similar bump in 2017. There was no

NDX options volume from non-Nasdaq exchanges after 2018.

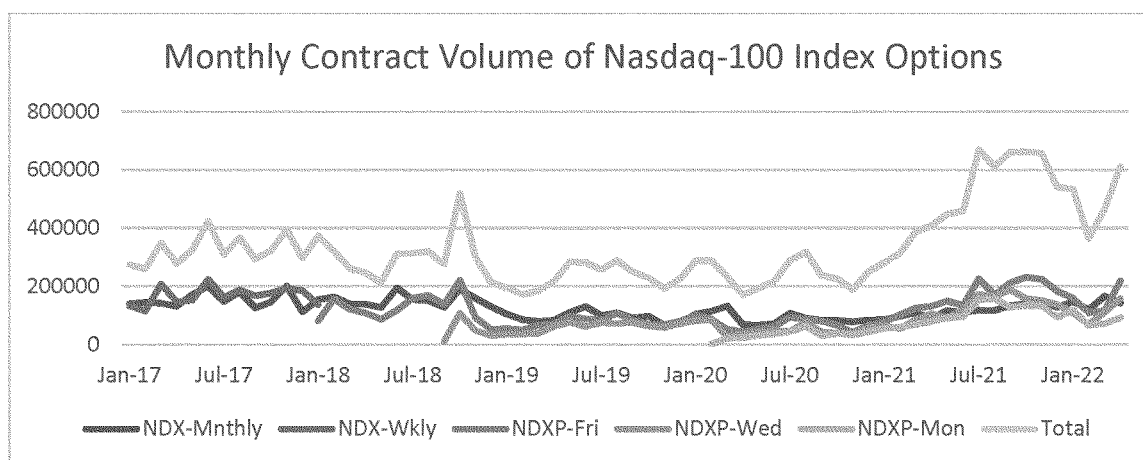
Contract Volume and Notional Volume

Contract volume in the regular-sized Nasdaq-100 Index contracts may be broken down into five time series: (1)

the incumbent NDX-Monthly;¹⁶ (2) the NDX-Weekly contract transitioning to NDXP-Fri;¹⁷ and (3) the introduction of NDXP-Wed and NDXP-Mon.¹⁸ The following graph shows monthly totals for each of these five groups.¹⁹

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Figure 1. Monthly Contract Volume of Nasdaq-100 Index Options



A number of observations can be drawn from the graph.

- The overall total contract volume remained almost flat until the pandemic market recovery started in the Spring of

2020. From Fall 2020 forward there has been substantial growth in volume. It appears that most of the recent growth has come from the NDX-Weekly contracts.

- The volumes of NDX-Monthly and NDX-Weekly were roughly equivalent during 2017. This is noteworthy for the fact that for any given month there would usually be at least three, and

¹⁶ As noted herein, this refers to the monthly third Friday a.m.-settled NDX contract.

¹⁷ As noted above, this refers to the p.m.-settled NDX contracts that formerly expired on Fridays, other than the third Friday-of-the-month.

¹⁸ NDXP-Wed and NDXP-Mon are the p.m.-settled NDX contracts expiring on Wednesday and Monday, respectively.

¹⁹ The full data supporting the graph is shown in the appendix.

sometimes four times, the number of front-month expiries for the weekly contract. The Exchange can infer, then, that the monthly contracts tend to have substantially higher volume per series than the weekly contracts.

- When NDX-Weekly transitioned to NDXP-Fri, the volume relationship with NDX-Monthly remained roughly the same.

- Soon after launch, the NDXP-Wed contracts achieved volume levels not

much lower than the NDXP-Fri contracts, and, in turn, not much lower than the monthly contracts.

- Soon after launch, the NDXP-Monday contracts achieved volume levels not much lower than the NDXP-Fri contracts, and, in turn, not much lower than the monthly contracts.

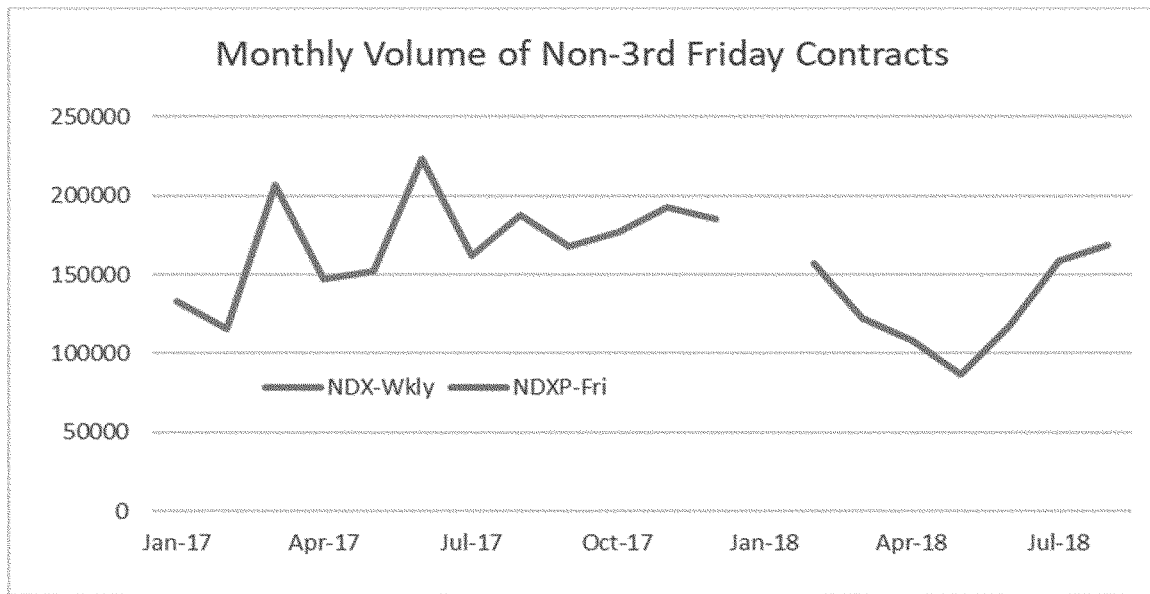
- By the end of the sample period, each of the four remaining contract types had roughly the same value (again

recognizing the differing number of expiries).

Each of the current contract types garner substantial trading volume.

Regarding the NDX-Weekly/NDXP-Fri transition, Figure 2, which ends in August 2018, takes a closer look at the timeframe immediately prior to the launch of NDXP-Wed. The transition month of January 2018 is not shown (both contract types had volume during January).

Figure 2. Monthly Volume of Non-3rd Friday Contracts

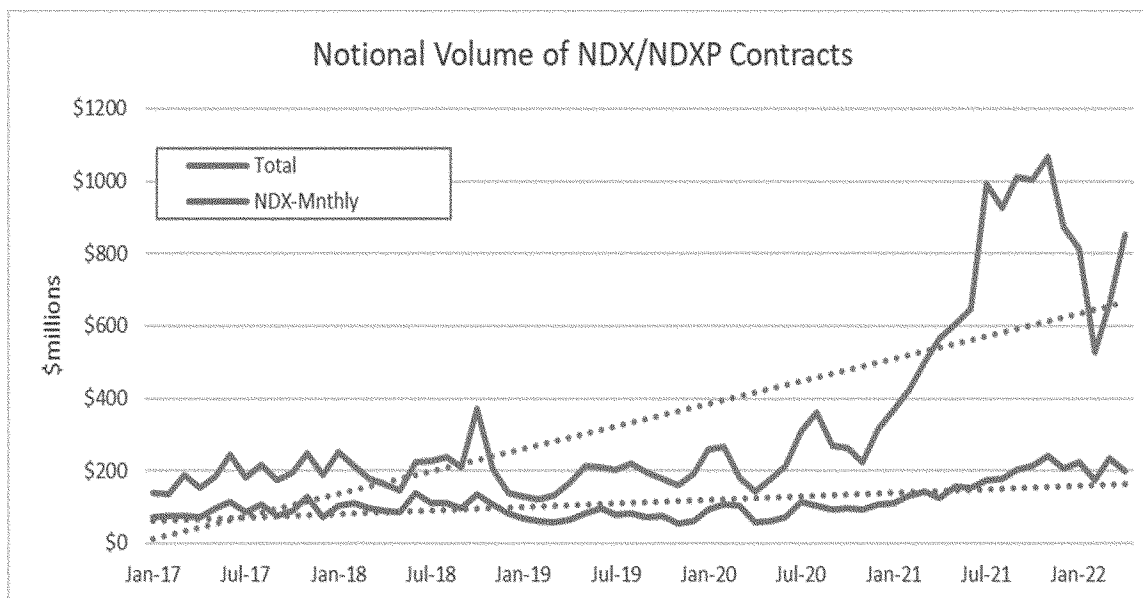


Though NDXP-Fri volume was relatively low in May 2018, there is no sign of a substantial sustained drop in volume accompanying the transition.

During the timeframe under consideration in this report there has been a remarkable increase in the level of the Nasdaq-100 Index, a rough tripling of the index from early 2017 to

April 2022. The notional value of a regular-sized contract is \$100 times the level of the index, and so it has tripled during the sample period, and is currently roughly \$1.3 million. In light of these changes, it is useful to consider volume from the perspective of notional value traded rather than contracts.

Figure 3 shows the sum of monthly notional value traded for NDX-Monthly and for the total of all five of the contract types. The notional value traded was computed as the sum of contracts traded times the monthly average value of the Nasdaq-100 Index times \$100. The graph also shows linear trend lines for each time series.

Figure 3. Notional Volume of NDX/NDXP Contracts

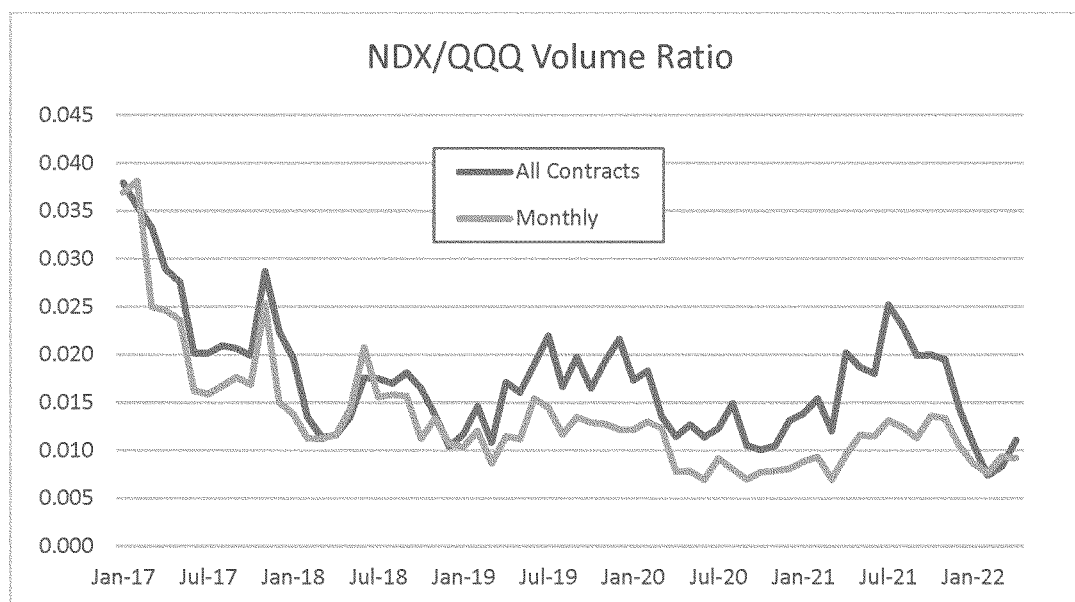
It appears that while the notional volume of the incumbent monthly contract has been flat, the total volume of all contract types exhibit a positive trend, with remarkable growth since the Fall of 2020. It appears, therefore, that the introduction of p.m.-settlement is associated with an increase in NDX options trading.

Comparison With QQQ Volume

The positive volume trend may be due to the remarkable performance of

the Nasdaq-100 Index during this timeframe. To rule out this alternative explanation, the exchange compare the volume in NDX/NDXP index options to QQQ ETF options. It is worth noting that the notional volume of a QQQ option contract has been much lower than that of an index option. During the sample period, the average notional value of an index option contract was about \$936,000, while a single QQQ contract had notional value of about \$23,000.

Figure 4 presents a time series of the ratio of the sum of monthly contract volume in the indicated index option contracts to the sum of contract volume in QQQ options. For NDX-Monthly index options, only QQQ volume from third Friday expiring contracts was used. Since both the index and ETF options have the same underlying index, the observed trend is similar if notional volumes were used instead.

Figure 4. NDX/QQQ Volume Ratio

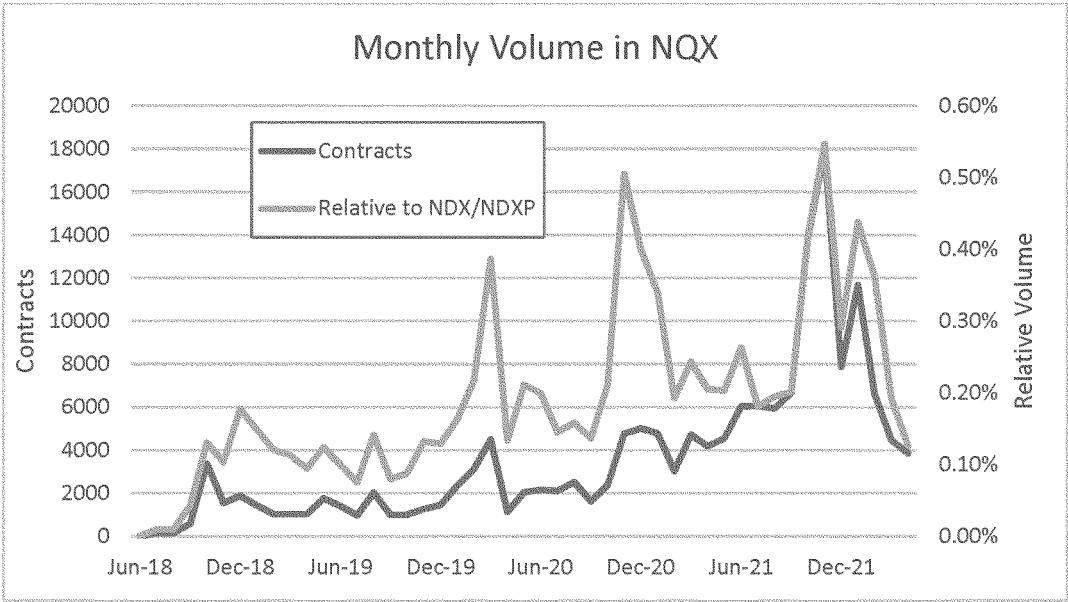
The graph shows a substantial decline in the relative level of the index option volume during 2017. This decline is too large to be explained by the reduction in the share of options trading on non-Nasdaq exchanges. The decline stabilized at the start of 2018.

NQX Volume

In spite of the very high notional volume of NDX/NDXP options, volume in the reduced-value NQX options has never been higher than NDXP trading volume (perhaps due to the availability of QQQ options). Figure 5 shows

monthly volume for all NQX contracts. Shown are both the volume in terms of contracts traded, as well as NQX volume relative to the total volume of NDX/NDXP contracts. For the latter calculation, the NQX contract volume was divided by 5 to reflect its reduced notional value.

Figure 5. Monthly Volume in NQX



Since launch, NQX volume has grown, both in absolute terms and relative to NDX/NDXP volume. The period of extreme market volatility surrounding the pandemic crisis in the Spring of 2020 led to a volume spike, as did the market recovery of the Fall of 2020. Even so, the relative level of NQX volume was very low relative to that of the regular-valued indexes. Due to the low level of NQX volume, it seems unlikely that its introduction had a significant impact on the market quality of the full-sized NDX contracts. Therefore, no further analysis was attempted on NQX options.

XND Volume

Trading in XND options contracts is relatively new.²⁰ The following table

shows XND monthly contract volume for the first year of trading.

Table 2. XND Trading Volume

Apr 2021	292
May 2021	1,128
Jun 2021	4,334
Jul 2021	6,452
Aug 2021	3,222
Sep 2021	5,319
Oct 2021	3,860
Nov 2021	2,700
Dec 2021	2,492
Jan 2022	4,941
Feb 2022	3,634
Mar 2022	6,593
Apr 2022	12,990

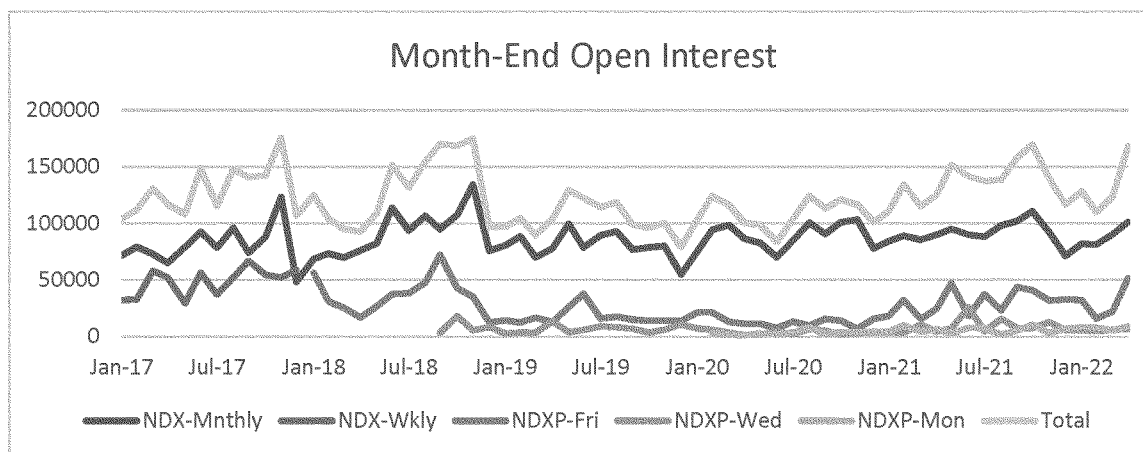
The low level of XND options volume suggests that the introduction of XND did not have a noticeable impact on the trading of the incumbent NDX/NDXP contracts.

Analysis of Open Interest

The Exchange next considered trends in open interest for the Nasdaq-100 Index options. The Options Clearing Corporation (“OCC”) data was utilized as source data for this analysis. Open interest measures positions held overnight; positions that are established and closed during the day are not captured.

Figure 6 shows the open interest, in contracts, as of the last trading day of the indicated month.

²⁰ As noted herein, XND began trading in April 2021.

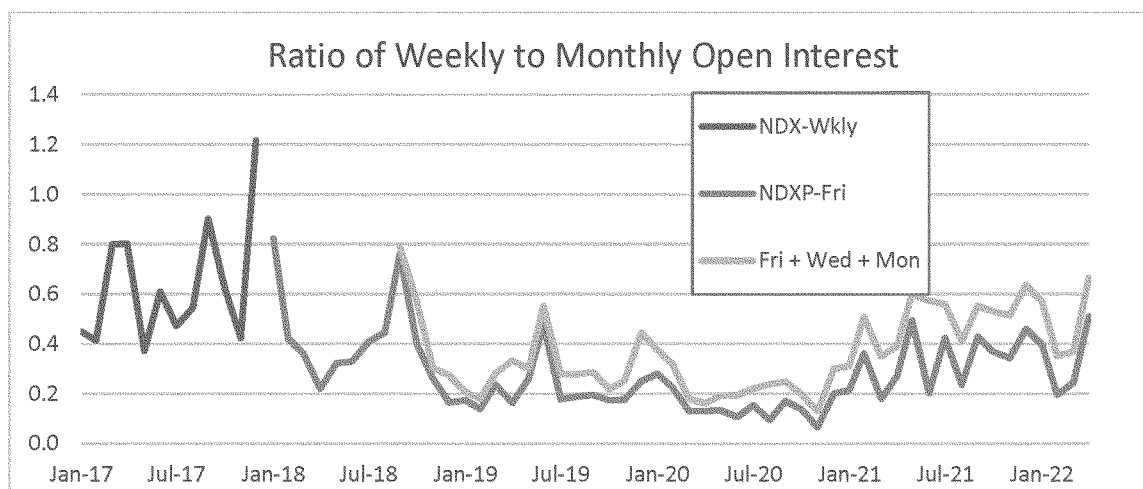
Figure 6. Month-End Open Interest

The open interest in NDX-Monthly is remarkably stable during this timeframe, and is substantially higher than that of the weekly contracts. After transitioning to p.m.-settlement, the open interest in NDXP-Fri contract started to decline

while it increased in the second half of 2022. The open interest in the Wednesday and Monday contracts has always been relatively low.

Further insight is shown in the following graph, which shows the ratio

of open interest in weekly contracts to that of the monthly contract (that is, the open interest sum of NDX-Weekly, NDXP-Fri, -Wed, and Mon divided by the open interest in NDX-Monthly).

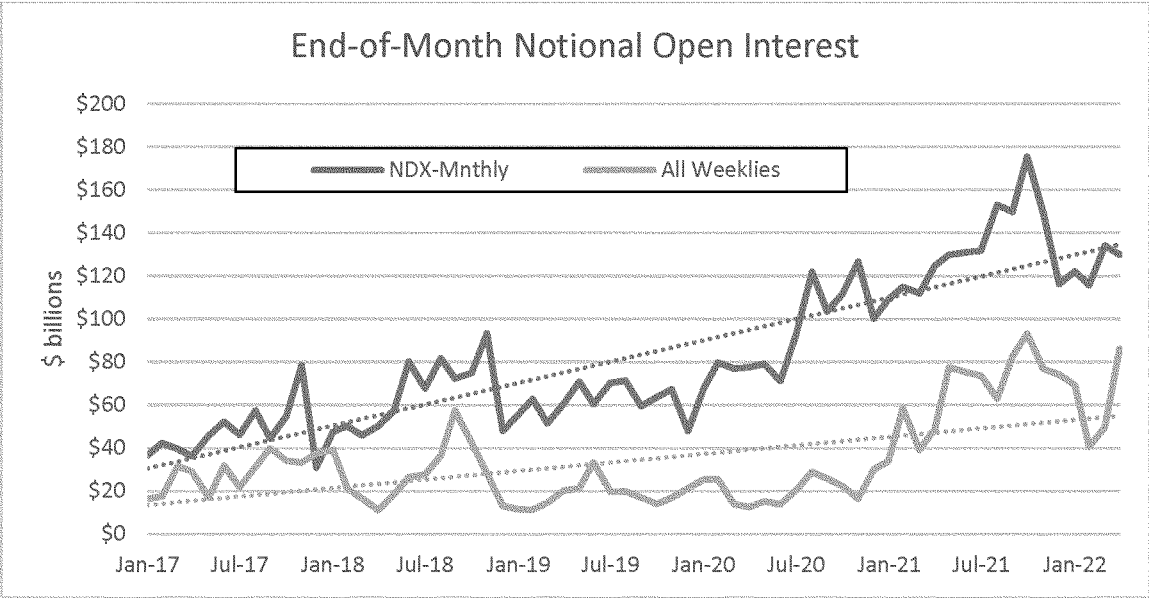
Figure 7. Ratio of Weekly to Monthly Open Interest

The graph shows a clear decline in the ratio of weekly to monthly open interest, starting at the beginning of 2018, but the declining trend stabilized at the end of Q1 2018. When considered with the volume information shown above, this may be because options traders with longer holding horizons may be more likely to trade the monthly

contract, while those with shorter intra-day positions are more likely to use the weekly contracts. This tendency is reflected in the listing of expiries. At any given time, expirations out to a year or more are available for the monthlies, while expirations only out a month or so are available for the weeklies.

As noted above, the notional value of Nasdaq-100 Index options has roughly tripled during this timeframe. It is therefore useful to consider the trends in open interest from a notional perspective, as shown in the following graph.

Figure 8. End of Month Notional Open Interest

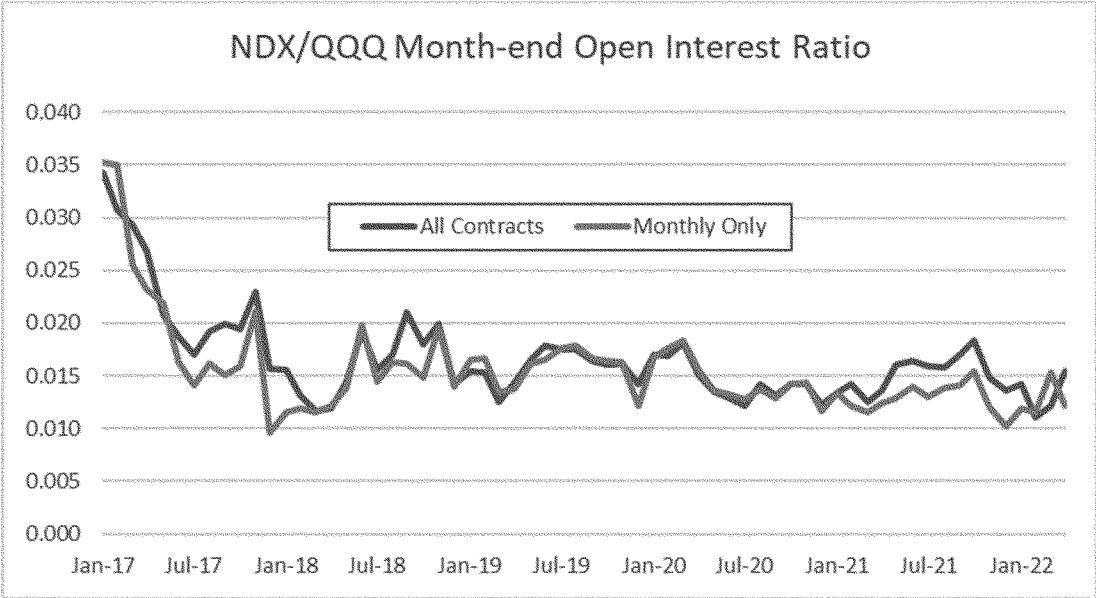


A clear positive trend is evident for the monthly contract in terms of notional value. The weeklies showed a flat trend that has increased since the Fall of 2020.

As discussed above, we designate QQQ options as a control group for our analysis. Figure 9 shows the ratio (in contracts) of Nasdaq-100 Index options to QQQ options. As noted herein, the

trend is unaffected when measuring open interest in contracts or notional value. The graph shows the ratio for monthly contracts for NDX and QQQ, as well as for NDX/NDXP and QQQ.

Figure 9. NDX/QQQ Month-End Open Interest Ratio



This graph closely mirrors the volume graph shown above in Figure 9. There was a distinct decline during 2017 in month-end open interest, but the trend stabilized at the start of 2018 and has remained flat since then.

Analysis of Spreads

An important dimension of market quality is the cost of trading. Following Holden and Jacobsen (2014),²¹ the

Exchange used duration weighted relative quoted spread as a measure of the cost of trading. In this section, the Exchange examines whether there is any deterioration of spreads to a.m.-settled

²¹ See Holden, C. and Jacobsen, S., 2014, Liquidity Measurement Problems in Fast, Competitive Markets: Expensive and Cheap

Solutions. Journal of Finance. 69, 1747–17852 (<https://onlinelibrary.wiley.com/doi/abs/10.1111/jofi.12127>).

Nasdaq-100 Index options by introducing p.m.-settled index options. A particular challenge for measuring quoted spreads is created by the large number of options series tied to a particular underlying. In addition to the range of expiries, a given expiration will have many available strike prices. This set of combinations then is doubled by considering calls and puts. Many listed options series will be very infrequently traded. For example, at the start of the sample period on January 3, 2017, there were 3,720 individual options series that had NDX as the underlying, made up from 14 expiration dates and 382 strike prices. Of these listed options series, only 458 had traded volume on that date, with 233 options series with volume of at least 10 contracts. Nearer to the end of the sample period, on April 29, 2022, there were 16,624 listed options series with NDX or NDXP as the underlying, consisting of 33 expiration dates and 675 strikes. Of the listed options series, 2,192 had some volume and 538 had volume of at least 10 contracts.

To assess the trend in the relative NBBO quoted spread, the Exchange limited the number of options series under consideration by reviewing spreads in the front-month contracts

(contract nearest expiration) on the first trading day of each month.²² The Exchange considered an NBBO quotation to be “live” and used in the computation when the National Best Offer (NBO) was non-zero.

In the following section, the Exchange shows the impact of the introduction of p.m.-settled index options on the liquidity of NDX contracts by showing the average monthly NDX spread over time (in Figure 10) as well as comparing the trend of relative quoted spread of NDX contracts with that of QQQ contracts (Figures 11 and 12). Figure 10 shows the average monthly relative quoted spread for all options with NDX as the underlying. To better reflect the trend of the relative quoted spread, the Exchange plotted the average relative quoted spread benchmarked against (subtracted by) the average spread of 2017 as the dotted line in Figure 10. The dotted vertical line highlights the time when p.m.-settled index options were introduced. Specifically, the time series in the dotted line was computed using the following steps. First, the Exchange calculated the duration weighted average relative quoted spread for each contract on each day. Second, the Exchange took the average of the above

daily spread across all contracts with NDX as the underlying for each day. Third, the Exchange calculated the average relative quoted spread for all months in 2017. Finally, the 2017 average was subtracted from the monthly average to create a time series dataset. As can be seen from the plot, a consistent decrease in the relative quoted spread is prevalent from 2017 to 2022 and most importantly, there is no obvious change in the trend following the introduction of p.m.-settled index options.

Although the above method is intuitive, it is well known that the option premia are correlated with option characteristics such as expiry, strike price, and whether the contract is a put or a call option. Also, option premia tend to increase when the expected volatility of the underlying asset increases, and premia increase may in turn cause the spread to increase. Inspired by Kaul, Nimalendran and Zhang (2004)²³ and Albuquerque, Song and Chen (2020),²⁴ the Exchange also employed the following regression model to control for factors related to option characteristics unrelated to the NQX Pilot and the Nonstandard Pilot:²⁵

$$\text{Spread} = \alpha + \text{InverseofPrice} + \text{Call/Put Dummy} + \text{Expiry} + \text{Moneyness} \\ \text{Categories} + \text{Month Fixed Effect} + \varepsilon \quad (1)$$

In the above model, *Spread* is the relative quoted spread. *InverseofPrice* is the inverse of the option price. *Call/Put Dummy* is a dummy variable that equals 1 for call options and 0 otherwise. *Expiry* is the number of the days to the expiration date. *Moneyness* is a dummy variable for moneyness category of each option. Specifically, all option contracts were classified into 5 moneyness categories. The moneyness for call options was calculated as:

$$\frac{S - X}{X} * 100\%$$

and

$$\frac{X - S}{X} * 100\%,$$

for put options, where “S” is the stock price and “X” is the exercise price. The cut-offs for the five moneyness groups were: –30%; –10%; 10%; and 30%. Month Fixed Effect is a dummy variable for each month.

In constructing the plot, the coefficients for those month fixed effects were adjusted. The raw coefficients for each month were collected from the

regression output. The first month in the sample, January 2017, implicitly had a coefficient of zero. The average coefficient for the 12 months in 2017 was then calculated. Finally, the average coefficients across all 12 months in 2017 were subtracted from the raw coefficients to create a time series dataset, which is depicted as the unbroken line in Figure 10.

As can be seen from the plot, there is a steady decrease in the relative quoted spread for NDX option contracts. The average relative quoted spread for NDX contracts decreased by about 30%–40% from the beginning of 2017 until the end of the sample period. Since the regression model controls for factors that affect the spread, the unbroken line

²² Although the Exchange believes that sampling the first trading day of each month between date January 2017 and April 2022 would reflect the trend of market quality, the Exchange acknowledges that in some cases there may be some information loss given a particular trading day. For example, a volatile trading day may not be representative of the market for that trading month.

²³ See Kaul, G., Nimalendran, m., and Zhang D., 2004, Informed Trading and Option Spreads.

Working Paper (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=547462).

²⁴ See Albuquerque, R., Song, S., and Yao, C., 2020, The Price Effects of Liquidity Shocks: A Study of SEC’s Tick-Size Experiment. *Journal of Financial Economics*, 138, 700–724 (<https://www.sciencedirect.com/science/article/pii/S0304405X20301884>).

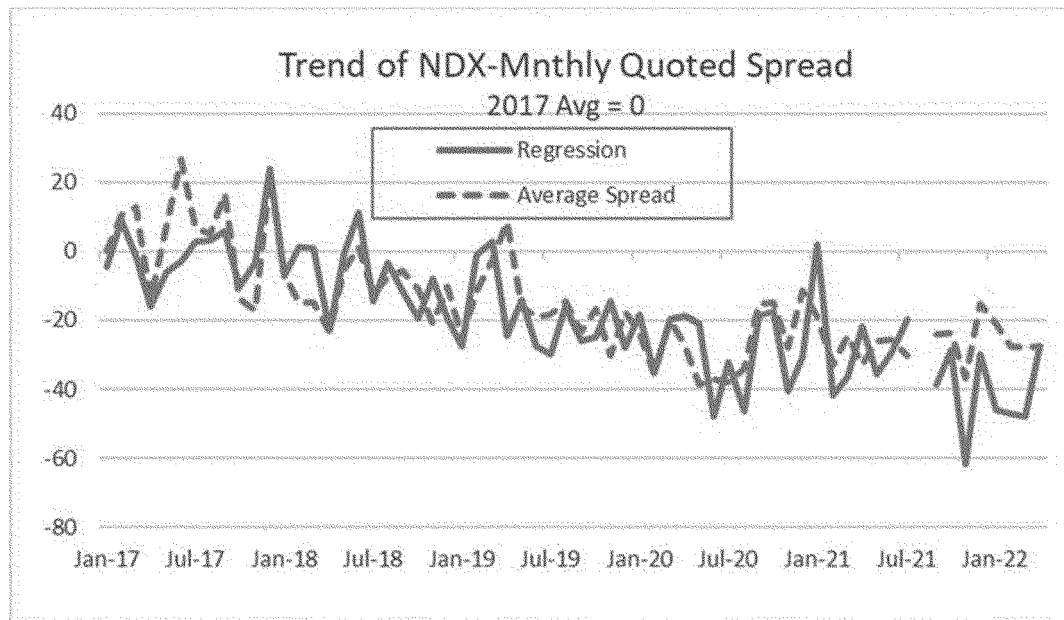
²⁵ The calculation was inspired by Kaul, G., Nimalendran, m., and Zhang D., and Albuquerque, R., Song, S., and Yao, C. See notes 21 and 22 above. The Exchange includes control variables used in Albuquerque, R., Song, S., and Yao, C. (2020) liquidity analysis and constructs *Moneyness Categories* following Kaul, Nimalendran and Zhang (2004).

based on the regression model tends to be less volatile. However, there is no large difference in the results between the average spread and results based on the regression models, but there is some

divergence at certain points in time. The Exchange conjectures that the divergence is due to higher option premia caused by the elevated levels of volatility. In summary, based on both

methods, a consistent decrease in relative quoted spread is observed from 2017 to 2022.

Figure 10. Trend of NDX-Monthly Quoted Spread²⁶



The Exchange then compared the spread trend of NDX monthly contracts to that of QQQ monthly contracts. The average monthly spread for QQQ contracts was constructed the same way as that for the NDX monthly contracts (as described in detail above). Figure 11, below, displays the patterns of relative quoted spread for NDX and QQQ, which are remarkably similar and decreased during the sample period. Figure 12, below, highlights the difference in

Figure 11 as between NDX and QQQ. Relative to a QQQ control, there is therefore no evidence of a deterioration of NDX monthly spreads during the sample period. In summary, the results suggest that there is gradual decrease in both the NDX monthly contracts spread and the QQQ contracts spread during the sample period.

As the introduction of p.m.-settled index options may affect the transaction cost for NDX monthly contracts, it is unlikely to affect the spread of QQQ

options. Therefore, the Exchange uses the following regression to formally test whether the spread of NDX contract changed after the introduction of p.m.-settled index options. NDX and QQQ options are included in the sample for the period between January 2017 and December 2018. This regression looks at a sample period starting from one year before and ending one year after the introduction of p.m.-settled index options.

$$\text{Spread} = \alpha + \text{NDX} + \text{Post} + \text{NDX} * \text{Post} + \text{InverseofPrice} + \text{Call/Put}$$

$$\text{Dummy} + \text{Expiry} + \text{Moneyness Categories} + \text{Month Fixed Effect} + \varepsilon \quad (2)$$

Similar to regression model (1), *Spread* is the relative quoted spread. *InverseofPrice* is the inverse of the option price. *Call/Put Dummy* is a dummy variable that equals 1 for call options and 0 otherwise. *Expiry* is the number of the days to the expiration date.²⁷ *Moneyness* is a dummy variable for moneyness category of each option.

NDX is a dummy variable that equals one if the underlying asset of the option is NDX index and zero otherwise. *Post* is a dummy variable that equals to one for days after January 2018 and zero otherwise. The Exchange also includes the interaction terms of the post dummy and the NDX dummy (*NDX * Post*).

Table 3 shows that the coefficient of the interaction term is negative but it is statistically insignificant. Therefore, the Exchange concludes that the introduction of p.m.-settled index options did not negatively affect the liquidity of a.m.-settled NDX options.²⁸

²⁶ NBBO data was unavailable between August 1, 2021 and August 11, 2021, and, therefore, August 2021 was excluded from the plot. Also, with respect to Figure 10, Regression plots the coefficients of

dummies for each month (i.e., fixed effects). Average Spread plots the average monthly relative quoted spread subtracted by the 2017 average relative quoted spread.

²⁷ The Exchange notes that there was no transformation.

²⁸ *Id.*

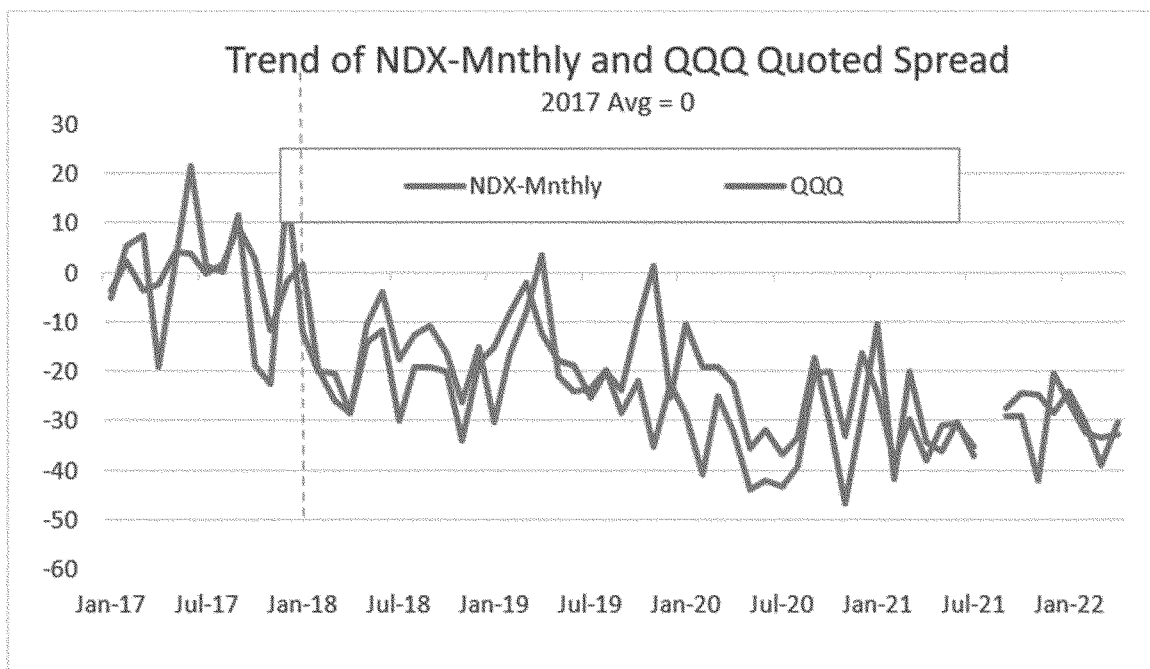
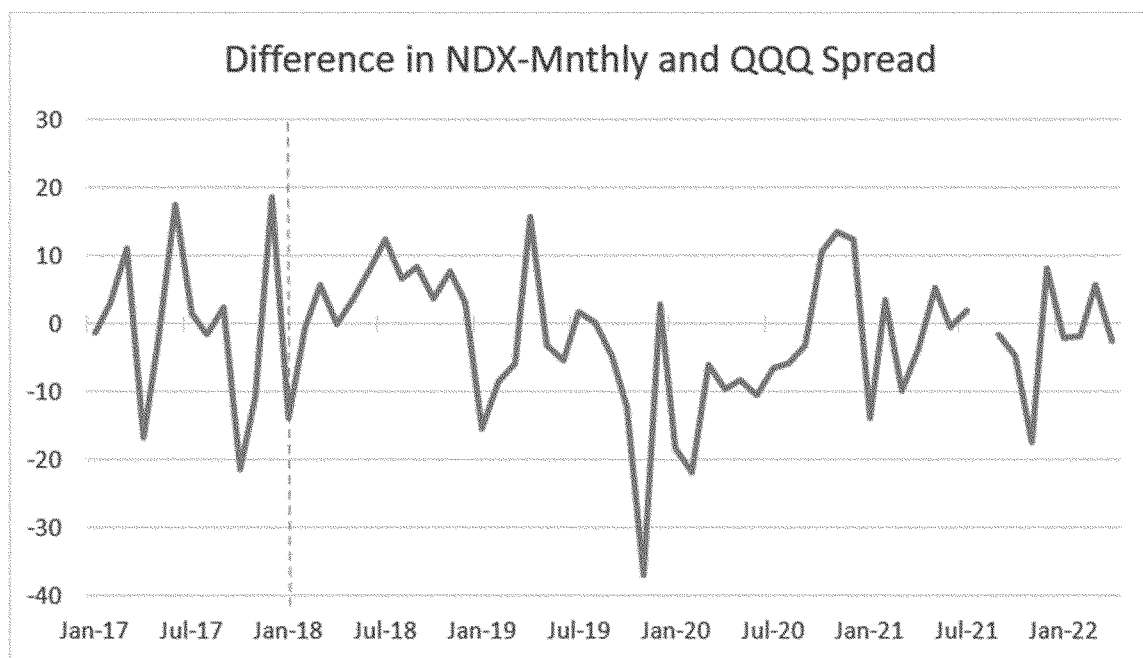
Figure 11. Trend of NDX-Monthly and QQQ Quoted Spread²⁸**Figure 12. Difference in NDX-Monthly and QQQ Spread²⁹**

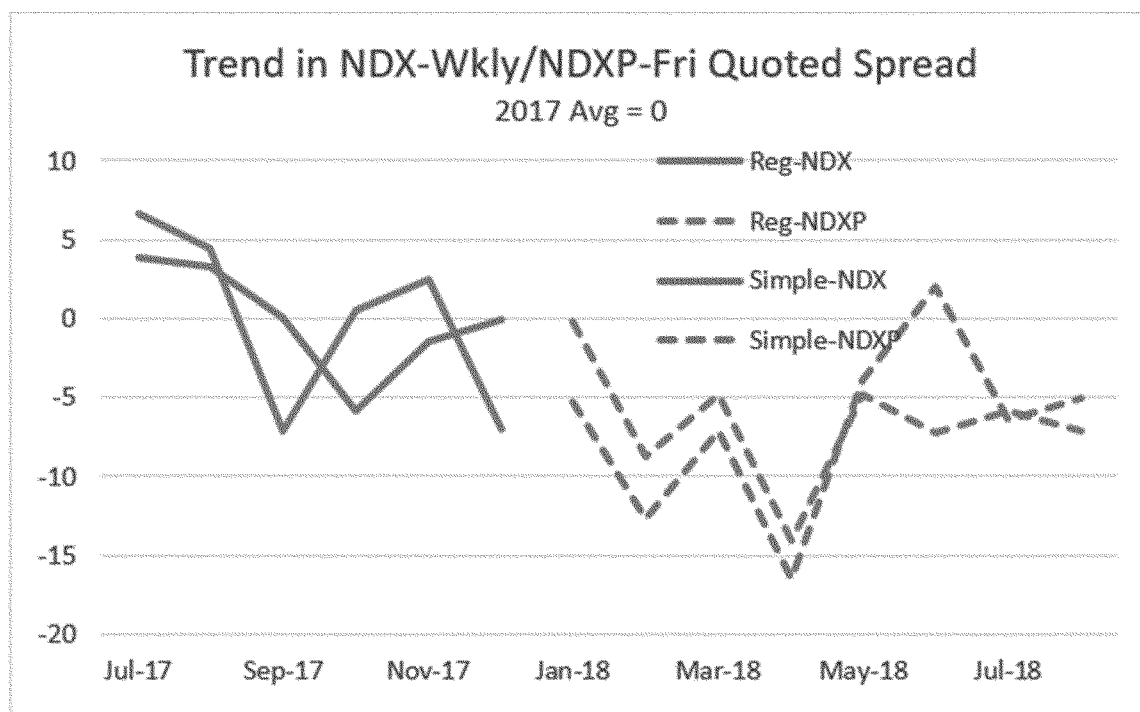
TABLE 3—REGRESSION RESULTS

	coef	std	t
Constant	*** 0.26	0.01	37.50
NDX	*** 0.28	0.01	28.62
Post	− 0.01	0.02	− 0.80
NDX * Post	* − 0.02	0.01	− 1.73
InverseofPrice	*** 0.00	0.00	48.65
Call/Put Dummy	*** 0.26	0.01	37.77
Expiry	*** 0.00	0.00	46.29
Moneyiness Categories Fixed Effect	Yes.		
Month Fixed Effect	Yes.		

The report considered one additional question regarding quoted spreads—whether the move from a.m.-settlement to p.m.-settlement for Friday weeklies (NDX-Weekly to NDXP-Fri) led to

changes in spreads for those contracts. This sample timeframe was from July 2017 through August 2018, prior to the launch of NDXP-Wed contracts. As before, the Exchange presented both the

simple average monthly relative quoted spread as well as the average spread calculated using the regression model.

Figure 13. Trend in NDX-Wkly/NDXP-Fri Quoted Spread³⁰

The relative quoted spread went down at the first part of 2018 and up in May and June 2018; it remained comparable to the 2017 average.

Overall, the Exchange sees no evidence of deterioration of spreads associated with the introduction of p.m.-settled NDX options.

Market Capacity Around the Market Close

The Exchange next analyzed the impact that p.m.-settled index options may have on the closing process of the equity markets.³¹ The DERA Staff PM Pilot Memo concluded that while p.m.-settled index options activity may have had a statistically detectable impact on volatility, the economic significance

was generally small. The DERA Staff PM Pilot Memo provided,

However, the report suggests that the magnitude of the effect of expiring p.m. cash-settled index options open interest on the measure of volatility and price reversals for index futures, the underlying cash index, and index component securities is economically very small.³²

²⁹ *Id.*

³⁰ With respect to Figure 13, Reg-NDX plots the coefficients of dummies for each month for NDX contracts. Reg-NDXP plots the coefficients of dummies for each month for NDXP contracts.

Simple-NDX plots the average monthly relative quoted spread subtracted by the 2017 average relative quoted spread for NDX contracts. Simple-NDXP plots the average monthly relative quoted

spread subtracted by the 2017 average relative quoted spread for NDXP contracts.

³¹ This analysis considers the DERA Staff PM Pilot Memo.

³² See DERA Staff PM Pilot Memo at page 1.

The following provides an illustration using some of the regression results from the DERA Staff PM Pilot Memo. Among the volatility variables analyzed by the DERA Staff PM Pilot Memo was the “Magnitude of Maximum Reversal Overlapping Close” of index futures

prices. The DERA Staff PM Pilot Memo found that this metric was higher when the options settlement volume was higher, for both the S&P 500 and the Nasdaq-100 Index options. Using data provided in the DERA Staff PM Pilot Memo, the Exchange can estimate the

impact of a very large increase in settlement volume: an increase from its 25th percentile to its 75th percentile. The following table shows the steps of the calculation.

TABLE 4³³

	Settlement volume			Regression coefficient	Impact	Median of variable	Rel. impact (%)
	25th	75th	Diff.				
S&P500	0.40	1.66	1.26	0.317	0.40	1.96	20.4
Nq-100	0.07	0.17	0.10	2.39	0.24	1.58	15.4

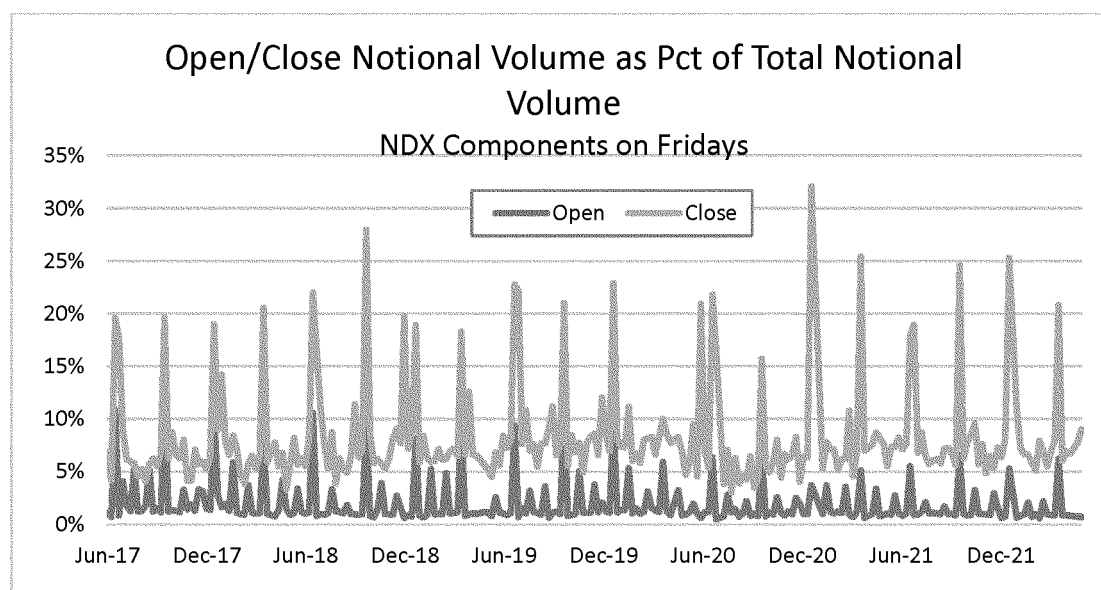
The percentiles of settlement volume (in units of \$10 billion notional) are shown in Table 25 of the DERA Staff PM Pilot Memo, which indicated that the volume of S&P 500 contracts was much higher than that of Nasdaq-100 contracts. The regression coefficients are from Table 5 (S&P 500) and Table 19 (Nasdaq-100) of the DERA Staff PM Pilot Memo. The estimated impact is the product of the volume difference times the coefficient. Table 5 of the DERA

Staff PM Pilot Memo provided the median of the volatility metric during the sample period. The relative impact is the estimated impact divided by the sample median, *i.e.*, the estimated change in the volatility metric, relative to its median value, due to an increase in settlement volume. As shown, the relative impact was small for both indexes, about 20% for the S&P 500 and 15% for the Nasdaq-100.

The Exchange provides some additional analysis on market capacity

around the market close. Specifically, the Exchange believes it is important to recognize that in recent years the closing auctions on the equity markets have steadily grown to a point where they are much larger than the opening auctions. To illustrate this point, the following chart shows the percentage of dollar volume of Nasdaq-100 Index components executed in the opening and closing auctions on Fridays.

Figure 14. Open/Close Dollar Volume as Pct of Total Dollar Volume NDX Components on Fridays



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The percentage of volume executed in the close is uniformly higher than that of the open. The spikes in the closing percentages represent third Fridays, and in a few cases Fridays that corresponded to the end of a month. The opening

percentage is slightly declining, the closing percentage slightly increasing during this timeframe. As another illustration, consider the opening and closing dollar volume percentages for Fridays, other than the third Friday-of-the-month, from the second half of 2017

compared with the first half of 2018. This timeframe corresponds to the introduction of NDXP options,³⁴ in which non-third Friday series moved to p.m.-settled. The following table present the average percentages.

³³ See DERA Staff PM Pilot Memo.

³⁴ NDXP options are p.m.-settled index options on broad-based indexes with nonstandard expirations

dates which are also the subject of a pilot program. NDXP are listed on ISE and Phlx.

TABLE 5—DOLLAR VOLUME FOR NASDAQ-100 COMPONENTS ON NON-3RD FRIDAYS

	Auction vol. as percentage of total vol.	
	Opening	Closing
Jul–Dec 2017	1.48	6.40
Jan–Jun 2018	1.13	6.76
Difference	–0.35	0.36

As would be expected, the relative size of the opening auction declined, and the closing auction increased by roughly the same amount. The percentage of about 0.35% would be an estimate of the volume impact of NDX/NDXP options settlement on the equity market auctions. This percentage is small to begin with, but it is a much smaller proportion of the closing auction than the opening auction. Therefore, the Exchange believes that the liquidity available at or around the

close would be able to mitigate any excess volatility created by the options settlement at the market close.

As a third example, the Exchange considered the level of options settlement volume relative to the size of the closing and opening auctions.³⁵ To provide the most up-to-date view of the current situation, the Exchange examined activity from the start of 2021 through April 2022. The below table shows the notional settlement volume (in billions of dollars) along with the

notional volume in the auctions for Nasdaq-100 Index components. Settlement volume is the average dollar volume settled at OCC, Closing Auction is the average dollar volume executed in the closing auction, Pct of Close is calculated as Settlement Volume divided by Closing Auction, Open Auction is the average notional volume executed in the open auction, and Pct of Open is calculated as Settlement Volume divided by Opening Auction.

TABLE 6—SETTLEMENT VOLUME FOR NDX/NDXP VS AUCTIONS: JAN 2021– APR 2022

Exp. day	Settlement volume	Closing auction	Percentage of close	Opening auction	Percentage of open
NDXP					
Monday	\$2.4	\$9.9	25.9	.....	.....
Wed	2.7	9.0	30.2	.....	.....
Non 3rd Fri	4.1	9.6	44.7	.....	.....
NDX					
3rd Friday	13.1	23.0	78.0	\$6.6	230.4

Table 6 shows that the settlement volume for NDXP settlements averages between 26% and 45% of the closing auction volume, the Friday NDXP settlements being the largest. NDX settlement volumes are larger, and relative to the opening auction—the relevant auction—they average more than twice the size of the auctions. By contrast, the relative size of the settlement volume would be about a third less if it were compared to the closing auctions on the third Fridays. As documented in the DERA Staff PM Pilot Memo, p.m.-settled option activities only have a very small impact on the volatility of the underlying index. Additionally, the size of the option settlement value is relatively small compared with the size of the closing auction value. Therefore, the Exchange believes that it is difficult to manipulate the underlying Nasdaq-100 Index during

the closing auction. The equity closing auctions have grown to be substantial liquidity events (for the period examined the closing auction volume is larger than the opening auction volume) and would therefore be suited for handling the excess liquidity demand created by index options settlement.

Technical Amendment to Rule Text

The Exchange proposes to amend Supplementary Material .07 to Options 4A, Section 12 to remove “c” and re-letter “d” as “c.”

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,³⁷ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and

perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest by proposing to make permanent the NQX Pilot and the Nonstandard Pilot.

Previously, the Commission has raised concerns about expanding p.m. settlement.³⁸ Specifically, the Commission noted in the Cboe Pilot Order that it had concerns about the adverse effects and impact of p.m. settlement upon market volatility and the operation of fair and orderly markets on the underlying cash market at or near the close of trading.³⁹ The Commission noted in the Cboe Pilot Order that the information requested of Cboe would enable the Commission to evaluate whether allowing p.m. settlement for EOW and EOMs will result in increased market and price volatility in the underlying component stocks.⁴⁰

³⁵ Options settlement volume is the primary size metric used in the DERA Staff PM Pilot Memo. Options settlement volume is the notional volume settled in the closing auction.

³⁶ 15 U.S.C. 78f(b).

³⁷ 15 U.S.C. 78f(b)(5).

³⁸ See Securities Exchange Act Release No. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (SR-CBOE–2009–075) (Order Approving Notice of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Establish a Pilot

Program to List P.M.-Settled End of Week and End of Month Expirations for Options on Broad-Based Indexes) (“Cboe Pilot Order”).

³⁹ *Id.* at 57540.

⁴⁰ *Id.* at 57540.

Further, the p.m. settlement Pilot information should help the Commission assess the impact on the markets and determine whether other changes are necessary.⁴¹ Furthermore, the Exchange's ongoing analysis of the Pilot should help it monitor any potential risks from large p.m.-settled positions and take appropriate action if warranted.⁴²

Similar to Cboe, ISE has provided pilot data to the Commission with respect to its NQX Pilot and Nonstandard Pilot. The Exchange's analysis presents data that the introduction of p.m.-settlement has led to an increase in options trading tied to the Nasdaq-100 Index. The Exchange notes within its analysis that it seems unlikely that the introduction of NQX option contracts or XND contracts⁴³ had a significant impact on the market quality of the full-sized Nasdaq-100 Index option contracts. The Exchange observed a consistent decrease in relative quoted spread is observed from 2017 to 2022 for NDX options. When the Exchange compared the spread trend of NDX monthly contracts to that of QQQ monthly contracts, the results suggest that there is gradual decrease in both the NDX monthly contracts spread and the QQQ contracts spread during the sample period.

The Exchange also considered whether the move from a.m.-settlement to p.m.-settlement for Friday weeklies (NDX-Weekly to NDXP-Fri) led to changes in spreads for those contracts. Overall, the Exchange sees no evidence of deterioration of spreads associated with the changes the Exchange has made to its Nasdaq-100 Index product offering by introducing p.m.-settled products.

Finally, in considering impact on the closing process in equity markets, the Exchange concluded that it is difficult to manipulate the underlying Nasdaq-100 Index. Specifically, the equity closing auctions have grown to be substantial liquidity events that are much larger than the opening auctions, and would therefore be better suited for handling the excess liquidity demand created by index options settlement. The Exchange believes the expiration of p.m.-settlement options would not adversely affect the options market or the underlying cash equities market.

Further, the Exchange has sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has

not encountered any issues or adverse market effects as a result of listing them.

Accordingly, the Exchange believes that weekly expirations and EOMs, including the NQX expirations, in the p.m.-settled products should create greater trading and hedging opportunities and flexibility and provide customers with the ability to more closely tailor their investment objectives.

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. Making permanent the NQX Pilot and the Nonstandard Pilot will not impose an undue burden on competition, rather, it will continue to provide investors with greater trading and hedging opportunities and flexibility, as well as the ability to more closely tailor their investment objectives.

Additionally, the Exchange does not believe the proposal will impose any burden on intermarket competition as market participants are welcome to become Members and trade at ISE if they determine that this proposed rule change has made ISE more attractive or favorable. Finally, all options exchanges are free to compete by listing and trading their own broad-based index options with weekly or end of month expirations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-ISE-2023-08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2023-08. 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 (<http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2023-08, and should be submitted on or before March 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁴

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2023-04224 Filed 3-1-23; 8:45 am]

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⁴¹ *Id.* at 57540.

⁴² *Id.* at 57540.

⁴³ See note 7 above.

⁴⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96974; File No. SR-CboeEDGA-2023-003]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rules 11.9, 11.10, and 11.11

February 24, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 15, 2023, Cboe EDGA Exchange, Inc. (“Exchange” or “EDGA”) 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 Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the “Exchange” or “EDGA”) proposes to amend Rule 11.9(a)(4) to provide that a change in position from either sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) will result in a loss of time priority if made when a short sale circuit breaker pursuant to Rule 201 of Regulation SHO is in effect. The Exchange also proposes to amend Rule 11.10(e)(3) to provide that orders may be modified from either sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) using a Replace Message. Additionally, the Exchange proposes to amend Rule 11.11(a) to clarify when the Exchange may route orders with a short sale instruction when a short sale circuit breaker pursuant to Rule 201 of Regulation SHO is in effect. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/edga/), at the Exchange’s Office of the

Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.9(a)(4) to reflect that if a User⁵ changes the position of an order from sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) while a Regulation SHO Rule 201⁶ short sale circuit breaker (the “SSCB”) is in effect, the change will result in a loss of time priority. This proposed change is substantially similar to MIAx PEARL, LLC (“MIAx Pearl”) Rule 2616 (discussed *infra*).⁸ The Exchange also proposes to amend Rule 11.10(e)(3) to provide that an order may be modified from sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) using a Replace Message. Additionally, the Exchange proposes to amend Rule 11.11(a) (Regulation SHO) to make clear that short sale orders⁹ entered with an order instruction to post to an away

⁵ See Exchange Rule 1.5(ee).

⁶ See 17 CFR 242.201; Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010).

⁷ For any execution of a short sale order to occur on the Exchange when a short sale price test restriction is in effect, the price must be better than the national best bid (“NBB”), unless the sell order was initially displayed by the System at a price above then the current NBB or is market “short exempt” pursuant to Regulation SHO. See Exchange Rule 11.10(a)(1).

⁸ See Securities Exchange Act Release No. 93506 (November 2, 2021), 86 FR 61796 (November 8, 2021) (SR-PEARL-2021-35) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Changes, as Modified by Amendment No. 1, To Amend Exchange Rule 2616, Priority of Orders).

⁹ See 17 CFR 242.200(a). The term “short sale” is defined as “any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.”

trading center when an SSCB is in effect are eligible for routing by the Exchange.

Priority Loss for Position Changes During an SSCB

Pursuant to Exchange Rule 11.10(e)(3), certain order modifications may be made via a Replace Message (*i.e.*, other than changing a Limit Order to a Market Order, only the price, Stop Price, the sell long indicator, Short Sale instruction, Max Floor of an order with a Reserve Quantity, and size of the order may be changed by a Replace Message), while other modifications require that the existing order be cancelled, and a new order be entered. Furthermore, pursuant to Rule 11.9(a)(4), when an order is cancelled or replaced in accordance with 11.10(e)(3), such order will retain its priority only for certain types of modifications (*e.g.*, changing an order’s position from sell long to sell short or a decrease in the size of the order). Certain other types of order modifications¹⁰ (*e.g.*, a change in the order’s price) will otherwise receive a new timestamp and lose priority on the EDGA Book.¹¹ For example, if pursuant to Rule 11.10(e)(3) an order is modified from sell long to sell short, such modification may be accomplished via a Replace Message, and the System will, pursuant to Rule 11.9(a)(4), allow such order to retain its original timestamp and priority on the EDGA Book.

The Exchange first proposes to amend Rule 11.10(e)(3) to provide that an order’s position may be modified from sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) through the use of a Replace Message. The Exchange notes that Users complete a position modification from sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) using the same functionality to mark an order as either sell long or sell short under Rule 11.10(e)(3). The Exchange believes this change will provide additional specificity to the rule and ensure the rule uses terminology consistent with the description of Replace Messages and their impact on an order’s priority under Exchange Rule 11.9(a)(4) (discussed *infra*).

The Exchange also proposes to amend Rule 11.9(a)(4) in order to align the Rule text with how the System currently behaves when an SSCB is in effect, and to provide clarification to Users that when an SSCB is in effect that changing an order’s position from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) will

¹⁰ See Rule 11.9(a)(4).

¹¹ See Rule 1.5(d).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

instead result in such order receiving a new timestamp and losing its original priority. The Exchange is not proposing to change the timestamp for modifications from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) when an SSCB is *not* in effect. Additionally, the Exchange is also proposing to add language to Rule 11.9(a)(4) stating that a modification from sell long to sell short exempt (or vice versa) is a type of order modification that would retain time priority and would not receive a new timestamp, regardless of whether an SSCB is in effect (discussed *infra*).

The Exchange also proposes a non-substantive change to Rule 11.9(a)(4) to provide that an order is being modified by a Replace Message rather than cancelled and replaced with a new order. This change is intended to provide that an order does not need to be cancelled and replaced with a new order, but rather includes modifications to orders via the use of a Replace Message. The proposed changes to Exchange Rule 11.9(a)(4) are based on previously-approved changes to MIAX Pearl Rule 2616(a)(5), which is substantially similar to Exchange Rule 11.9(a)(4).¹²

In the event that a User requests an order modification using a Replace Message, the System will first determine whether the modification is of a kind that may result in a loss of time priority in order to determine how the modification will be handled by the System. For example, as noted in Exchange Rule 11.9(a)(4), a modification to the price of an order will cause the loss of time priority. Therefore, in the event of a modification of the price of an order, the System will first determine that the type of modification may result in a loss of time priority and then handle the order accordingly by giving it a new timestamp.¹³ Since an order modification from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) may result in a change in price of the order when an SSCB is in effect, the Exchange immediately gives the order a new timestamp. As previously discussed, a modification from sell long to sell short (or vice versa) or a modification from sell short exempt to sell short (or vice

versa) requires the System to determine whether an order must be re-priced to be compliant with the requirements of Regulation SHO. The Exchange notes, however, that an order modification from sell long to sell short exempt (or vice versa) does not require the System to determine whether the order shall be re-priced as a result of the modification, as both a sell long and a sell short exempt order may execute at a more aggressive price than a sell short order when an SSCB is in effect. Given that the System does not have to evaluate whether a price change is required as part of an order modification from sell long to sell short exempt (or vice versa), this specific order modification does not lose priority on the EDGA Book.

Specifically, if a sell long order is modified to a sell short order (or vice versa) or a sell short exempt order is modified to a sell short order (or vice versa) while an SSCB is in effect, the Exchange cannot simply change the order from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) while resting on the book, but rather must verify that the sell short order would not violate Rule 201(b)(1)(ii)¹⁴ of Regulation SHO before the order is re-added to the EDGA Book. Therefore, as such a modification may result in a change of the order's price, the System gives the order a new timestamp, resulting in a loss of priority. Similarly, if a sell short order is modified to a sell long order (or vice versa) or a sell short order is modified to a sell short exempt (or vice versa) order while an SSCB is in effect, the order may be eligible to display at a more aggressive price. As such, the System gives the order a new timestamp, again resulting in a loss of time priority, but potentially in improved price priority. However, if an order is modified from sell long to sell short exempt (or vice versa) when an SSCB is in effect, the System does not have to take an additional step to evaluate whether the modification violates Rule 201(b)(1)(ii) of Regulation SHO given that sell long and sell short exempt orders may execute at more aggressive prices that sell short orders during an SSCB. Accordingly, an order modification from sell long to sell short exempt (or vice versa) would not result in a loss of priority. Stated differently, the System treats orders marked sell long and sell short exempt the same,

and only order modifications from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) would cause an order to lose priority during an SSCB because the System is required to determine whether a change in the order's price is required as a consequence of the change in status from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa). This order price analysis by the System is required in order to prevent potential violations of Rule 201(b)(1)(ii) of Regulation SHO as orders may be required to be re-priced to prevent potential violations of Rule 201 when the SSCB is in effect.

To illustrate order behavior with a modification from sell long to sell short during an SSCB, consider the following example:

Assume the National Best Bid and Offer ("NBBO")¹⁵ in a given covered security¹⁶ is \$5.00 × \$5.10 while an SSCB is in effect. A User enters a non-displayed sell long order with a limit price of \$5.00. Subsequently, the User modifies the position of the order from sell long to sell short, while the NBBO has remained the same. In order to effect the modification, the System determines that a modification from sell long to sell short may result in a change in the order's price in order to prevent potential violations of Rule 201(b)(1)(ii) of Regulation SHO, as orders may be required to be repriced to prevent potential violations of Rule 201 when the SSCB is in effect. Accordingly, the order loses its time priority in order for the System to handle the potential price change. In this example, the subject order resulted in a change of the order's price as the sell short order was not eligible for execution at a price equal to the NBB. Nonetheless, even if the modification would not have ultimately resulted in a price change, the modification would have necessarily caused the System to evaluate whether a price change was necessary and, thus, required a new timestamp, resulting in a loss of time priority.

Order modifications from sell long to sell short (or vice versa), sell long to sell

¹⁵ See Exchange Rule 1.5(o).

¹⁶ Rule 201(a)(1) of Regulation SHO defines the term "covered security" to mean any "NMS stock" as defined under Rule 600(b)(48) of Regulation NMS. Rule 600(b)(48) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." Rule 600(b)(47) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." See 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(47); and 17 CFR 242.600(b)(48).

¹² *Supra* note 8.

¹³ Alternatively, as noted in Rule 11.9(a)(4) a modification that involves a decrease in the size of the order will not cause the loss of time priority. Therefore, in order to decrease the size of the order, the System will first determine that the type of modification will not result in a loss of time priority and will handle the order in a completely different manner than it would if the order would have resulted in a loss of time priority.

¹⁴ Pursuant to Rule 201(b)(1)(ii) of Regulation SHO, the Exchange must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current NBB during an SSCB.

short exempt (or vice versa), or sell short exempt to sell short (or vice versa) that occur when an SSCB is not in effect will not be subject to a loss of priority on the Exchange, as orders may be required to be re-priced to prevent potential violations of Rule 201 of Regulation SHO, only when an SSCB is in effect. When an SSCB is not in effect the System does not have to take the additional step of determining whether a price change is required before effecting a position modification from sell long to sell short (or vice versa), sell long to sell short exempt (or vice versa), or sell short exempt to sell short (or vice versa) and as such, these order modifications can be processed without a loss of priority.

Routing Clarification for Orders That Will Post to an Away Trading Center

The Exchange is also proposing to amend Rule 11.11(a) in order to codify that any sell short order that will post to an away Trading Center¹⁷ will be routed when an SSCB is in effect. Given that sell short orders that post to an away Trading Center are subjected to the receiving Trading Center's processes for handling sell short orders in compliance with Rule 201 of Regulation SHO,¹⁸ the Exchange believes the capability to route all sell short orders with the ability to post to an away market center during an SSCB is appropriate and that Exchange Rules should be amended to codify such functionality.¹⁹

The proposed rule change would provide Users with clarity as how the Exchange will handle routable sell short orders when the SSCB is in effect. For instance, Rule 11.11(a) explicitly states

¹⁷ Rule 600(b)(82) of Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." See 17 CFR 242.201(a)(9); 17 CFR 242.600(b)(82).

¹⁸ Rule 201(b)(1) of Regulation SHO requires a Trading Center (e.g., Cboe EDGA) to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the national best bid if the price of that covered security decrease by 10% or more from the covered security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day. See 17 CFR 242.201(b)(1).

¹⁹ See, e.g., Nasdaq Rule 4763; NYSE Rule 440B; and Nasdaq's Regulation SHO Frequently Asked Questions (updated March 10, 2011), available at <https://nasdaqtrader.com/content/marketregulation/regsho/regshoFAQs.pdf>.

that the Post to Away²⁰ and RDOT²¹ routing options will post an order to another Trading Center's book when the SSCB is in effect.²² While Rule 11.11(a) provides that the Post to Away and RDOT routing options may post an order to another Trading Center's book (which could occur if the order is entered with a time-in-force ("TIF") of Day),²³ the Exchange seeks to clarify that any routing strategy that would post the remainder of the routed order to another Trading Center's book is eligible for routing during an SSCB. Under Exchange Rule 11.11(a), orders that include a Short Sale instruction and a Time-in-Force of IOC²⁴ that are not eligible for routing during an SSCB will continue to be cancelled. For any other order that includes a Short Sale instruction that is ineligible for routing due to an SSCB being in effect, the Exchange will continue to post the unfilled balance of the order to the EDGA Book, treat the order as if it included a Book Only or Post Only instruction, and subject it to the Re-Pricing Instructions to Comply with Rule 201 of Regulation SHO, as

²⁰ See Rule 11.11(g)(14). Post to Away is a routing option that routes the remainder of a routed order to and posts such order on the order book of a destination on the System routing table as specified by the User.

²¹ See Rule 11.11(g)(5). RDOT is a routing option under which an order checks the System for available shares and then is sent to destinations on the System routing table. If shares remain unexecuted after routing, they are sent to the NYSE and can be re-routed by the NYSE. Any remainder will be posted to the NYSE, unless otherwise instructed by the User.

²² The Exchange notes that orders routed pursuant to the Post to Away routing option that include a short sale instruction are identified as "short" and are subject to the receiving Trading Center's processes for handling sell short orders in compliance with Rule 201 of Regulation SHO. See Securities Exchange Act Release No. 79150 (October 25, 2016) 81 FR 75466 (October 31, 2016) (SR-BatsEDGA-2016-22) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to EDGA Rule 11.11, Routing to Away Trading Centers). See also Securities Exchange Act Release No. 34-88326 (March 5, 2020) 85 FR 14269 (March 11, 2020) (SR-CboeEDGA-2020-006) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt the Dark Routing Technique Routing Options; To Eliminate References to the ROUD, ROUE, and ROUQ Routing Options; and To Reflect Additional Routing Strategies for Which the Exchange May Route Orders With a Short Sale Instruction).

²³ A "Day Order" refers to an order to buy or sell which, if not executed, expires at the end of Regular Trading Hours. See Exchange Rule 11.6(q)(2). Day Orders routed pursuant to the RDOT routing option that include a short sale instruction are identified as "short" and are subject to the receiving Trading Center's processes for handling short sale orders in compliance with Rule 201 of Regulation SHO.

²⁴ An "IOC Order" refers to an order that is to be executed in whole or in part as soon as such order is received and the portion not executed immediately on the Exchange or another trading center is treated as cancelled and is not posted to the EDGA Book. See Exchange Rule 11.6(q)(1).

described in Rule 11.6(l)(2), unless the User has elected the order Cancel Back as described in Rule 11.6(b).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁶ 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)²⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change to Rule 11.10(e)(3) is consistent with the protection of investors and the public interest because it aligns the rule text with the how the System currently operates and helps to eliminate any potential confusion Users may have regarding current Rule 11.10(e)(3). This proposed amendment will not change existing System behavior and Users will have more certainty about how orders may be modified, which is related to the proposed changes to Rule 11.9(a)(4).

Additionally, the proposed rule change to Rule 11.9(a)(4) is designed to ensure all sell short orders are subjected to the Exchange's process for ensuring that the order would not violate Rule 201(b)(1)(ii) of Regulation SHO during an SSCB. In order to verify the displayed price of an order with a position modification from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) during an SSCB, the System handles the modification as if a price change would occur, even if the modification does not ultimately result in a price change. If the System permitted such order modifications to forego this process, no order modifications from sell long to

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ *Id.*

sell short (or vice versa) or sell short exempt to sell short (or vice versa) during an SSCB would result in a loss of time priority, and as a result, certain sell short orders could be permitted to display or execute at an impermissible price that would not comply with Rule 201(b)(1)(ii). The Exchange's process is designed to ensure compliance with Rule 201(b)(1)(ii) of Regulation SHO and is consistent with the protection of investors and the public interest. As designed, during an SSCB, the System determines up front whether an order modification could result in a price change before it can properly effect the modification. If the modification is of a type that may result in a price change to comply with Regulation SHO, the System gives the order a new timestamp. As a result, such a modification from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) always results in a loss of time priority even if the modification did not result in a change of the order's price. Conversely, an order modification from sell long to sell short exempt (or vice versa) does not result in an order losing priority because the System does not conduct an order price analysis to ensure compliance with Rule 201(b)(1)(ii) of Regulation SHO as both sell long and sell short exempt orders may execute at more aggressive prices than sell short orders during an SSCB.

Moreover, the Exchange processes billions of order modifications each month, with only a limited amount of modifications involving a change from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) during an SSCB. Out of the billions of order modifications processed by the Cboe affiliated equity exchanges during the months of May, June, and July 2022, the Exchange identified approximately 369,884 order modifications from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) across the Cboe affiliated equity exchanges during an SSCB that would potentially be affected by the proposed amendment to Rule 11.9(a)(4).²⁸ Given that 369,884 order modifications during an SSCB across the Cboe affiliated equity exchanges is an extremely small percentage of the billions of order modifications that the

Cboe affiliated equity exchanges processed during the months of May, June, and July 2022, the Exchange believes that any benefit from restoring priority to this limited amount of order modifications is outweighed by the burden of changing the System to be able to conduct an order price analysis in real time to prevent potential violations of Rule 201(b)(1)(ii) of Regulation SHO and to permit these orders to retain priority.

In addition, the proposed change to Rule 11.9(a)(4) will also protect investors and the public interest because it continues to promote compliance with Regulation SHO, including Regulation SHO's order marking requirements²⁹ and Users' compliance with any applicable exemptions. Users are currently able to modify their order's position using a Replace Message and the proposed rule change does not alter a User's ability to do so. Users are required to mark their orders properly upon entry and upon modification³⁰ and the proposed amendment to Rule 11.9(a)(4) does not change this obligation. As they are required to do today, Users must also continue to ensure that their order complies with any applicable exemption from Regulation SHO that they seek to avail themselves of, not only at the time of entry, but also at the time they change an order's position via a Replace Message.³¹ The Exchange notes that it will continue to surveil for compliance with Exchange Rules 11.5 and 11.10(a)(5) as well as Regulation SHO.

The proposed amendment to Rule 11.10(e)(3) is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system because it

does not seek to change how order modifications from either sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) are accomplished. Instead, the proposed change provides clarity to Users that a position change from either sell long to sell short exempt (or vice versa) or from sell short exempt to sell short (or vice versa) may be accomplished through the use of a Replace Message and does not require an order to be cancelled and a new order submitted in order to modify an order's position to sell short exempt. The proposed change to Rule 11.10(e)(3) will also provide continuity between Rule 11.10(e)(3) and the proposed changes to Rule 11.9(a)(4), and as such are directly intended to remove impediments to and perfect the mechanism of a free and open market and national market system.

The proposed change to Rule 11.9(a)(4) removes impediments to and perfects the mechanism of a free and open market and a national market system because it addresses a limited scenario when a User modifies an order's position using a Replace Message during an SSCB. The proposed rule change specifically states that orders whose positions are modified from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) using a Replace Message when an SSCB is in effect will not lose priority as compared to other orders on the EDGA Book. Further, the proposed rule change provides that order modifications from sell long to sell short exempt (or vice versa) using a Replace Message will not lose priority as compared to other orders on the EDGA Book, regardless of whether an SSCB is in effect. Additionally, the proposed change to Rule 11.9(a)(4) removes impediments to and perfects a free and open market system because it is designed to make clear to Users that orders may be modified using a Replace Message without losing priority subject to the limitations named in Rule 11.9(a)(4). This change does not amend the meaning or operation of Rule 11.9(a)(4).

The proposed changes to Rule 11.11(a) are designed to clarify that any sell short order that will post to an away Trading Center will be routed when an SSCB is in effect. In addition, providing Users the ability to send sell short orders that will post to an away Trading Center, and thus are routable when an SSCB is in effect provides them additional flexibility with regard to the handling of their orders, and may provide additional execution opportunities for those orders. Given this, the proposed amendments to Rule

²⁹ 17 CFR 242.200(g).

³⁰ See Exchange Rule 11.10(a)(5) ("Short Sales"). The rule provides that "[a]ll orders to sell short shall include a Short Sale instruction, and if applicable, a Short Exempt instruction when entered into the System. If an order includes a Short Exempt instruction, the Exchange shall execute, display and/or route an order without regard to any short sale price test restriction in effect under Regulation SHO. The Exchange relies on the inclusion of a Short Exempt instruction when handling such order, and thus, it is the entering Member's responsibility, not the Exchange's responsibility, to comply with the requirements of Regulation SHO relating to including a Short Exempt instruction on an order."

³¹ A change in an order's price or position as well as an increase in an order's size via a Replace Message implicitly results in a new order. All Users must, therefore, ensure continued compliance with the order market and locate requirements of Regulation SHO (17 CFR 242.201) including compliance with Question 2.6 of the Commission's "Responses to Frequently Asked Questions Concerning Regulation SHO" available at <https://www.sec.gov/marketreg/rule201faq.htm> (last accessed October 3, 2022).

²⁸ When identifying orders impacted by this functionality during May, June, and July 2022, the Exchange broadly identified any orders regardless of whether those orders were at or near the NBBO (i.e., marketable orders) at the time of the event. The Cboe affiliated equities exchanges refers to the Exchange, Cboe BYX Exchange, Inc. ("BYX"), Cboe BZX Exchange, Inc. ("BZX"), and Cboe EDGX Exchange, Inc. ("EDGX").

11.11(a) are directly targeted at removing impediments to and perfecting the mechanism of a free and open market and national market system, as well as to assure fair competition among brokers and dealers and among exchange markets.

The proposed change to Rule 11.11(a) further promotes just and equitable principles of trade and perfects a free and open market system by identifying which orders containing routing instructions are eligible to route and post to an away market center during an SSCB. As all Trading Centers are required to comply with Rule 201(b)(1)(ii) of Regulation SHO, a User can expect that an order routed from the Exchange to an away market center will be treated similarly on the away market center as it would on the Exchange during an SSCB. There is no change to the meaning or operation of this rule, but rather an amendment to make clear that an order that is eligible to post to an away market may be routed during an SSCB.

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 as the proposed rule changes are not being proposed for competitive reasons. Rather, the proposed amendment to Rule 11.10(e)(3) provides that modifications from sell long to sell short exempt (or vice versa) or from sell short exempt to sell short (or vice versa) may be accomplished through the use of a Replace Message. This proposed amendment will not change existing System behavior and Users will have more certainty about how orders may be modified, which is related to the proposed changes to Rule 11.9(a)(4). Order modifications from sell long to sell short (or vice versa) use the same Replace Message functionality as a modification from either sell long to sell short exempt (or vice versa) or from sell short exempt to sell short (or vice versa), and amending Rule 11.10(e)(3) to describe this behavior for Users is directly related to the Exchange's proposed changes to Rule 11.9(a)(4) and does not impose a burden on inter-market competition that is not necessary or appropriate in furtherance of the Act.

Additionally, the proposed amendments to Rule 11.9(a)(4) will enhance the transparency of the rules by revising the rule text. By revising the rule text to align with the current System behavior, Users will be aware that if they modify their orders from sell

long to sell short (or vice versa) or from sell short exempt to sell short (or vice versa) and an SSCB is in effect, their orders will be given a new timestamp and lose time priority. Users are free to consider this proposed change as part of their overall experience with the Exchange, which also includes execution quality and functionality offerings, when making order routing decisions. Additionally, the Exchange notes that the proposed rule change applies equally to all Users, and all Users' orders are subject to the described functionality, regardless of their size. Users may not opt-out of this System functionality.

Furthermore, this loss of time priority for a position modification would only occur when an SSCB is in effect and the Exchange is required to comply with Rule 201 of Regulation SHO. The impact of an order modification from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) using a Replace Message during an SSCB with respect to loss of time priority is no different than when a User seeks to increase the size of their order using a Replace Message or when a User seeks to change the position of their order by cancelling the existing order and entering a new order. In each instance, the order will receive a new timestamp reflecting the time the modification was made and the order would lose priority as compared to other orders on the EDGA Book.

Furthermore, the proposed change to Rule 11.9(a)(4) does not impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the Act in that the proposed change does not present a novel approach to sell short order handling. Indeed, the proposed changes to Rule 11.9(a)(4) are consistent with a recently approved amendment³² to MIAX Pearl Rule 2616(a).³³ Pursuant to MIAX Pearl Rule 2616(a), any position modification involving a change from sell long to either sell short exempt or sell short (or vice versa) will result in the order receiving a new timestamp and the order losing priority, as compared to other orders resting on the

book while an SSCB is in effect. The Exchange's proposed Rule is also similar to MIAX Pearl Rule 2616(a) in that modifications from sell long to sell short (or vice versa) and modifications from sell short exempt to sell short (or vice versa) will be subject to a loss of priority during an SSCB.

While the proposed rule change is substantially similar to that of MIAX Pearl, the Exchange's proposal differs in that its proposal would not cause orders modified from sell long to sell short exempt (or vice versa) to lose priority during an SSCB, whereas MIAX Pearl Rule 2616(a) specifically states that a change from sell long to sell short exempt is a type of order modification that would be subject to a loss of priority during an SSCB. The Exchange's System does not view an order modification from sell long to sell short exempt (or vice versa) as a type of change which requires an order price analysis in order to prevent potential violations of Rule 201(b)(1)(ii) of Regulation SHO, and as such does not cause these types of order modifications to result in a loss of priority.

In addition, the proposed rule change is more narrowly tailored than the rules of Investors Exchange LLC ("IEX"), which requires market participants to enter a new order where an order's position is changed even when an SSCB is not in effect³⁴ and Nasdaq Stock Market, LLC ("Nasdaq"), which requires orders to be cancelled if the order's position is redesignated as short during a Short Sale Period and the order is not priced at a Permitted Price or higher under Nasdaq Rule 4763(e).³⁵ In each instance mentioned above, the original order would need to be replaced with a new order and therefore would receive a new timestamp which would result in a loss of priority. The Exchange is seeking to only append a new timestamp and cause a loss of priority as compared to other orders on the EDGA Book when an order's position is modified from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) during an SSCB, which is more narrowly-tailored than the rules governing similar order behavior on MIAX Pearl, IEX and Nasdaq.

Furthermore, the proposed change to Rule 11.11(a) does not impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the Act as it makes clear that orders that may post to away market centers will be routed during an

³² *Supra* note 8.

³³ MIAX Pearl Rule 2616(a) states: "[i]n the event an order has been modified via a Cancel/Replace message in accordance with Rule 2614(e) above, such order only retains its timestamp if such modification involves a decrease in the size of the order, a change to the Max Floor of an order with a Reserve Quantity, or when a Short Sale Period, as defined in Exchange Rule 2614(g)(3)(A), is not in effect, a change in position from (A) sell to sell short; (B) sell to sell short exempt; (C) sell short to sell; (D) sell short to sell short exempt; (E) sell short exempt to sell; and (F) sell short exempt to sell short."

³⁴ See IEX Rule 11.190(d)(3) and IEX Rule 11.190(d)(4).

³⁵ See Nasdaq Equity 4, Rule 4756(a)(3).

SSCB. Users will have the ability to take this factor into consideration when determining which routing strategy to use when entering an order on the Exchange and are able to consider this proposed change as part of their overall experience with the Exchange. If a User disfavors this proposed change they are free to use a different routing strategy or submit an order directly to an away market center. This proposed change is not being proposed for competitive reasons, but rather to make clear that any order eligible to be posted to an away market center will be routed during an SSCB. As each market center is required to comply with Rule 201 of Regulation SHO, the Exchange believes that any order eligible to be posted to an away market center should be permitted to route, as the order would be subject to the away market center's rules regarding compliance with Rule 201 of Regulation SHO upon posting.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act³⁶ and Rule 19b-4(f)(6) thereunder.³⁷

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³⁸ 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. The Exchange states the proposed rule change provides clarity

on how orders modified to sell short exempt are accomplished and the priority of orders marked sell short exempt. The Exchange believes that the proposed rule change related to modifications from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) that occur during an SSCB will affect only a small percentage of overall order modifications.³⁹ Finally, the Exchange states that the proposed change to Rule 11.11(a) will permit orders containing routing instructions entered by all Users that would post to an away market during an SSCB to route to away market centers immediately upon becoming operative. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.⁴⁰

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeEDGA-2023-003.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

³⁹ See *supra* note 28.

⁴⁰ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGA-2023-003. 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 (<http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGA-2023-003, and should be submitted on or before March 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴¹

J. Matthew DeLesDernier,
Deputy Secretary.

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BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96973; File No. SR-CboeEDGX-2023-012]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rules 11.9, 11.10, and 11.11

February, 24, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

⁴¹ 17 CFR 200.30-3(a)(12), (59).

³⁶ 15 U.S.C. 78s(b)(3)(A).

³⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁸ 17 CFR 240.19b-4(f)(6)(iii).

(“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on February 15, 2023, Cboe EDGX Exchange, Inc. (“Exchange” or “EDGX”) 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 Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b–4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) proposes to amend Rule 11.9(a)(4) to provide that a change in position from either sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) will result in a loss of time priority if made when a short sale circuit breaker pursuant to Rule 201 of Regulation SHO is in effect. The Exchange also proposes to amend Rule 11.10(e)(3) to provide that orders may be modified from either sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) using a Replace Message. Additionally, the Exchange proposes to amend Rule 11.11(a) to clarify when the Exchange may route orders with a short sale instruction when a short sale circuit breaker pursuant to Rule 201 of Regulation SHO is in effect. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.9(a)(4) to reflect that if a User⁵ changes the position of an order from sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) while a Regulation SHO Rule 201⁶ short sale circuit breaker (the “SSCB”) is in effect, the change will result in a loss of time priority. This proposed change is substantially similar to MIAx PEARL, LLC (“MIAx Pearl”) Rule 2616 (discussed *infra*).⁸ The Exchange also proposes to amend Rule 11.10(e)(3) to provide that an order may be modified from sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) using a Replace Message. Additionally, the Exchange proposes to amend Rule 11.11(a) (Regulation SHO) to make clear that short sale orders⁹ entered with an order instruction to post to an away trading center when an SSCB is in effect are eligible for routing by the Exchange.

Priority Loss for Position Changes During an SSCB

Pursuant to Exchange Rule 11.10(e)(3), certain order modifications may be made via a Replace Message (*i.e.*, other than changing a Limit Order to a Market Order, only the price, Stop Price, the sell long indicator, Short Sale instruction, Max Floor of an order with a Reserve Quantity, and size of the order may be changed by a Replace Message), while other modifications require that the existing order be cancelled, and a

new order be entered. Furthermore, pursuant to Rule 11.9(a)(4), when an order is cancelled or replaced in accordance with 11.10(e)(3), such order will retain its priority only for certain types of modifications (*e.g.*, changing an order’s position from sell long to sell short or a decrease in the size of the order). Certain other types of order modifications¹⁰ (*e.g.*, a change in the order’s price) will otherwise receive a new timestamp and lose priority on the EDGX Book.¹¹ For example, if pursuant to Rule 11.10(e)(3) an order is modified from sell long to sell short, such modification may be accomplished via a Replace Message, and the System will, pursuant to Rule 11.9(a)(4), allow such order to retain its original timestamp and priority on the EDGX Book.

The Exchange first proposes to amend Rule 11.10(e)(3) to provide that an order’s position may be modified from sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) through the use of a Replace Message. The Exchange notes that Users complete a position modification from sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) using the same functionality to mark an order as either sell long or sell short under Rule 11.10(e)(3). The Exchange believes this change will provide additional specificity to the rule and ensure the rule uses terminology consistent with the description of Replace Messages and their impact on an order’s priority under Exchange Rule 11.9(a)(4) (discussed *infra*).

The Exchange also proposes to amend Rule 11.9(a)(4) in order to align the Rule text with how the System currently behaves when an SSCB is in effect, and to provide clarification to Users that when an SSCB is in effect that changing an order’s position from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) will instead result in such order receiving a new timestamp and losing its original priority. The Exchange is not proposing to change the timestamp for modifications from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) when an SSCB is *not* in effect. Additionally, the Exchange is also proposing to add language to Rule 11.9(a)(4) stating that a modification from sell long to sell short exempt (or vice versa) is a type of order modification that would retain time priority and would not receive a new timestamp, regardless of whether an SSCB is in effect (discussed *infra*).

⁵ See Exchange Rule 1.5(ee).

⁶ See 17 CFR 242.201; Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010).

⁷ For any execution of a short sale order to occur on the Exchange when a short sale price test restriction is in effect, the price must be better than the national best bid (“NBB”), unless the sell order was initially displayed by the System at a price above then the current NBB or is market “short exempt” pursuant to Regulation SHO. See Exchange Rule 11.10(a)(1).

⁸ See Securities Exchange Act Release No. 93506 (November 2, 2021), 86 FR 61796 (November 8, 2021) (SR-PEARL-2021-35) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Changes, as Modified by Amendment No. 1, To Amend Exchange Rule 2616, Priority of Orders).

⁹ See 17 CFR 242.200(a). The term “short sale” is defined as “any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.”

¹⁰ See Rule 11.9(a)(4).

¹¹ See Rule 1.5(d).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b–4(f)(6).

The Exchange also proposes a non-substantive change to Rule 11.9(a)(4) to provide that an order is being modified by a Replace Message rather than cancelled and replaced with a new order. This change is intended to provide that an order does not need to be cancelled and replaced with a new order, but rather includes modifications to orders via the use of a Replace Message. The proposed changes to Exchange Rule 11.9(a)(4) are based on previously-approved changes to MIAX Pearl Rule 2616(a)(5), which is substantially similar to Exchange Rule 11.9(a)(4).¹²

In the event that a User requests an order modification using a Replace Message, the System will first determine whether the modification is of a kind that may result in a loss of time priority in order to determine how the modification will be handled by the System. For example, as noted in Exchange Rule 11.9(a)(4), a modification to the price of an order will cause the loss of time priority. Therefore, in the event of a modification of the price of an order, the System will first determine that the type of modification may result in a loss of time priority and then handle the order accordingly by giving it a new timestamp.¹³ Since an order modification from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) may result in a change in price of the order when an SSCB is in effect, the Exchange immediately gives the order a new timestamp. As previously discussed, a modification from sell long to sell short (or vice versa) or a modification from sell short exempt to sell short (or vice versa) requires the System to determine whether an order must be re-priced to be compliant with the requirements of Regulation SHO. The Exchange notes, however, that an order modification from sell long to sell short exempt (or vice versa) does not require the System to determine whether the order shall be re-priced as a result of the modification, as both a sell long and a sell short exempt order may execute at a more aggressive price than a sell short order when an SSCB is in effect. Given that the System does not have to evaluate whether a price change is required as part of an order modification from sell

long to sell short exempt (or vice versa), this specific order modification does not lose priority on the EDGX Book.

Specifically, if a sell long order is modified to a sell short order (or vice versa) or a sell short exempt order is modified to a sell short order (or vice versa) while an SSCB is in effect, the Exchange cannot simply change the order from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) while resting on the book, but rather must verify that the sell short order would not violate Rule 201(b)(1)(ii)¹⁴ of Regulation SHO before the order is re-added to the EDGX Book. Therefore, as such a modification may result in a change of the order's price, the System gives the order a new timestamp, resulting in a loss of priority. Similarly, if a sell short order is modified to a sell long order (or vice versa) or a sell short order is modified to a sell short exempt (or vice versa) order while an SSCB is in effect, the order may be eligible to display at a more aggressive price. As such, the System gives the order a new timestamp, again resulting in a loss of time priority, but potentially in improved price priority. However, if an order is modified from sell long to sell short exempt (or vice versa) when an SSCB is in effect, the System does not have to take an additional step to evaluate whether the modification violates Rule 201(b)(1)(ii) of Regulation SHO given that sell long and sell short exempt orders may execute at more aggressive prices than sell short orders during an SSCB. Accordingly, an order modification from sell long to sell short exempt (or vice versa) would not result in a loss of priority. Stated differently, the System treats orders marked sell long and sell short exempt the same, and only order modifications from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) would cause an order to lose priority during an SSCB because the System is required to determine whether a change in the order's price is required as a consequence of the change in status from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa). This order price analysis by the System is required in order to prevent potential violations of Rule 201(b)(1)(ii) of Regulation SHO as orders may be required to be re-

priced to prevent potential violations of Rule 201 when the SSCB is in effect.

To illustrate order behavior with a modification from sell long to sell short during an SSCB, consider the following example:

Assume the National Best Bid and Offer ("NBBO")¹⁵ in a given covered security¹⁶ is \$5.00 × \$5.10 while an SSCB is in effect. A User enters a non-displayed sell long order with a limit price of \$5.00. Subsequently, the User modifies the position of the order from sell long to sell short, while the NBBO has remained the same. In order to effect the modification, the System determines that a modification from sell long to sell short may result in a change in the order's price in order to prevent potential violations of Rule 201(b)(1)(ii) of Regulation SHO, as orders may be required to be repriced to prevent potential violations of Rule 201 when the SSCB is in effect. Accordingly, the order loses its time priority in order for the System to handle the potential price change. In this example, the subject order resulted in a change of the order's price as the sell short order was not eligible for execution at a price equal to the NBB. Nonetheless, even if the modification would not have ultimately resulted in a price change, the modification would have necessarily caused the System to evaluate whether a price change was necessary and, thus, required a new timestamp, resulting in a loss of time priority.

Order modifications from sell long to sell short (or vice versa), sell long to sell short exempt (or vice versa), or sell short exempt to sell short (or vice versa) that occur when an SSCB is not in effect will not be subject to a loss of priority on the Exchange, as orders may be required to be re-priced to prevent potential violations of Rule 201 of Regulation SHO, only when an SSCB is in effect. When an SSCB is not in effect the System does not have to take the additional step of determining whether a price change is required before effecting a position modification from sell long to sell short (or vice versa), sell long to sell short exempt (or vice versa),

¹⁵ See Exchange Rule 1.5(o).

¹⁶ Rule 201(a)(1) of Regulation SHO defines the term "covered security" to mean any "NMS stock" as defined under Rule 600(b)(48) of Regulation NMS. Rule 600(b)(48) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." Rule 600(b)(47) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." See 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(47); and 17 CFR 242.600(b)(48).

¹² *Supra* note 8.

¹³ Alternatively, as noted in Rule 11.9(a)(4) a modification that involves a decrease in the size of the order will not cause the loss of time priority. Therefore, in order to decrease the size of the order, the System will first determine that the type of modification will not result in a loss of time priority and will handle the order in a completely different manner than it would if the order would have resulted in a loss of time priority.

¹⁴ Pursuant to Rule 201(b)(1)(ii) of Regulation SHO, the Exchange must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current NBB during an SSCB.

or sell short exempt to sell short (or vice versa) and as such, these order modifications can be processed without a loss of priority.

Routing Clarification for Orders That Will Post to an Away Trading Center

The Exchange is also proposing to amend Rule 11.11(a) in order to codify that any sell short order that will post to an away Trading Center¹⁷ will be routed when an SSCB is in effect. Given that sell short orders that post to an away Trading Center are subjected to the receiving Trading Center's processes for handling sell short orders in compliance with Rule 201 of Regulation SHO,¹⁸ the Exchange believes the capability to route all sell short orders with the ability to post to an away market center during an SSCB is appropriate and that Exchange Rules should be amended to codify such functionality.¹⁹

The proposed rule change would provide Users with clarity as how the Exchange will handle routable sell short orders when the SSCB is in effect. For instance, Rule 11.11(a) explicitly states that the Post to Away,²⁰ RDOT,²¹ and ROOC²² routing options will post an

order to another Trading Center's book when the SSCB is in effect.²³ While Rule 11.11(a) provides that the Post to Away, RDOT, and ROOC routing options may post an order to another Trading Center's book (which could occur if the order is entered with a time-in-force ("TIF") of Day),²⁴ the Exchange seeks to clarify that *any* routing strategy that would post the remainder of the routed order to another Trading Center's book is eligible for routing during an SSCB. Under Exchange Rule 11.11(a), orders that include a Short Sale instruction and a Time-in-Force of IOC²⁵ that are not eligible for routing during an SSCB will continue to be cancelled. For any other order that includes a Short Sale instruction that is ineligible for routing due to an SSCB being in effect, the Exchange will continue to post the unfilled balance of the order to the EDGX Book, treat the order as if it included a Book Only or Post Only instruction, and subject it to the Re-Pricing Instructions to Comply with Rule 201 of Regulation SHO, as described in Rule 11.6(l)(2), unless the User has elected the order Cancel Back as described in Rule 11.6(b).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the

received before the opening/re-opening/closing time of such market. If shares remain unexecuted after attempting to execute in the opening, re-opening, or closing process, they are either posted to the EDGX Book, executed, or routed to destinations on the System routing table.

²³ The Exchange notes that orders routed pursuant to the Post to Away routing option that include a short sale instruction are identified as "short" and are subject to the receiving Trading Center's processes for handling sell short orders in compliance with Rule 201 of Regulation SHO. *See* Securities Exchange Act Release No. 79151 (October 25, 2016) 81 FR 75458 (October 31, 2016) (SR-BatsEDGX-2016-54) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend EDGX Rule 11.11, Routing to Away Trading Centers). *See also* Securities Exchange Act Release No. 34-88154 (February 7, 2020) 85 FR 8327 (February 13, 2020) (SR-CboeEDGX-2020-006) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt the Dark Routing Technique Routing Option; To Eliminate References to the ROUD, ROUE, and ROUQ Routing Options; and To Reflect Additional Routing Strategies for Which the Exchange May Route Orders with a Short Sale Instruction).

²⁴ A "Day Order" refers to an order to buy or sell which, if not executed, expires at the end of Regular Trading Hours. *See* Exchange Rule 11.6(q)(2). Day Orders routed pursuant to the RDOT routing option that include a short sale instruction are identified as "short" and are subject to the receiving Trading Center's processes for handling short sale orders in compliance with Rule 201 of Regulation SHO.

²⁵ An "IOC Order" refers to an order that is to be executed in whole or in part as soon as such order is received and the portion not executed immediately on the Exchange or another trading center is treated as cancelled and is not posted to the EDGX Book. *See* Exchange Rule 11.6(q)(1).

"Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁷ 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)²⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change to Rule 11.10(e)(3) is consistent with the protection of investors and the public interest because it aligns the rule text with the how the System currently operates and helps to eliminate any potential confusion Users may have regarding current Rule 11.10(e)(3). This proposed amendment will not change existing System behavior and Users will have more certainty about how orders may be modified, which is related to the proposed changes to Rule 11.9(a)(4).

Additionally, the proposed rule change to Rule 11.9(a)(4) is designed to ensure all sell short orders are subjected to the Exchange's process for ensuring that the order would not violate Rule 201(b)(1)(ii) of Regulation SHO during an SSCB. In order to verify the displayed price of an order with a position modification from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) during an SSCB, the System handles the modification as if a price change would occur, even if the modification does not ultimately result in a price change. If the System permitted such order modifications to forego this process, no order modifications from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) during an SSCB would result in a loss of time priority, and as a result, certain sell short orders could be permitted to display or execute at an impermissible price that would not comply with Rule 201(b)(1)(ii). The Exchange's process is

¹⁷ Rule 600(b)(82) of Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." *See* 17 CFR 242.201(a)(9); 17 CFR 242.600(b)(82).

¹⁸ Rule 201(b)(1) of Regulation SHO requires a Trading Center (e.g., Cboe EDGX) to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the national best bid if the price of that covered security decrease by 10% or more from the covered security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day. *See* 17 CFR 242.201(b)(1).

¹⁹ *See, e.g.,* Nasdaq Rule 4763; NYSE Rule 440B; and Nasdaq's Regulation SHO Frequently Asked Questions (updated March 10, 2011), available at <https://nasdaqtrader.com/content/marketregulation/regsho/regshoFAQs.pdf>.

²⁰ *See* Rule 11.11(g)(11). Post to Away is a routing option that routes the remainder of a routed order to and posts such order on the order book of a destination on the System routing table as specified by the User.

²¹ *See* Rule 11.11(g)(5). RDOT is a routing option under which an order checks the System for available shares and then is sent to destinations on the System routing table. If shares remain unexecuted after routing, they are sent to the NYSE and can be re-routed by the NYSE. Any remainder will be posted to the NYSE, unless otherwise instructed by the User.

²² *See* Rule 11.11(g)(8). ROOC is a routing option for orders that the entering firm wishes to designate for participation in the opening, re-opening (following a halt, suspension, or pause), or closing process of a primary listing market (Cboe BZX, NYSE, Nasdaq, NYSE American, or NYSE Arca) if

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ *Id.*

designed to ensure compliance with Rule 201(b)(1)(ii) of Regulation SHO and is consistent with the protection of investors and the public interest. As designed, during an SSCB, the System determines up front whether an order modification could result in a price change before it can properly effect the modification. If the modification is of a type that may result in a price change to comply with Regulation SHO, the System gives the order a new timestamp. As a result, such a modification from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) always results in a loss of time priority even if the modification did not result in a change of the order's price. Conversely, an order modification from sell long to sell short exempt (or vice versa) does not result in an order losing priority because the System does not conduct an order price analysis to ensure compliance with Rule 201(b)(1)(ii) of Regulation SHO as both sell long and sell short exempt orders may execute at more aggressive prices than sell short orders during an SSCB.

Moreover, the Exchange processes billions of order modifications each month, with only a limited amount of modifications involving a change from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) during an SSCB. Out of the billions of order modifications processed by the Cboe affiliated equity exchanges during the months of May, June, and July 2022, the Exchange identified approximately 369,884 order modifications from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) across the Cboe affiliated equity exchanges during an SSCB that would potentially be affected by the proposed amendment to Rule 11.9(a)(4).²⁹ Given that 369,884 order modifications during an SSCB across the Cboe affiliated equity exchanges is an extremely small percentage of the billions of order modifications that the Cboe affiliated equity exchanges processed during the months of May, June, and July 2022, the Exchange believes that any benefit from restoring priority to this limited amount of order modifications is outweighed by the burden of changing the System to be able to conduct an order price analysis

in real time to prevent potential violations of Rule 201(b)(1)(ii) of Regulation SHO and to permit these orders to retain priority.

In addition, the proposed change to Rule 11.9(a)(4) will also protect investors and the public interest because it continues to promote compliance with Regulation SHO, including Regulation SHO's order marking requirements³⁰ and Users' compliance with any applicable exemptions. Users are currently able to modify their order's position using a Replace Message and the proposed rule change does not alter a User's ability to do so. Users are required to mark their orders properly upon entry and upon modification³¹ and the proposed amendment to Rule 11.9(a)(4) does not change this obligation. As they are required to do today, Users must also continue to ensure that their order complies with any applicable exemption from Regulation SHO that they seek to avail themselves of, not only at the time of entry, but also at the time they change an order's position via a Replace Message.³² The Exchange notes that it will continue to surveil for compliance with Exchange Rules 11.5 and 11.10(a)(5) as well as Regulation SHO.

The proposed amendment to Rule 11.10(e)(3) is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system because it does not seek to change how order modifications from either sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) are accomplished. Instead, the proposed change provides clarity to Users that a position change from either sell long to sell short exempt (or vice versa) or from

sell short exempt to sell short (or vice versa) may be accomplished through the use of a Replace Message and does not require an order to be cancelled and a new order submitted in order to modify an order's position to sell short exempt. The proposed change to Rule 11.10(e)(3) will also provide continuity between Rule 11.10(e)(3) and the proposed changes to Rule 11.9(a)(4), and as such are directly intended to remove impediments to and perfect the mechanism of a free and open market and national market system.

The proposed change to Rule 11.9(a)(4) removes impediments to and perfects the mechanism of a free and open market and a national market system because it addresses a limited scenario when a User modifies an order's position using a Replace Message during an SSCB. The proposed rule change specifically states that orders whose positions are modified from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) using a Replace Message when an SSCB is in effect will not lose priority as compared to other orders on the EDGX Book. Further, the proposed rule change provides that order modifications from sell long to sell short exempt (or vice versa) using a Replace Message will not lose priority as compared to other orders on the EDGX Book, regardless of whether an SSCB is in effect. Additionally, the proposed change to Rule 11.9(a)(4) removes impediments to and perfects a free and open market system because it is designed to make clear to Users that orders may be modified using a Replace Message without losing priority subject to the limitations named in Rule 11.9(a)(4). This change does not amend the meaning or operation of Rule 11.9(a)(4).

The proposed changes to Rule 11.11(a) are designed to clarify that any sell short order that will post to an away Trading Center will be routed when an SSCB is in effect. In addition, providing Users the ability to send sell short orders that will post to an away Trading Center, and thus are routable when an SSCB is in effect provides them additional flexibility with regard to the handling of their orders, and may provide additional execution opportunities for those orders. Given this, the proposed amendments to Rule 11.11(a) are directly targeted at removing impediments to and perfecting the mechanism of a free and open market and national market system, as well as to assure fair competition among brokers and dealers and among exchange markets.

³⁰ 17 CFR 242.200(g).

³¹ See Exchange Rule 11.10(a)(5) ("Short Sales"). The rule provides that "[a]ll orders to sell short shall include a Short Sale instruction, and if applicable, a Short Exempt instruction when entered into the System. If an order includes a Short Exempt instruction, the Exchange shall execute, display and/or route an order without regard to any short sale price test restriction in effect under Regulation SHO. The Exchange relies on the inclusion of a Short Exempt instruction when handling such order, and thus, it is the entering Member's responsibility, not the Exchange's responsibility, to comply with the requirements of Regulation SHO relating to including a Short Exempt instruction on an order."

³² A change in an order's price or position as well as an increase in an order's size via a Replace Message implicitly results in a new order. All Users must, therefore, ensure continued compliance with the order market and locate requirements of Regulation SHO (17 CFR 242.201) including compliance with Question 2.6 of the Commission's "Responses to Frequently Asked Questions Concerning Regulation SHO" available at <https://www.sec.gov/divisions/rule201faq.htm> (last accessed October 3, 2022).

²⁹ When identifying orders impacted by this functionality during May, June, and July 2022, the Exchange broadly identified any orders regardless of whether those orders were at or near the NBBO (*i.e.*, marketable orders) at the time of the event. The Cboe affiliated equities exchanges refers to the Exchange, Cboe BYX Exchange, Inc. ("BYX"), Cboe BZX Exchange, Inc. ("BZX"), and Cboe EDGA Exchange, Inc. ("EDGA").

The proposed change to Rule 11.11(a) further promotes just and equitable principles of trade and perfects a free and open market system by identifying which orders containing routing instructions are eligible to route and post to an away market center during an SSCB. As all Trading Centers are required to comply with Rule 201(b)(1)(ii) of Regulation SHO, a User can expect that an order routed from the Exchange to an away market center will be treated similarly on the away market center as it would on the Exchange during an SSCB. There is no change to the meaning or operation of this rule, but rather an amendment to make clear that an order that is eligible to post to an away market may be routed during an SSCB.

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 as the proposed rule changes are not being proposed for competitive reasons. Rather, the proposed amendment to Rule 11.10(e)(3) provides that modifications from sell long to sell short exempt (or vice versa) or from sell short exempt to sell short (or vice versa) may be accomplished through the use of a Replace Message. This proposed amendment will not change existing System behavior and Users will have more certainty about how orders may be modified, which is related to the proposed changes to Rule 11.9(a)(4). Order modifications from sell long to sell short (or vice versa) use the same Replace Message functionality as a modification from either sell long to sell short exempt (or vice versa) or from sell short exempt to sell short (or vice versa), and amending Rule 11.10(e)(3) to describe this behavior for Users is directly related to the Exchange's proposed changes to Rule 11.9(a)(4) and does not impose a burden on inter-market competition that is not necessary or appropriate in furtherance of the Act.

Additionally, the proposed amendments to Rule 11.9(a)(4) will enhance the transparency of the rules by revising the rule text. By revising the rule text to align with the current System behavior, Users will be aware that if they modify their orders from sell long to sell short (or vice versa) or from sell short exempt to sell short (or vice versa) and an SSCB is in effect, their orders will be given a new timestamp and lose time priority. Users are free to consider this proposed change as part of their overall experience with the

Exchange, which also includes execution quality and functionality offerings, when making order routing decisions. Additionally, the Exchange notes that the proposed rule change applies equally to all Users, and all Users' orders are subject to the described functionality, regardless of their size. Users may not opt-out of this System functionality.

Furthermore, this loss of time priority for a position modification would only occur when an SSCB is in effect and the Exchange is required to comply with Rule 201 of Regulation SHO. The impact of an order modification from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) using a Replace Message during an SSCB with respect to loss of time priority is no different than when a User seeks to increase the size of their order using a Replace Message or when a User seeks to change the position of their order by cancelling the existing order and entering a new order. In each instance, the order will receive a new timestamp reflecting the time the modification was made and the order would lose priority as compared to other orders on the EDGX Book.

Furthermore, the proposed change to Rule 11.9(a)(4) does not impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the Act in that the proposed change does not present a novel approach to sell short order handling. Indeed, the proposed changes to Rule 11.9(a)(4) are consistent with a recently approved amendment³³ to MIAX Pearl Rule 2616(a).³⁴ Pursuant to MIAX Pearl Rule 2616(a), any position modification involving a change from sell long to either sell short exempt or sell short (or vice versa) will result in the order receiving a new timestamp and the order losing priority, as compared to other orders resting on the book while an SSCB is in effect. The Exchange's proposed Rule is also similar to MIAX Pearl Rule 2616(a) in that modifications from sell long to sell short (or vice versa) and modifications from sell short exempt to sell short (or

vice versa) will be subject to a loss of priority during an SSCB.

While the proposed rule change is substantially similar to that of MIAX Pearl, the Exchange's proposal differs in that its proposal would not cause orders modified from sell long to sell short exempt (or vice versa) to lose priority during an SSCB, whereas MIAX Pearl Rule 2616(a) specifically states that a change from sell long to sell short exempt is a type of order modification that would be subject to a loss of priority during an SSCB. The Exchange's System does not view an order modification from sell long to sell short exempt (or vice versa) as a type of change which requires an order price analysis in order to prevent potential violations of Rule 201(b)(1)(ii) of Regulation SHO, and as such does not cause these types of order modifications to result in a loss of priority.

In addition, the proposed rule change is more narrowly tailored than the rules of Investors Exchange LLC ("IEX"), which requires market participants to enter a new order where an order's position is changed even when an SSCB is not in effect³⁵ and Nasdaq Stock Market, LLC ("Nasdaq"), which requires orders to be cancelled if the order's position is redesignated as short during a Short Sale Period and the order is not priced at a Permitted Price or higher under Nasdaq Rule 4763(e).³⁶ In each instance mentioned above, the original order would need to be replaced with a new order and therefore would receive a new timestamp which would result in a loss of priority. The Exchange is seeking to only append a new timestamp and cause a loss of priority as compared to other orders on the EDGX Book when an order's position is modified from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) during an SSCB, which is more narrowly-tailored than the rules governing similar order behavior on MIAX Pearl, IEX and Nasdaq.

Furthermore, the proposed change to Rule 11.11(a) does not impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the Act as it makes clear that orders that may post to away market centers will be routed during an SSCB. Users will have the ability to take this factor into consideration when determining which routing strategy to use when entering an order on the Exchange and are able to consider this proposed change as part of their overall

³³ *Supra* note 8.

³⁴ MIAX Pearl Rule 2616(a) states: "[i]n the event an order has been modified via a Cancel/Replace message in accordance with Rule 2614(e) above, such order only retains its timestamp if such modification involves a decrease in the size of the order, a change to the Max Floor of an order with a Reserve Quantity, or when a Short Sale Period, as defined in Exchange Rule 2614(g)(3)(A), is not in effect, a change in position from (A) sell to sell short; (B) sell to sell short exempt; (C) sell short to sell; (D) sell short to sell short exempt; (E) sell short exempt to sell; and (F) sell short exempt to sell short."

³⁵ See IEX Rule 11.190(d)(3) and IEX Rule 11.190(d)(4).

³⁶ See Nasdaq Equity 4, Rule 4756(a)(3).

experience with the Exchange. If a User disfavors this proposed change they are free to use a different routing strategy or submit an order directly to an away market center. This proposed change is not being proposed for competitive reasons, but rather to make clear that any order eligible to be posted to an away market center will be routed during an SSCB. As each market center is required to comply with Rule 201 of Regulation SHO, the Exchange believes that any order eligible to be posted to an away market center should be permitted to route, as the order would be subject to the away market center's rules regarding compliance with Rule 201 of Regulation SHO upon posting.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act³⁷ and Rule 19b-4(f)(6) thereunder.³⁸

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³⁹ 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. The Exchange states the proposed rule change provides clarity on how orders modified to sell short exempt are accomplished and the priority of orders marked sell short exempt. The Exchange believes that the proposed rule change related to modifications from sell long to sell short

(or vice versa) or sell short exempt to sell short (or vice versa) that occur during an SSCB will affect only a small percentage of overall order modifications.⁴⁰ Finally, the Exchange states that the proposed change to Rule 11.11(a) will permit orders containing routing instructions entered by all Users that would post to an away market during an SSCB to route to away market centers immediately upon becoming operative. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.⁴¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeEDGX-2023-012.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-CboeEDGX-2023-012. 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 (<http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2023-012, and should be submitted on or before March 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴²

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2023-04231 Filed 3-1-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34842]

Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

February 24, 2023.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of February 2023. 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

³⁷ 15 U.S.C. 78s(b)(3)(A).

³⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁹ 17 CFR 240.19b-4(f)(6)(iii).

⁴⁰ See *supra* note 29.

⁴¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁴² 17 CFR 200.30-3(a)(12), (59).

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 Secretaries-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 March 21, 2023, 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 Secretaries-Office@sec.gov.

ADDRESSES: The Commission: Secretaries-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.

Center Coast Brookfield Core MLP Fund I, LLC [File No. 811-22565]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 25, 2018, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of \$8,362 incurred in connection with the liquidation were paid by the applicant.

Filing Date: The application was filed on February 2, 2023.

Applicant's Address: Brookfield Public Securities Group LLC, Brookfield Place, 250 Vesey Street, 15th Floor, New York, New York 10281-1023.

Forward Funds [File No. 811-06722]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Ultimus Managers Trust, and on November 18,

2022 made a final distribution to its shareholders based on net asset value. Expenses of \$396,976 incurred in connection with the reorganization were paid by the parent company of the applicant and the parent company of the acquiring fund.

Filing Dates: The application was filed on December 9, 2022, and amended on February 16, 2023.

Applicant's Address: Cal.Gilmartin@klgates.com.

FPA Capital Fund, Inc. [File No. 811-01596]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to FPA Queens road Small Cap Value Fund, a series of Bragg Capital Trust, and on January 31, 2021 made a final distribution to its shareholders based on net asset value. Expenses of \$408,250 incurred in connection with the reorganization were paid by the applicant and the applicant's investment adviser.

Filing Dates: The application was filed on May 16, 2022, and amended on January 30, 2023.

Applicant's Address: 11601 Wilshire Boulevard, Suite 1200, Los Angeles, California 90025.

FPA Paramount Fund, Inc. [File No. 811-00852]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Phaeacian Global Value Fund, a series of Datum One Series Trust, and on October 16, 2020 made a final distribution to its shareholders based on net asset value. Expenses of \$202,042 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 May 16, 2022, and amended on January 30, 2023.

Applicant's Address: 11601 Wilshire Boulevard, Suite 1200, Los Angeles, California 90025.

Salient MF Trust [File No. 811-22678]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Ultimus Managers Trust, and on November 18, 2022 made a final distribution to its shareholders based on net asset value. Expenses of \$770,747 incurred in connection with the reorganization were paid by the parent company of the applicant and the parent company of the acquiring fund.

Filing Dates: The application was filed on December 9, 2022, and amended on February 16, 2023.

Applicant's Address: Cal.Gilmartin@klgates.com.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2023-04214 Filed 3-1-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96972; File No. SR-NYSEArca-2023-15]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the JPMorgan Active Small Cap Value ETF Under NYSE Arca Rule 8.601-E (Active Proxy Portfolio Shares)

February 24, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on February 14, 2023, NYSE Arca, Inc. ("NYSE Arca" 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 list and trade shares of the JPMorgan Active Small Cap Value ETF under NYSE Arca Rule 8.601-E. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 has adopted NYSE Arca Rule 8.601-E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges ("UTP"), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.⁴ Commentary .01 to Rule 8.601-E requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade shares ("Shares") as Active Proxy Portfolio Shares of the JPMorgan

Active Small Cap Value ETF (the "Fund") under Rule 8.601-E.

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Rule 8.600-E⁵ and for which a "Disclosed Portfolio" is required to be disseminated at least once daily,⁶ the portfolio for an issue of Active Proxy Portfolio Shares will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end management investment companies registered under the Investment Company Act of 1940 (the "1940 Act").⁷ The composition of

the portfolio of an issue of Active Proxy Portfolio Shares would not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio or Custom Basket, as applicable, and/or cash with a value equal to the next-determined NAV. A series of Active Proxy Portfolio Shares will disclose the Proxy Portfolio on a daily basis, which, as described above, is designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares. As set forth in NYSE Arca Rule 8.601-E(d)(2)(B)(ii), for Active Proxy Portfolio Shares using a Custom Basket, each Business Day,⁸ before the opening of trading in the Core Trading Session (as defined in NYSE Arca Rule 7.34-E(a)), the Investment Company shall make publicly available on its website the composition of any Custom Basket transacted on the previous Business Day, except a Custom Basket that differs from the applicable Proxy Portfolio only with respect to cash.

The Commission has previously approved⁹ and noticed for immediate

CEN, filed annually. A series of Active Proxy Portfolio Shares' SAI and Shareholder Reports will be available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov.

⁸ "Business Day" is defined to mean any day that the Exchange is open, including any day when the Fund satisfies redemption requests as required by Section 22(e) of the 1940 Act.

⁹ See Securities Exchange Act Release Nos. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR-NYSEArca-2019-95) (Notice of Filing of Amendment No. 6 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 6, to Adopt NYSE Arca Rule 8.601-E to Permit the Listing and Trading of Active Proxy Portfolio Shares and To List and Trade Shares of the Natixis U.S. Equity Opportunities ETF Under Proposed NYSE Arca Rule 8.601-E); 89192 (June 30, 2020), 85 FR 40699 (July 7, 2020) (SR-NYSEArca-2019-96) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to List and Trade Two Series of Active Proxy Portfolio Shares Issued by the American Century ETF Trust under NYSE Arca Rule 8.601-E); 89191 (June 30, 2020), 85 FR 40358 (July 6, 2020) (SR-NYSEArca-2019-92) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Four Series of Active Proxy Portfolio Shares Issued by T. Rowe Price Exchange-Traded Funds, Inc. under NYSE Arca Rule 8.601-E); 89438 (July 31, 2020), 85 FR 47821 (August 6, 2020) (SR-NYSEArca-2020-51) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of Natixis Vaughan

Continued

⁴ See Securities Exchange Act Release No. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR-NYSEArca-2019-95). Rule 8.601-E(c)(1) provides that "[t]he term 'Active Proxy Portfolio Share' means a security that (a) is issued by a investment company registered under the Investment Company Act of 1940 ('Investment Company') organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio or Custom Basket, as applicable, and/or cash with a value equal to the next determined net asset value ('NAV'); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder's request in return for the Proxy Portfolio or Custom Basket, as applicable, and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter." Rule 8.601-E(c)(2) provides that "[t]he term 'Actual Portfolio' means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company's calculation of NAV at the end of the business day." Rule 8.601-E(c)(3) provides that "[t]he term 'Proxy Portfolio' means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series." Rule 8.601-E(c)(4) provides that "the term 'Custom Basket' means a portfolio of securities that is different from the Proxy Portfolio and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Active Proxy Portfolio Shares."

⁵ The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under NYSE Arca Rule 8.600-E. See, e.g., Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR-NYSEArca-2009-55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR-NYSEArca-2010-79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR-NYSEArca-2010-118) (order approving Exchange listing and trading of the SIM Dynamic Allocation Diversified Income ETF and SIM Dynamic Allocation Growth Income ETF). The Commission also has approved a proposed rule change relating to generic listing standards for Managed Fund Shares. See Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR-NYSEArca-2015-110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

⁶ NYSE Arca Rule 8.600-E(c)(2) defines the term "Disclosed Portfolio" as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. NYSE Arca Rule 8.600-E(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

⁷ A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N-CSR under the 1940 Act. Information reported on Form N-PORT for the third month of a fund's fiscal quarter will be made publicly available 60 days after the end of a fund's fiscal quarter. Form N-PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a series of Active Proxy Portfolio Shares' Statement of Additional Information ("SAI"), its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-

effectiveness¹⁰ the listing and trading on the Exchange of series of Active Proxy Portfolio Shares under NYSE Arca Rule 8.601–E.

The Shares of the Fund will be issued by the J.P. Morgan Exchange-Traded Fund Trust (the “Trust”), which is organized as a Delaware statutory trust and registered with the Commission as an open-end management investment company.¹¹ J.P. Morgan Investment Management Inc. will be the investment adviser and administrator to the Fund (the “Adviser”). JPMorgan Chase Bank will serve as the Fund’s transfer agent, custodian, and sub-administrator. JPMorgan Distribution Services, Inc. will act as the distributor (the “Distributor”) for the Fund.

Commentary .04 to NYSE Arca Rule 8.601–E provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable. Any person related to the

investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or has access to non-public information regarding the Investment Company’s Actual Portfolio, Proxy Portfolio, and/or the Custom Basket, as applicable, or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio, Proxy Portfolio, and/or the Custom Basket, as applicable, or changes thereto. Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2–E(j)(3); however, Commentary .04, in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer, reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds.¹² Commentary .04 is also similar to Commentary .06 to Rule 8.600–E related to Managed Fund Shares, except that Commentary .04 relates to establishment and maintenance of a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, applicable to an Investment Company’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto, and not just to the underlying portfolio, as is the case with Managed Fund Shares.

In addition, Commentary .05 to Rule 8.601–E provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public

information regarding the Investment Company’s Actual Portfolio, the Proxy Portfolio, or the Custom Basket, as applicable, or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio, the Proxy Portfolio, or the Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio, Proxy Portfolio, or Custom Basket, as applicable.

The Adviser is not registered as a broker-dealer but is affiliated with broker-dealers. The Adviser has implemented and will maintain a “fire wall” with respect to such broker-dealer affiliates regarding access to information concerning the composition of and/or changes to the Fund’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable.

In the event (a) the Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a “fire wall” with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto. Any person related to the Adviser or the Fund who makes decisions pertaining to the Fund’s Actual Portfolio, the Proxy Portfolio, or Custom Basket, as applicable, or has access to non-public information regarding the Fund’s Actual Portfolio, the Proxy Portfolio, and/or the Custom Basket, as applicable, or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund’s Actual Portfolio, the Proxy Portfolio, and/or the Custom Basket, as applicable, or changes thereto.

In addition, any person or entity, including any service provider for the

Nelson Select ETF and Natixis Vaughan Nelson MidCap ETF under NYSE Arca Rule 8.601–E).

¹⁰ See Securities Exchange Act Release Nos. 92104 (June 3, 2021), 86 FR 30635 (June 9, 2021) (NYSEArca–2021–46) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Nuveen Santa Barbara Dividend Growth ETF, Nuveen Small Cap Select ETF, and Nuveen Winslow Large-Cap Growth ESG ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares); and 92958 (September 13, 2021), 86 FR 51933 (September 17, 2021) (NYSEArca–2021–77) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the Nuveen Growth Opportunities ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares)).

¹¹ The Trust is registered under the 1940 Act. On November 21, 2022, the Trust filed an amended registration statement on Form N–1A under the 1940 Act relating to the Fund (File No. 333–191837) (the “Registration Statement”). The Trust filed an application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–15383, dated September 6, 2022) (the “Application”). See Investment Company Act Release No. 34747 (November 3, 2022). On November 30, 2022, the Commission issued an order (the “Exemptive Order”) under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 34767, November 30, 2022). Investments made by the Fund will comply with the conditions set forth in the Application and the Exemptive Order. See *e.g.*, note 12, *infra*. The description of the operation of the Fund herein is based, in part, on the Registration Statement, the Application and the Exemptive Order. The Exchange will not commence trading in Shares of the Fund until the Registration Statement is effective.

¹² An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel will be subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

Fund, who has access to non-public information regarding the Fund's Actual Portfolio, the Proxy Portfolio, and/or the Custom Basket, as applicable, or changes thereto, will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund's Actual Portfolio, the Proxy Portfolio, and/or the Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity has erected and will maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to the Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable.

Description of the Fund

According to the Registration Statement, the Fund will generate a Proxy Portfolio that will be designed to closely track the daily performance of the Fund but will not be the Fund's Actual Portfolio. The Proxy Portfolio may be comprised of (1) some but not all of the Fund's actual holdings and (2) cash and cash equivalents. The Proxy Portfolio will include only certain securities that trade on a national securities exchange contemporaneously that trade on a national securities exchange contemporaneously [sic] with the Fund's Shares. The Fund will publish on its website the Proxy Portfolio before the commencement of trading of the Fund's Shares on each Business Day. In addition to the Proxy Portfolio, the Fund will disclose daily the percentage weight overlap between the holdings of the Proxy Portfolio and the Actual Portfolio that formed the basis for the Fund's calculation of NAV at the end of the prior Business Day ("Proxy Overlap") and the standard deviation over the past three months of the daily proxy spread (*i.e.*, the difference, in percentage terms, between the Proxy Portfolio per share NAV and that of the Actual Portfolio) ("Tracking Error"). Daily disclosure of the Proxy Portfolio, the Proxy Overlap, the Tracking Error and the other related proxy portfolio information is designed to ensure that investors can purchase and sell Fund shares in the secondary market at prices that are at or close to the underlying NAV per share of the Fund by enabling Authorized Participants and other market participants to accurately assess the profitability of arbitrage trades in Shares of the Fund.

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.¹³ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group ("ISG") or with which the Exchange has in place a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund's investment objective is to seek to provide long-term capital appreciation. Under normal circumstances, the Fund will invest at least 80% of its assets in equity securities small cap companies.

Investment Restrictions

The Shares of the Fund will conform to the initial and continued listing criteria under Rule 8.601-E. The Fund's holdings will be limited to and consistent with permissible holdings as described in the Application and Exemptive Order and all requirements in the Application and Exemptive Order.¹⁴ The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.*, 2X or -3X) of the Fund's primary broad-based securities market index (as defined in Form N-1A).¹⁵

¹³ Pursuant to the Application and Exemptive Order, the permissible investments for the Fund include only the following instruments: ETFs, Exchange-traded notes, Exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares, Exchange-traded preferred stocks, Exchange-traded American depositary receipts, Exchange-traded real estate investment trusts, Exchange-traded commodity pools, Exchange-traded metals trusts, Exchange-traded currency trusts, and Exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents (short-term U.S. Treasury securities, government money market funds, and repurchase agreements). For purposes of the application, exchange-traded futures are U.S. listed futures contracts where the futures contract's reference asset is an asset that the Fund could invest in directly, or in the case of an index future, is based on an index of a type of asset that the Fund could invest in directly. All futures contracts that the Fund may invest in will be traded on a U.S. futures exchange. For purposes of this footnote only, "Exchange" means a national securities exchange as defined in section 2(a)(26) of the Act.

¹⁴ *Id.*

¹⁵ The Fund's broad-based securities benchmark index will be identified in a future amendment to its Registration Statement following the Fund's first full calendar year of performance.

Creations and Redemptions of Shares

According to the Registration Statement, Shares of the Fund may be acquired or redeemed directly from the Fund only in specified minimum size "Creation Units" as defined below or multiples thereof. The Fund will offer and issue Shares at the applicable NAV to broker-dealers and other financial intermediaries who are participants in the National Securities Clearing Corporation ("NSCC") and who have signed an Authorized Participant Agreement with the Distributor (each, an "Authorized Participant"), and accepted by the Distributor, only in aggregations of a specified number of Shares ("Creation Units"), in exchange for a basket of securities and/or instruments (the "Deposit Securities"), together with a deposit of a specified cash payment (the "Cash Component"). The NAV of the Fund's Shares will be calculated each Business Day as of the close of regular trading on the Exchange, ordinarily 4:00 p.m. Eastern Time ("E.T."). A Creation Unit will consist of at least 5,000 Shares.

In certain circumstances, the Fund may issue Creation Units solely in exchange for a specified all-cash payment ("Cash Deposit"). Shares of the Fund are likewise redeemable by the Fund only in Creation Units, generally in exchange for a basket of securities and instruments ("Redemption Securities"), together with a Cash Component. The names and quantities of the securities and instruments that constitute the Deposit Securities and Redemption Securities are generally the same as the Fund's Proxy Portfolio, except to the extent purchases and redemptions are made entirely or partially on a cash basis. In addition, the Fund may determine to use Custom Baskets that differ from the Proxy Portfolio in that they include instruments that are not in the Proxy Portfolio, or are included in the Proxy Portfolio but in different weightings. As with the offer and sale of Creation Units, the Fund may, in certain circumstances, redeem Creation Units in exchange for a specified all-cash payment.

In order to initiate a creation order for a Creation Unit, an Authorized Participant must submit an irrevocable order to purchase Shares in proper form to the Distributor by the close of regular trading on the NYSE, typically 3:00 p.m. E.T. on a Business Day for creation of Creation Units to be effected based on the NAV of Shares of the Fund on that Business Day. The date on which an order to create Creation Units (or an order to redeem Creation Units, as discussed below) is placed is referred to

as the “Transmittal Date.” Orders must be transmitted by an Authorized Participant via the electronic order entry system, by telephone or other transmission method acceptable to JPMorgan Chase Bank and the Distributor pursuant to procedures set forth in the Authorized Participant Agreement.

Fund Shares may be redeemed only in Creation Units at the NAV next determined after receipt of a redemption request in proper form and only on a Business Day. The redemption proceeds for a Creation Unit will generally consist of securities represented in the Proxy Portfolio or a Custom Basket (such securities, “Fund Security” or “Fund Securities”) plus cash in an amount equal to the difference between the NAV of the Creation Unit being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities, minus any fees. The Fund may substitute a “cash-in-lieu” amount to replace any Fund Security in certain limited circumstances. The amount of cash paid out in such cases will be equivalent to the value of the instrument listed as a Fund Security. In the event that the Fund Securities have a value greater than the NAV of the Creation Unit, a compensating cash payment equal to the difference will be included in the Cash Component required to be delivered by an Authorized Participant. In order to initiate a redemption order for a Creation Unit to be effected based on the NAV of Shares of the Fund on that Business Day, an Authorized Participant must submit an irrevocable order to redeem the Creation Unit in proper form to the Distributor by the close of regular trading on the NYSE, typically 3:00 p.m. E.T. on that Business Day.

Availability of Information

The Fund’s website (www.jpmorganfunds.com), which will be publicly available prior to the public offering of Shares, which will be publicly available prior to the public offering of Shares, [sic] will include a form of the prospectus for the Fund that may be downloaded. The Fund’s website will include on a daily basis, per Share of the Fund, the prior Business Day’s NAV, the prior Business Day’s “Closing Price” or “Bid/Ask Price”¹⁶ and a calculation of the

premium/discount of such Closing Price or Bid/Ask Price against such NAV.¹⁷ The Adviser has represented that the Fund’s website will also provide: (1) any other information regarding premiums/discounts as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended, and (2) any information regarding the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. The Fund’s website also will disclose the information required under Rule 8.601–E(c)(3).¹⁸

The website and information will be publicly available at no charge.

The identity and quantity of investments in the Proxy Portfolio for the Fund will be publicly available on the Fund’s website before the commencement of trading in Shares on each Business Day. The website will also include information relating to the Proxy Overlap and the Tracking Error, as discussed above. With respect to each Custom Basket utilized by the Fund, each Business Day, before the opening of trading in the Core Trading Session (as defined in NYSE Arca Rule 7.34–E(a)), the Fund’s website will also include the composition of any Custom Basket transacted on the previous Business Day, except a Custom Basket that differs from the applicable Proxy Portfolio only with respect to cash.

Typical mutual fund-style annual, semi-annual and quarterly disclosures contained in the Fund’s Commission filings will be provided on the Fund’s website on a current basis.¹⁹ Thus, the Fund will publish the portfolio contents of its Actual Portfolio on a periodic basis, and no less than 60 days after the end of every fiscal quarter.

Investors can also obtain the Fund’s SAI, Shareholder Reports, Form N–CSR, N–PORT, and Form N–CEN. The

prospectus, SAI, and Shareholder Reports are available free upon request, and those documents and the Form N–CSR, N–PORT, and Form N–CEN may be viewed on-screen or downloaded from the Commission’s website. The Exchange also notes that pursuant to the Application, the Fund must comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information.

Information regarding the market price of Shares and trading volume in Shares, will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. The previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the Consolidated Tape Association (“CTA”) high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Quotation and last sale information for futures contracts will be available from the exchanges on which they trade. Intraday price information for all exchange-traded instruments, which include all eligible instruments except cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is available through major market data vendors, subscription services and/or pricing services.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.²⁰ Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund will be halted.

Specifically, Rule 8.601–E(d)(2)(D) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio

System or UTP Plan Securities Information Processor. The “Closing Price” of Shares is the official closing price of the Shares on the Exchange.

¹⁷ The “premium/discount” refers to the premium or discount to the NAV at the end of a trading day and will be calculated based on the last Bid/Ask Price or the Closing Price on such trading day.

¹⁸ See note 4, *supra*. Rule 8.601–E(c)(3) provides that the website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the 1940 Act applicable to such series, including the following, to the extent applicable:

- (i) Ticker symbol;
- (ii) CUSIP or other identifier;
- (iii) Description of holding;
- (iv) Quantity of each security or other asset held; and
- (v) Percentage weighting of the holding in the portfolio.

¹⁹ See note 7, *supra*.

²⁰ See NYSE Arca Rule 7.12–E.

¹⁶ The records relating to Bid/Ask Prices will be retained by the Fund or its service providers. The “Bid/Ask Price” is the midpoint of the highest bid and lowest offer based upon the National Best Bid and Offer as of the time of calculation of the Fund’s NAV. The “National Best Bid and Offer” is the current national best bid and national best offer as disseminated by the Consolidated Quotation

Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If the Exchange becomes aware that the NAV, Proxy Portfolio, or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio, or Actual Portfolio is available to all market participants at the same time.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace in all trading sessions in accordance with NYSE Arca Rule 7.34-E(a). As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601-E. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.

A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. In addition, pursuant to Rule 8.601-E(d)(1)(B), the Exchange, prior to commencement of trading in the Shares, will obtain a representation from the Trust that the NAV per Share of the Fund will be calculated daily, that the NAV, Proxy Portfolio, and the Actual Portfolio for the Fund will be made publicly available to all market participants at the same time, and the Trust and any person acting on behalf of the Trust will comply with Regulation Fair Disclosure under the Securities Exchange Act of 1934, including with respect to any Custom Basket.

With respect to Active Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery

requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and the Financial Industry Regulatory Authority, Inc. ("FINRA") will continue to monitor Exchange members for compliance with such requirements.

Surveillance

The Exchange represents 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 FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.²¹ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and underlying exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²²

The Adviser will make available daily to FINRA and the Exchange the Actual Portfolio of the Fund, upon request, in order to facilitate the performance of the surveillances referred to above.

²¹ 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.

²² For a list of the current members of ISG, see www.isgportal.org.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Commentary .03 to NYSE Arca Rule 8.601-E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares.

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of Rule 8.601-E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the issuer of a series of Active Proxy Portfolio Shares, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601-E. The Exchange notes that Commentary .01 to Rule 8.601-E requires an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601-E. In addition, the Exchange will require the issuer to represent that it will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. As part of its surveillance procedures, the Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601-E.

With respect to the Fund, all statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on

the Exchange. The Exchange will obtain a representation from the Trust, prior to commencement of trading in the Shares of the Fund, that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²³ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.²⁵

With respect to the proposed listing and trading of Shares of the Fund, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.601–E.

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.²⁶

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and underlying exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded instruments from markets and other

entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The daily dissemination of the identity and quantity of Proxy Portfolio component investments, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the Shares' Bid/Ask Price and NAV.

The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or –3X) of the Fund's primary broad-based securities market index (as defined in Form N–1A).

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the Trust that the NAV per Share of the Fund will be calculated daily and that the NAV, Proxy Portfolio, Actual Portfolio, and/or Custom Basket, as applicable, for the Fund will be made available to all market participants at the same time. Investors can obtain the Fund's SAI, shareholder reports, and its Form N–CSR, Form N–PORT, and Form N–CEN. The Fund's SAI and shareholder reports will be available free upon request from the Fund, and those documents and the Form N–CSR, Form N–PORT, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website.

Commentary .03 to NYSE Arca Rule 8.601–E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with

listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares. With respect to the Fund, the Adviser will make available daily to FINRA and the Exchange the portfolio holdings of the Fund upon request in order to facilitate the performance of the surveillances referred to above.

The Exchange will utilize its existing procedures to monitor compliance with the requirements of Rule 8.601–E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the Trust, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601–E. The Exchange notes that Commentary .01 to Rule 8.601–E requires the issuer of the Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601–E. In addition, the Exchange will require the issuer to represent that it will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. The Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601–E.

In addition, with respect to the Fund, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency.

Quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the CTA high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Quotation and last sale information for futures contracts will be available from the exchanges on which they trade. Intraday price information for all exchange-traded instruments, which include all eligible instruments except cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is available through major market data vendors, subscription services and/or pricing services.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act, as provided by NYSE Arca Rule 5.3–E.

²⁶ See note 13, *supra*.

The website for the Fund will include a form of the prospectus that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund will be halted. In addition, as noted above, investors will have ready access to the Proxy Portfolio and quotation and last sale information for the Shares. The identity and quantity of investments in the Proxy Portfolio will be publicly available on the Fund’s website before the commencement of trading in Shares on each Business Day. The Shares will conform to the initial and continued listing criteria under Rule 8.601–E.²⁷

The Fund’s holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.²⁸ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange will obtain a representation from the Adviser, prior to commencement of trading in the Shares of the Fund, that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

As noted above, the Exchange has in place surveillance procedures relating to

trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding quotation and last sale information for the Shares.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading of an additional actively-managed ETF that has characteristics different from existing actively-managed and index ETFs and 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

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

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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁹ and Rule 19b–4(f)(6) thereunder.³⁰

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)³¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may

become operative immediately upon filing. The Exchange notes that the Commission has approved and noticed for immediate effectiveness proposed rule changes to permit listing and trading on the Exchange of Active Proxy Portfolio Shares similar to the Fund.³² The proposed listing rule for the Fund raises no novel legal or regulatory issues. Thus, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.³³

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.

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–NYSEArca–2023–15 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–2023–15. 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 (<http://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

²⁹ 15 U.S.C. 78s(b)(3)(A).

³⁰ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³¹ 17 CFR 240.19b–4(f)(6)(iii).

³² See *supra* notes 9 and 10.

³³ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁷ See note 4, *supra*.

²⁸ See note 15, *supra*.

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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2023-15, and should be submitted on or before March 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2023-04226 Filed 3-1-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96975; File No. SR-CboeBYX-2023-004]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rules 11.9, 11.12, and 11.13

February 24, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 15, 2023, Cboe BYX Exchange, Inc. ("Exchange" or "BYX") 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 Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the "Exchange" or "BYX") proposes to amend Rule 11.9(e)(3) to provide that orders may be modified from either sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) using a Replace message. The Exchange also proposes to amend Rule 11.12(a)(4) to provide that a change in position from either sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) will result in a loss of time priority if made when a short sale circuit breaker pursuant to Rule 201 of Regulation SHO is in effect. Additionally, the Exchange proposes to amend Rule 11.13(b)(1) to provide when the Exchange may route orders with a short sale instruction when a short sale circuit breaker pursuant to Rule 201 of Regulation SHO is in effect. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/byx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.12(a)(4) to reflect that if a User⁵ changes the position of an order from either sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) while a Regulation

SHO Rule 201⁶ short sale circuit breaker (the "SSCB")⁷ is in effect, the change will result in a loss of time priority. This proposed change is substantially similar to MIAx PEARL, LLC ("MIAx Pearl") Rule 2616 (discussed *infra*).⁸ The Exchange also proposes to amend Rule 11.9(e)(3) to provide that an order may be modified from sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) using a Replace Message. Additionally, the Exchange proposes to amend Rule 11.13(b)(1) (Regulation SHO) to make clear that short sale orders⁹ entered with an order instruction to post to an away trading center when an SSCB is in effect are eligible for routing by the Exchange.

Priority Loss for Position Changes During an SSCB

Pursuant to Exchange Rule 11.9(e)(3), certain order modifications may be made via a Replace Message (*i.e.*, other than changing a limit order to a market order, only the price, stop price, the sell long or sell short indicator, Max Floor of a Reserve Order, and size of the order may be changed by a Replace Message), while other modifications require that the existing order be cancelled, and a new order be entered. Furthermore, pursuant to Rule 11.12(a)(4), when an order is cancelled or replaced in accordance with Rule 11.9(e)(3), such order will retain its priority only for certain types of modifications (*e.g.*, changing an order's position from sell long to sell short or a decrease in the size of the order). Certain other types of order modifications¹⁰ (*e.g.*, a change in the order's price) will otherwise receive a new timestamp and lose priority on the BYX Book.¹¹ For example, if pursuant to Rule 11.9(e)(3) an order is modified from sell long to sell short,

⁶ See 17 CFR 242.201; Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010).

⁷ For any execution of a short sale order to occur on the Exchange when a short sale price test restriction is in effect, the price must be better than the national best bid ("NBB"), unless the sell order was initially displayed by the System at a price above then the current NBB or is market "short exempt" pursuant to Regulation SHO. See Exchange Rule 11.13(a)(1).

⁸ See Securities Exchange Act Release No. 93506 (November 2, 2021), 86 FR 61796 (November 8, 2021) (SR-PEARL-2021-35) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Changes, as Modified by Amendment No. 1, To Amend Exchange Rule 2616, Priority of Orders).

⁹ See 17 CFR 242.200(a). The term "short sale" is defined as "any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller."

¹⁰ See Rule 11.12(a)(4).

¹¹ See Rule 1.5(e).

³⁴ 17 CFR 200.30-3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Exchange Rule 1.5(cc).

such modification may be accomplished via a Replace Message, and the System will, pursuant to Rule 11.12(a)(4), allow such order to retain its original timestamp and priority on the BYX Book.

The Exchange first proposes to amend Rule 11.9(e)(3) to provide that an order's position may be modified from sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) through the use of a Replace Message. The Exchange notes that Users complete a position modification from sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) using the same functionality to mark an order as either sell long or sell short under Rule 11.9(e)(3). The Exchange believes this change will provide additional specificity to the rule and ensure the rule uses terminology consistent with the description of Replace Messages and their impact on an order's priority under Exchange Rule 11.12(a)(4) (discussed *infra*).

The Exchange also proposes to amend Rule 11.12(a)(4) in order to align the Rule text with how the System currently behaves when an SSCB is in effect, and to provide clarification to Users that when an SSCB is in effect that changing an order's position from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) will instead result in such order receiving a new timestamp and losing its original priority. The Exchange is not proposing to change the timestamp for modifications from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) when an SSCB is *not* in effect. Additionally, the Exchange is also proposing to add language to Rule 11.12(a)(4) stating that a modification from sell long to sell short exempt (or vice versa) is a type of order modification that would retain time priority and would not receive a new timestamp, regardless of whether an SSCB is in effect (discussed *infra*).

The Exchange also proposes a non-substantive change to Rule 11.12(a)(4) to provide that an order is being modified by a Replace Message rather than cancelled and replaced with a new order. This change is intended to provide that an order does not need to be cancelled and replaced with a new order, but rather includes modifications to orders via the use of a Replace Message. The proposed changes to Exchange Rule 11.12(a)(4) are based on previously-approved changes to MIAX Pearl Rule 2616(a)(5), which is

substantially similar to Exchange Rule 11.12(a)(4).¹²

In the event that a User requests an order modification using a Replace Message, the System will first determine whether the modification is of a kind that may result in a loss of time priority in order to determine how the modification will be handled by the System. For example, as noted in Exchange Rule 11.12(a)(4), a modification to the price of an order will cause the loss of time priority. Therefore, in the event of a modification of the price of an order, the System will first determine that the type of modification may result in a loss of time priority and then handle the order accordingly by giving it a new timestamp.¹³ Since an order modification from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) may result in a change in price of the order when an SSCB is in effect, the Exchange immediately gives the order a new timestamp. As previously discussed, a modification from sell long to sell short (or vice versa) or a modification from sell short exempt to sell short (or vice versa) requires the System to determine whether an order must be re-priced to be compliant with the requirements of Regulation SHO. The Exchange notes, however, that an order modification from sell long to sell short exempt (or vice versa) does not require the System to determine whether the order shall be re-priced as a result of the modification, as both a sell long and a sell short exempt order may execute at a more aggressive price than a sell short order when an SSCB is in effect. Given that the System does not have to evaluate whether a price change is required as part of an order modification from sell long to sell short exempt (or vice versa), this specific order modification does not lose priority on the BYX Book.

Specifically, if a sell long order is modified to a sell short order (or vice versa) or a sell short exempt order is modified to a sell short order (or vice versa) while an SSCB is in effect, the Exchange cannot simply change the order from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) while resting on the book, but rather must verify that the sell short

order would not violate Rule 201(b)(1)(ii)¹⁴ of Regulation SHO before the order is re-added to the BYX Book. Therefore, as such a modification may result in a change of the order's price, the System gives the order a new timestamp, resulting in a loss of priority. Similarly, if a sell short order is modified to a sell long order (or vice versa) or a sell short order is modified to a sell short exempt (or vice versa) order while an SSCB is in effect, the order may be eligible to display at a more aggressive price. As such, the System gives the order a new timestamp, again resulting in a loss of time priority, but potentially in improved price priority. However, if an order is modified from sell long to sell short exempt (or vice versa) when an SSCB is in effect, the System does not have to take an additional step to evaluate whether the modification violates Rule 201(b)(1)(ii) of Regulation SHO given that sell long and sell short exempt orders may execute at more aggressive prices that sell short orders during an SSCB. Accordingly, an order modification from sell long to sell short exempt (or vice versa) would not result in a loss of priority. Stated differently, the System treats orders marked sell long and sell short exempt the same, and only order modifications from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) would cause an order to lose priority during an SSCB because the System is required to determine whether a change in the order's price is required as a consequence of the change in status from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa). This order price analysis by the System is required in order to prevent potential violations of Rule 201(b)(1)(ii) of Regulation SHO as orders may be required to be re-priced to prevent potential violations of Rule 201 when the SSCB is in effect.

To illustrate order behavior with a modification from sell long to sell short during an SSCB, consider the following example:

Assume the National Best Bid and Offer ("NBBO")¹⁵ in a given covered security¹⁶ is \$5.00 × \$5.10 while an

¹⁴ Pursuant to Rule 201(b)(1)(ii) of Regulation SHO, the Exchange must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current NBB during an SSCB.

¹⁵ See Exchange Rule 1.5(o).

¹⁶ Rule 201(a)(1) of Regulation SHO defines the term "covered security" to mean any "NMS stock" as defined under Rule 600(b)(48) of Regulation NMS. Rule 600(b)(48) of Regulation NMS defines an

¹² *Supra* note 8.

¹³ Alternatively, as noted in Rule 11.12(a)(4) a modification that involves a decrease in the size of the order will not cause the loss of time priority. Therefore, in order to decrease the size of the order, the System will first determine that the type of modification will not result in a loss of time priority and will handle the order in a completely different manner than it would if the order would have resulted in a loss of time priority.

SSCB is in effect. A User enters a non-displayed sell long order with a limit price of \$5.00. Subsequently, the User modifies the position of the order from sell long to sell short, while the NBBO has remained the same. In order to effect the modification, the System determines that a modification from sell long to sell short may result in a change in the order's price in order to prevent potential violations of Rule 201(b)(1)(ii) of Regulation SHO, as orders may be required to be repriced to prevent potential violations of Rule 201 when the SSCB is in effect. Accordingly, the order loses its time priority in order for the System to handle the potential price change. In this example, the subject order resulted in a change of the order's price as the sell short order was not eligible for execution at a price equal to the NBB. Nonetheless, even if the modification would not have ultimately resulted in a price change, the modification would have necessarily caused the System to evaluate whether a price change was necessary and, thus, required a new timestamp, resulting in a loss of time priority.

Order modifications from sell long to sell short (or vice versa), sell long to sell short exempt (or vice versa), or sell short exempt to sell short (or vice versa) that occur when an SSCB is not in effect will not be subject to a loss of priority on the Exchange, as orders may be required to be re-priced to prevent potential violations of Rule 201 of Regulation SHO, only when an SSCB is in effect. When an SSCB is not in effect the System does not have to take the additional step of determining whether a price change is required before effecting a position modification from sell long to sell short (or vice versa), sell long to sell short exempt (or vice versa), or sell short exempt to sell short (or vice versa) and as such, these order modifications can be processed without a loss of priority.

Routing Clarification for Orders That Will Post to an Away Trading Center

The Exchange is also proposing to amend Rule 11.13(b)(1) in order to codify that any sell short order that will post to an away Trading Center¹⁷ will

¹⁷ "NMS stock" as "any NMS security other than an option." Rule 600(b)(47) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." See 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(47); and 17 CFR 242.600(b)(48).

¹⁸ Rule 600(b)(82) of Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an

be routed when an SSCB is in effect. Given that sell short orders that post to an away Trading Center are subjected to the receiving Trading Center's processes for handling sell short orders in compliance with Rule 201 of Regulation SHO,¹⁸ the Exchange believes the capability to route all sell short orders with the ability to post to an away market center during an SSCB is appropriate and that Exchange Rules should be amended to codify such functionality.¹⁹ The Exchange also proposes to correct an inadvertent reference to the Cboe BZX Exchange, Inc. ("BZX"), rather than the Exchange, in Rule 11.13(b)(1).

The proposed rule change would provide Users with clarity as how the Exchange will handle routable sell short orders when the SSCB is in effect. For instance, Rule 11.13(b)(1) explicitly states that the Post to Away²⁰ routing option will post an order to another Trading Center's book when the SSCB is in effect.²¹ However, while Rule 11.13(b)(3)(K) provides that the RDOT²² routing option may post an order to another Trading Center's book (which

SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." See 17 CFR 242.201(a)(9); 17 CFR 242.600(b)(82).

¹⁹ Rule 201(b)(1) of Regulation SHO requires a Trading Center (e.g., Cboe BYX) to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the national best bid if the price of that covered security decrease by 10% or more from the covered security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day. See 17 CFR 242.201(b)(1).

²⁰ See, e.g., Nasdaq Rule 4763; NYSE Rule 440B; and Nasdaq's Regulation SHO Frequently Asked Questions (updated March 10, 2011), available at <https://nasdaqtrader.com/content/marketregulation/regsho/regshoFAQs.pdf>.

²¹ See Exchange Rule 11.13(b)(3)(H). Post to Away is a routing option that routes the remainder of a routed order to and posts such order on the order book of a destination on the System routing table as specified by the User.

²² The Exchange notes that orders routed pursuant to the Post to Away routing option that include a short sale instruction are identified as "short" and are subject to the receiving Trading Center's processes for handling sell short orders in compliance with Rule 201 of Regulation SHO. See Securities Exchange Act No. 79148 (October 25, 2016) 81 FR 75456 (October 31, 2016) (SR-BatsBYX-2016-27) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend BYX Rule 11.13, Order Execution and Routing).

²³ See Exchange Rule 11.13(b)(3)(K). RDOT is a routing option under which an order checks the System for available shares and then is sent to destinations on the System routing table. If shares remain unexecuted after routing, they are sent to the NYSE and can be re-routed by the NYSE. If shares remain unexecuted after routing, they are posted to the NYSE, unless otherwise instructed by the User.

could occur if the order is entered with a time-in-force ("TIF") of Day),²³ Rule 11.13(b)(1) does not state that the RDOT routing option is available to orders marked sell short during an SSCB. The Exchange seeks to clarify that *any* routing strategy that would post the remainder of the routed order to another Trading Center's book is eligible for routing during an SSCB. Under Exchange Rule 11.13(b)(1), IOC orders²⁴ marked "short" that are not eligible for routing during an SSCB will continue to be cancelled. The unfilled portions of limit orders marked "short" that are ineligible for routing due to an SSCB will continue to be posted to the BYX Book subject to the price sliding process as defined in Exchange Rule 11.9(g).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁶ 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)²⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change to Rule 11.9(e)(3) is consistent with the protection of investors and the

²³ A "Day Order" refers to a limit order to buy or sell which, if not executed, expires at the end of Regular Trading Hours. See Exchange Rule 11.9(b)(2). Day Orders routed pursuant to the RDOT routing option that include a short sale instruction are identified as "short" and are subject to the receiving Trading Center's processes for handling short sale orders in compliance with Rule 201 of Regulation SHO.

²⁴ An "IOC Order" refers to a limit order that is to be executed in whole or part as soon as such order is received and the portion not immediately executed on the Exchange or another trading center is treated as cancelled and is not posted to the BYX Book. See Exchange Rule 11.9(b)(1).

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ *Id.*

public interest because it aligns the rule text with the how the System currently operates and helps to eliminate any potential confusion Users may have regarding current Rule 11.9(e)(3). This proposed amendment will not change existing System behavior and Users will have more certainty about how orders may be modified, which is related to the proposed changes to Rule 11.12(a)(4).

Additionally, the proposed rule change to Rule 11.12(a)(4) is designed to ensure all sell short orders are subjected to the Exchange's process for ensuring that the order would not violate Rule 201(b)(1)(ii) of Regulation SHO during an SSCB. In order to verify the displayed price of an order with a position modification from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) during an SSCB, the System handles the modification as if a price change would occur, even if the modification does not ultimately result in a price change. If the System permitted such order modifications to forego this process, no order modifications from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) during an SSCB would result in a loss of time priority, and as a result, certain sell short orders could be permitted to display or execute at an impermissible price that would not comply with Rule 201(b)(1)(ii). The Exchange's process is designed to ensure compliance with Rule 201(b)(1)(ii) of Regulation SHO and is consistent with the protection of investors and the public interest. As designed, during an SSCB, the System determines up front whether an order modification could result in a price change before it can properly effect the modification. If the modification is of a type that may result in a price change to comply with Regulation SHO, the System gives the order a new timestamp. As a result, such a modification from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) always results in a loss of time priority even if the modification did not result in a change of the order's price. Conversely, an order modification from sell long to sell short exempt (or vice versa) does not result in an order losing priority because the System does not conduct an order price analysis to ensure compliance with Rule 201(b)(1)(ii) of Regulation SHO as both sell long and sell short exempt orders may execute at more aggressive prices than sell short orders during an SSCB.

Moreover, the Exchange processes billions of order modifications each month, with only a limited amount of modifications involving a change from

sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) during an SSCB. Out of the billions of order modifications processed by the Cboe affiliated equity exchanges during the months of May, June, and July 2022, the Exchange identified approximately 369,884 order modifications from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) across the Cboe affiliated equity exchanges during an SSCB that would potentially be affected by the proposed amendment to Rule 11.12(a)(4).²⁸ Given that 369,884 order modifications during an SSCB across the Cboe affiliated equity exchanges is an extremely small percentage of the billions of order modifications that the Cboe affiliated equity exchanges processed during the months of May, June, and July 2022, the Exchange believes that any benefit from restoring priority to this limited amount of order modifications is outweighed by the burden of changing the System to be able to conduct an order price analysis in real time to prevent potential violations of Rule 201(b)(1)(ii) of Regulation SHO and to permit these orders to retain priority.

In addition, the proposed change to Rule 11.12(a)(4) will also protect investors and the public interest because it continues to promote compliance with Regulation SHO, including Regulation SHO's order marking requirements²⁹ and Users' compliance with any applicable exemptions. Users are currently able to modify their order's position using a Replace Message and the proposed rule change does not alter a User's ability to do so. Users are required to mark their orders properly upon entry and upon modification³⁰ and the proposed amendment to Rule 11.12(a)(4) does not change this obligation. As they are required to do today, Users must also

²⁸ When identifying orders impacted by this functionality during May, June, and July 2022, the Exchange broadly identified any orders regardless of whether those orders were at or near the NBBO (*i.e.*, marketable orders) at the time of the event. The Cboe affiliated equities exchanges refers to the Exchange, Cboe BZX Exchange, Inc. ("BZX"), Cboe EDGX Exchange, Inc. ("EDGX"), and Cboe EDGA Exchange, Inc. ("EDGA").

²⁹ 17 CFR 242.200(g).

³⁰ See Exchange Rule 11.19 ("Short Sales"). The rule provides that "[a]ll short sale orders shall be identified as 'short' or 'short exempt' when entered into the System. If marked 'short exempt,' the Exchange shall execute, display and/or route an order without regard to any short sale price test restriction in effect under Regulation SHO. The Exchange relies on the marking of an order as 'short exempt' when handling such order, and thus, it is the entering Member's responsibility, not the Exchange's responsibility, to comply with the requirements of Regulation SHO relating to marking of orders as 'short exempt'."

continue to ensure that their order complies with any applicable exemption from Regulation SHO that they seek to avail themselves of, not only at the time of entry, but also at the time they change an order's position via a Replace Message.³¹ The Exchange notes that it will continue to surveil for compliance with Exchange Rules 11.19 and 11.21 as well as Regulation SHO.

The proposed amendment to Rule 11.9(e)(3) is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system because it does not seek to change how order modifications from either sell long to sell short exempt (or vice versa) or sell short exempt to sell short (or vice versa) are accomplished. Instead, the proposed change provides clarity to Users that a position change from either sell long to sell short exempt (or vice versa) or from sell short exempt to sell short (or vice versa) may be accomplished through the use of a Replace Message and does not require an order to be cancelled and a new order submitted in order to modify an order's position to sell short exempt. The proposed change to Rule 11.9(e)(3) will also provide continuity between Rule 11.9(e)(3) and the proposed changes to Rule 11.12(a)(4), and as such are directly intended to remove impediments to and perfect the mechanism of a free and open market and national market system.

The proposed change to Rule 11.12(a)(4) removes impediments to and perfects the mechanism of a free and open market and a national market system because it addresses a limited scenario when a User modifies an order's position using a Replace Message during an SSCB. The proposed rule change specifically states that orders whose positions are modified from either sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) using a Replace Message when an SSCB is not in effect will not receive a new timestamp and will not lose priority as compared to other orders on the BYX Book. Further, the proposed rule change provides that order modifications from sell long to sell short exempt (or vice versa) using a Replace Message will not lose priority as

³¹ A change in an order's price or position as well as an increase in an order's size via a Cancel/Replace message implicitly results in a new order. All Users must, therefore, ensure continued compliance with the order marking and locate requirements of Regulation SHO (17 CFR 242.201) including compliance with Question 2.6 of the Commission's "Responses to Frequently Asked Questions Concerning Regulation SHO" available at <https://www.sec.gov/marketreg/mrfaqregsho1204.htm> (last accessed October 3, 2022).

compared to other orders on the BYX Book, regardless of whether an SSCB is in effect. Additionally, the proposed change to Rule 11.12(a)(4) removes impediments to and perfects a free and open market system because it is designed to make clear to Users that orders may be modified using a Replace Message without losing priority subject to the limitations named in Rule 11.12(a)(4). This change does not amend the meaning or operation of Rule 11.12(a)(4).

The proposed changes to Rule 11.13(b)(1) are designed to provide that any sell short order that will post to an away Trading Center will be routed when an SSCB is in effect. In addition, providing Users the ability to send sell short orders that will post to an away Trading Center, and thus are routable when an SSCB is in effect provides them additional flexibility with regard to the handling of their orders, and may provide additional execution opportunities for those orders. Given this, the proposed amendments to Rule 11.13(b)(1) are directly targeted at removing impediments to and perfecting the mechanism of a free and open market and national market system, as well as to assure fair competition among brokers and dealers and among exchange markets.

The proposed change to Rule 11.13(b)(1) further promotes just and equitable principles of trade and perfects a free and open market system by identifying which orders containing routing instructions are eligible to route and post to an away market center during an SSCB. As all Trading Centers are required to comply with Rule 201(b)(1)(ii) of Regulation SHO, a User can expect that an order routed from the Exchange to an away market center will be treated similarly on the away market center as it would on the Exchange during an SSCB. There is no change to the meaning or operation of this rule, but rather an amendment to make clear that an order that is eligible to post to an away market may be routed during an SSCB. In addition, correcting an inadvertent reference to the Exchange's affiliate promotes just and equitable principles of trade by correctly identifying the Exchange within the rule text without changing the meaning or operation of the rule.

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 as the proposed rule changes are not being

proposed for competitive reasons. Rather, the proposed amendment to Rule 11.9(e)(3) provides that modifications from sell long to sell short exempt (or vice versa) or from sell short exempt to sell short (or vice versa) may be accomplished through the use of a Replace Message. This proposed amendment will not change existing System behavior and Users will have more certainty about how orders may be modified, which is related to the proposed changes to Rule 11.12(a)(4). Order modifications from sell long to sell short (or vice versa) use the same Replace Message functionality as a modification from either sell long to sell short exempt (or vice versa) or from sell short exempt to sell short (or vice versa), and amending Rule 11.9(e)(3) to describe this behavior for Users is directly related to the Exchange's proposed changes to Rule 11.12(a)(4) and does not impose a burden on inter-market competition that is not necessary or appropriate in furtherance of the Act.

Additionally, the proposed amendments to Rule 11.12(a)(4) will enhance the transparency of the rules by revising the rule text. By revising the rule text to align with the current System behavior, Users will be aware that if they modify their orders from sell long to sell short (or vice versa) or from sell short exempt to sell short (or vice versa) and an SSCB is in effect, their orders will be given a new timestamp and lose time priority. Users are free to consider this proposed change as part of their overall experience with the Exchange, which also includes execution quality and functionality offerings, when making order routing decisions. Additionally, the Exchange notes that the proposed rule change applies equally to all Users, and all Users' orders are subject to the described functionality, regardless of their size. Users may not opt-out of this System functionality.

Furthermore, this loss of time priority for a position modification would only occur when an SSCB is in effect and the Exchange is required to comply with Rule 201 of Regulation SHO. The impact of an order modification from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) using a Replace Message during an SSCB with respect to loss of time priority is no different than when a User seeks to increase the size of their order using a Replace Message or when a User seeks to change the position of their order by cancelling the existing order and entering a new order. In each instance, the order will receive a new timestamp reflecting the time the modification was made and the order would lose priority

as compared to other orders on the BYX Book.

Furthermore, the proposed change to Rule 11.12(a)(4) does not impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the Act in that the proposed change does not present a novel approach to sell short order handling. Indeed, the proposed changes to Rule 11.12(a)(4) are consistent with a recently approved amendment³² to MIAx Pearl Rule 2616(a).³³ Pursuant to MIAx Pearl Rule 2616(a), any position modification involving a change from sell long to either sell short exempt or sell short (or vice versa) will result in the order receiving a new timestamp and the order losing priority, as compared to other orders resting on the book while an SSCB is in effect. The Exchange's proposed Rule is also similar to MIAx Pearl Rule 2616(a) in that modifications from sell long to sell short (or vice versa) and modifications from sell short exempt to sell short (or vice versa) will be subject to a loss of priority during an SSCB.

While the proposed rule change is substantially similar to that of MIAx Pearl, the Exchange's proposal differs in that its proposal would not cause orders modified from sell long to sell short exempt (or vice versa) to lose priority during an SSCB, whereas MIAx Pearl Rule 2616(a) specifically states that a change from sell long to sell short exempt is a type of order modification that would be subject to a loss of priority during an SSCB. The Exchange's System does not view an order modification from sell long to sell short exempt (or vice versa) as a type of change which requires an order price analysis in order to prevent potential violations of Rule 201(b)(1)(ii) of Regulation SHO, and as such does not cause these types of order modifications to result in a loss of priority.

In addition, the proposed rule change is more narrowly tailored than the rules of Investors Exchange LLC ("IEX"), which requires market participants to enter a new order where an order's position is changed even when an SSCB

³² *Supra* note 8.

³³ MIAx Pearl Rule 2616(a) states: "[i]n the event an order has been modified via a Cancel/Replace message in accordance with Rule 2614(e) above, such order only retains its timestamp if such modification involves a decrease in the size of the order, a change to the Max Floor of an order with a Reserve Quantity, or when a Short Sale Period, as defined in Exchange Rule 2614(g)(3)(A), is not in effect, a change in position from (A) sell to sell short; (B) sell to sell short exempt; (C) sell short to sell; (D) sell short to sell short exempt; (E) sell short exempt to sell; and (F) sell short exempt to sell short."

is not in effect³⁴ and Nasdaq Stock Market, LLC (“Nasdaq”), which requires orders to be cancelled if the order’s position is redesignated as short during a Short Sale Period and the order is not priced at a Permitted Price or higher under Nasdaq Rule 4763(e).³⁵ In each instance mentioned above, the original order would need to be replaced with a new order and therefore would receive a new timestamp which would result in a loss of priority. The Exchange is seeking to only append a new timestamp and cause a loss of priority as compared to other orders on the BYX Book when an order’s position is modified from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) during an SSCB, which is more narrowly-tailored than the rules governing similar order behavior on MIAX Pearl, IEX and Nasdaq.

Furthermore, the proposed change to Rule 11.13(b)(1) does not impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the Act as it makes clear that orders that may post to away market centers will be routed during an SSCB. Users will have the ability to take this factor into consideration when determining which routing strategy to use when entering an order on the Exchange and are able to consider this proposed change as part of their overall experience with the Exchange. If a User disfavors this proposed change they are free to use a different routing strategy or submit an order directly to an away market center. This proposed change is not being proposed for competitive reasons, but rather to make clear that any order eligible to be posted to an away market center will be routed during an SSCB. As each market center is required to comply with Rule 201 of Regulation SHO, the Exchange believes that any order eligible to be posted to an away market center should be permitted to route, as the order would be subject to the away market center’s rules regarding compliance with Rule 201 of Regulation SHO upon posting. The proposed change to correct an inadvertent reference to the Exchange’s affiliate is similarly not proposed for competitive reasons, but rather in order to ensure that the rule correctly identifies the Exchange within the rule text.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act³⁶ and Rule 19b-4(f)(6) thereunder.³⁷

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³⁸ 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. The Exchange states the proposed rule change provides clarity on how orders modified to sell short exempt are accomplished and the priority of orders marked sell short exempt. The Exchange believes that the proposed rule change related to modifications from sell long to sell short (or vice versa) or sell short exempt to sell short (or vice versa) that occur during an SSCB will affect only a small percentage of overall order modifications.³⁹ Finally, the Exchange states that the proposed change to Rule 11.11(a) will permit orders containing routing instructions entered by all Users that would post to an away market during an SSCB to route to away market centers immediately upon becoming operative. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues.

³⁶ 15 U.S.C. 78s(b)(3)(A).

³⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁸ 17 CFR 240.19b-4(f)(6)(iii).

³⁹ See *supra* note 28.

Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.⁴⁰

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeBYX-2023-004.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBYX-2023-004. 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 (<http://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

⁴⁰ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁴ See IEX Rule 11.190(d)(3) and IEX Rule 11.190(d)(4).

³⁵ See Nasdaq Equity 4, Rule 4756(a)(3).

Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR—CboeBYX—2023–004, and should be submitted on or before March 23, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴¹

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2023–04227 Filed 3–1–23; 8:45 am]

BILLING CODE 8011–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36377 (Sub-No. 7)]

BNSF Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

By petition filed on December 13, 2022, BNSF Railway Company (BNSF) requests that the Board partially revoke the trackage rights exemption granted to it under 49 CFR 1180.2(d)(7) in Docket No. FD 36377 (Sub-No. 6), as necessary to permit that trackage rights arrangement to expire at midnight on December 31, 2023.

As explained by BNSF in its verified notice of exemption in Docket No. FD 36377 (Sub-No. 6), BNSF and Union Pacific Railroad Company (UP) entered into an agreement granting BNSF restricted, local trackage rights over two rail lines owned by UP between: (1) UP milepost 93.2 at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, Cal., on UP's Canyon Subdivision, a distance of 126.2 miles; and (2) UP milepost 219.4 at Elsey, and UP milepost 280.7 at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles (collectively, the Lines). BNSF Verified Notice of Exemption 2, *BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R.*, FD 36377 (Sub-No. 6). BNSF further stated that the trackage rights arrangement is intended to permit BNSF to move empty and loaded unit ballast trains to and from the ballast pit located at Elsey. *Id.* According to BNSF,

it filed its verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7), instead of 49 CFR 1180.2(d)(8), because the trackage rights covered by the notice are local rather than overhead rights. BNSF Verified Notice of Exemption 1 n.1, 2, *BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R.*, FD 36377 (Sub-No. 6).

In its petition, BNSF asks the Board to partially revoke the exemption as necessary to permit the trackage rights to expire at midnight on December 31, 2023, pursuant to the parties' agreement. (*See* BNSF Pet. 1–2); *see also* BNSF Verified Notice of Exemption, Ex. B at 2, *BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R.*, FD 36377 (Sub-No. 6). BNSF argues that granting this petition will promote the rail transportation policy at 49 U.S.C. 10101 and that the partial revocation would be consistent with the limited scope of the transaction and would not have an adverse effect on shippers. (BNSF Pet. 3.) In addition, BNSF asserts that the Board has granted similar petitions for partial revocation to permit temporary trackage rights to expire, including petitions involving prior iterations of the trackage rights agreement at issue here. (*Id.* at 3–4.)

Discussion and Conclusions

Although BNSF and UP have expressly agreed on the duration of the proposed trackage rights agreement, trackage rights approved under the class exemption at 49 CFR 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. At times, however, the Board has partially revoked a trackage rights exemption to allow those rights to expire after a limited time period rather than lasting in perpetuity. *See, e.g., BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R.*, FD 36377 (Sub-No. 5) (STB served Feb. 7, 2022) (granting a petition to partially revoke a trackage rights exemption involving the Lines at issue in this case); *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 at the end of 2023 would eliminate the need for BNSF to file a second pleading seeking discontinuance authority when the agreement expires, thereby promoting the aspects of 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 would have no adverse impact on shippers because the trackage rights at

issue are solely to allow BNSF to move empty and loaded unit ballast trains to and from the ballast pit in Elsey for use in BNSF's maintenance-of-way projects. (*See* BNSF Pet. 2.) Therefore, the Board will grant the petition and permit the trackage rights exempted in Docket No. FD 36377 (Sub-No. 6) to expire at midnight on December 31, 2023.

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 36377 (Sub-No. 6) are permitted to expire at midnight on December 31, 2023, subject to the employee protective conditions set forth in *Oregon Short Line*.

3. Notice of this decision will be published in the **Federal Register**.

4. This decision is effective on April 1, 2023. Petitions for stay must be filed by March 13, 2023. Petitions for reconsideration must be filed by March 22, 2023.

Decided: February 24, 2023.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

Stefan Rice,
Clearance Clerk.

[FR Doc. 2023–04263 Filed 3–1–23; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2023–0002–N–03]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA will seek approval of the Information Collection Request (ICR) abstracted

⁴¹ 17 CFR 200.30–3(a)(12), (59).

below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before May 1, 2023.

ADDRESSES: Written comments and recommendations for the proposed ICR should be submitted on *regulations.gov* to the docket, Docket No. FRA–2023–0002. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number (2130–0593) in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: (571) 609–1285 or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8–1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with

the collection of information that Federal statutes and regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) reduce reporting burdens; (2) organize information collection requirements in a “user-friendly” format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service.

OMB Control Number: 2130–0593.

Abstract: This collection of information is necessary to enable FRA to garner customer and stakeholder feedback in an efficient, timely manner, consistent with its commitment to improving service delivery. The information collected from FRA's customers and stakeholders will help ensure users have an effective, efficient, and satisfying experience with FRA's programs. This feedback will provide insights into customer and stakeholder perceptions, experiences and expectations, provide an early indicator of issues with service, and focus attention on areas where communication, training or changes in operations might improve delivery of products or services. This collection will allow ongoing, collaborative, and actionable communications between FRA and its customers and stakeholders. It also allows feedback to contribute directly to the improvement of program management. If this information is not collected, vital feedback from customers and stakeholders on FRA's services will be unavailable.

Improving FRA's programs requires ongoing assessment of service delivery. FRA will collect, analyze, and interpret information gathered through this generic clearance to identify strengths and weaknesses of current services and make improvements to service delivery based on feedback. The solicitation of feedback will target areas such as: timeliness, appropriateness, information accuracy, courtesy, service delivery efficiency, and issue resolution. FRA will assess responses in order to plan and inform efforts seeking to improve the quality of service offered to the public.

FRA will only submit a collection for approval under this generic clearance under the following conditions:

- The information gathered is only used internally for general service improvement and program management purposes and is not intended for public release;
- The information gathered is not used to substantially inform significant policy decisions;
- The information gathered will yield qualitative information; FRA will not design the collection or expect it to yield statistically reliable results or use it as though the results are generalizable to the study population;
- Participation in the collection is voluntary;
- The collection is low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and is low-cost for both the respondents and the Federal Government;
- The collection is non-controversial and does not raise issues of concern to other Federal agencies;
- The collection is directed to the solicitation of opinions from respondents who have experience with the OMB program or may have experience with the OMB program soon after receiving the collection; and
- With the exception of information needed to provide remuneration for focus group participants and cognitive laboratory studies, personally identifiable information (PII) is collected only to the extent necessary and is not retained by FRA.

FRA increased the estimated paperwork burden by 121 hours, from 354 hours (current inventory) to 4475 hours (requesting inventory). The increased burden is due to changes in FRA's organizational structure and additional interactions with stakeholders as a result of continued implementation of the Infrastructure Investment and Jobs Act statutorily required programs.

Type of Request: Extension without change (revised estimates) of a currently approved collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Governments.

Form(s): N/A.

Respondent Universe: 5,750.

Frequency of Submission: Once per request.

Reporting Burden:

CFR section	Respondent universe (A)	Total annual responses	Average time per response (minutes) (B)	Total annual burden hours (C = A * B)
1. Surveys, comment cards, interviews, focus groups, and web-based technologies for Customer Service Satisfaction and Delivery for the Office of the Administrator.	350	Annual, periodically	10	58.33
2. Surveys, comment cards, interviews, focus groups, and web-based technologies for Customer Service Satisfaction and Delivery for the Office of Railroad Safety.	350	Annual, periodically	10	58.33
3. Surveys, comment cards, interviews, focus groups, and web-based technologies for Customer Service Satisfaction and Delivery for the Office of Research, Data, and Innovation.	350	Annual, periodically	10	58.33
4. Surveys, comment cards, interviews, focus groups, and web-based technologies for Customer Service Satisfaction and Delivery for the Office of Railroad Development.	350	Annual, periodically	10	58.33
5. Surveys, comment cards, interviews, focus groups, and web-based technologies for Customer Service Satisfaction and Delivery for the Office of the Chief Financial Officer.	350	Annual, periodically	10	58.33
6. Web-based technologies for Customer Service Satisfaction and Delivery related to the improvement of webinar-based stakeholder engagement for the Office of Railroad Development.	3,500	Annual, periodically	1	58.33
7. Surveys, comment cards, interviews, focus groups, and web-based technologies for Customer Service Satisfaction and Delivery related to the improvement of stakeholder capacity building and training resources for the Office of Railroad Development.	500	Annual, periodically	15	125
Total ¹	5,750	Annual, periodically	N/A	475

Total Estimated Annual Responses: 5,750.

Total Estimated Annual Burden: 475 hours.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.¹

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Deputy Chief Counsel.

[FR Doc. 2023–04299 Filed 3–1–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2023–0038]

Request for Comments on the Approval of a New Information Collection: Building American Production Capacity for Electric Port Equipment and Other Port Infrastructure Items

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments on our intention to request the Office of Management and Budget (OMB) approval of a new information collection. The proposed collection OMB 2133–NEW (Building American Production Capacity for Electric Port Equipment and other Port Infrastructure Items) will be used to identify the

demand for electric-powered port equipment and other port infrastructure items supported by a pooled procurement. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before May 1, 2023.

ADDRESSES: You may submit comments [identified by Docket No. DOT–MARAD–2023–0038] through one of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Search using the above DOT docket number and follow the online instructions for submitting comments.
- **Fax:** 1–202–493–2251.
- **Mail or Hand Delivery:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Instructions: All submissions must include the agency name and docket number for this rulemaking.

Note: All comments received will be posted without change to www.regulations.gov including any personal information provided.

Comments are invited on: (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request

for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Kirk Claussen, (202) 366–5660, Office of Ports & Waterways, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, Email at Kirk.Claussen@dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Building American Production Capacity for Electric Port Equipment and other Port Infrastructure Items.

OMB Control Number: 2133–NEW.

Type of Request: New Information Collection.

Abstract: The Building American Production Capacity for Electric Port Equipment and other Port Infrastructure Items collection is essential to identify the demand for electrically powered port equipment and infrastructure items supported by pooled procurement. This initiative, which is comprised of an online survey and interview with diverse American port stakeholders, will also support Buy American/Buy America objectives and American manufacturers of electrically powered port equipment. Survey responses will also help to identify a suitable port through which the procurement of electrically powered port equipment and infrastructure can be initiated. This survey is being conducted through a cooperative agreement between the Maritime Administration (MARAD) and the American Association of Port Authorities (AAPA).

Currently, many U.S. port authorities and marine terminal operators purchase diesel-powered dockside equipment, necessary for loading, unloading, and organizing shipping containers. Much of this equipment is foreign made, in short supply, and increases exposure to

¹ Totals may not add due to rounding.

dangerous emissions that contribute to climate change. The recent passage of the Infrastructure Investment and Jobs Act (IIJA), commonly referred to as the Bipartisan Infrastructure Bill, which was signed into law on November 15, 2021, provides a federal grant stream that will modernize U.S. ports infrastructure over the next five years. Specifically, this Bill assures resources for the development of a domestic capacity of clean electric-powered American alternatives to replace and reduce emissions by predominantly foreign-made diesel port equipment.

Respondents: U.S. port authorities, marine terminal operators, and port equipment manufacturers.

Affected Public: Local and state governments, and businesses.

Estimated Number of Respondents: 50.

Estimated Number of Responses: 50.

Estimated Hours per Response: 2 hours.

Annual Estimated Total Annual Burden Hours: 100.

Frequency of Response: Once.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.93.)

* * * * *

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023-04258 Filed 3-1-23; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2023-0007]

National Emergency Medical Services Advisory Council; Solicitation of Applications

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Solicitation of applicants for appointment to the National Emergency Medical Services Advisory Council (NEMSAC).

SUMMARY: NHTSA is soliciting applications for appointment to the DOT's NEMSAC. The purpose of NEMSAC is to serve as a nationally recognized council of Emergency Medical Services (EMS) representatives and consumers to provide advice and recommendations regarding EMS to

DOT. Through NHTSA, NEMSAC's advice is provided to the Federal Interagency Committee on EMS (FICEMS).

DATES: Applications for membership must be received by NHTSA on or before 5 p.m. EST, April 13, 2023.

ADDRESSES: If you wish to apply for membership, your application should be submitted to:

• *Email:* NEMSAC@dot.gov.

• *Mail: Use only overnight mail such as UPS or FedEx to:* U.S. Department of Transportation, National Highway Traffic Safety Administration, Office of Emergency Medical Services, Attn: NEMSAC c/o Clary Mole, 1200 New Jersey Avenue SE, NPD 400, W44-321, Washington, DC 20590.

Additional information on NEMSAC, including the current roster, charter, and previous meeting minutes can be found at: <https://www.ems.gov/nemsac.html>.

FOR FURTHER INFORMATION CONTACT:

Clary Mole, EMS Specialist, National Highway Traffic Safety Administration, U.S. Department of Transportation, *Clary.Mole@dot.gov* or 202-868-3275. Any committee related questions should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

Background: NEMSAC is an advisory council established by DOT in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. App.) and DOT Order 1120.3C. NEMSAC provides information, advice, and recommendations to the Secretary via the Administrator of NHTSA, and through NHTSA to FICEMS on matters relating to all aspects of development and implementation of EMS.

Description of Duties: NEMSAC is authorized to:

a. Perform EMS needs assessments and gap analyses to discover issues with national significance, consider findings to develop statements regarding EMS issues, formulate positions on these issues, and make recommendations on such issues for the Secretary of Transportation and/or FICEMS through the NHTSA Office of EMS.

NEMSAC provides recommendations or advice relating to EMS on topics such as:

- Expanded use of the National EMS Information System (NEMSIS)—the database used to store EMS data from the U.S. states and territories
- Use of NEMSIS for applied research and development of standards,

guidelines, and performance benchmarks that are evidence-based

- Development of federal programs that will both improve coordination among federal agencies supporting local, regional, state, tribal and territorial EMS and 911 systems and improve the delivery of EMS throughout the nation

- National EMS system quality improvement projects and programs that will strengthen the resiliency of EMS systems into one that is inherently more adaptable, innovative, equitable, integrated, prepared, sustainable, and safe

- Enhancements that promote the strengthen and increase medical and operational education, professional development, safety, diversity, recruitment, retention, use of technology, healthcare system data linkages, etc.

b. Respond to requests for consultation on EMS issues from the Secretary of Transportation and/or from FICEMS through the NHTSA Office of EMS.

c. Prepare an annual report to be sent to the Secretary of Transportation, the Secretary of Health and Human Services, and Secretary of Homeland Security, and to FICEMS, which summarizes NEMSAC's actions and recommendations.

Membership: In accordance with the NEMSAC charter, members should represent a cross-section of the diverse agencies, organizations, and individuals involved in EMS activities and programs in the United States. NEMSAC consists of 25 members, each of whom shall be appointed by the Secretary of Transportation, in coordination with the U.S. Departments of Homeland Security and Health and Human Services through their respective representatives on FICEMS. The NEMSAC members shall collectively be representative of all sectors of the EMS community. The NEMSAC's broad-based membership will ensure that it has sufficient EMS system expertise and geographic and demographic diversity to accurately reflect the whole EMS community. Representatives will be selected on the basis of materials submitted and in a manner that ensured equal opportunity for all people and avoided discrimination on the basis of race, color, religion, sex, gender identity, sexual orientation, national origin, disability or age.

Moreover, selection will be undertaken in a manner that encourages participation by members of underrepresented and underserved communities in accordance with Presidential Executive Order 13985. To the extent practical, the final NEMSAC membership shall ensure representation from the following sectors of the EMS community:

- Volunteer EMS
- Fire-based (career) EMS
- Private (career non-fire) EMS
- Hospital-based EMS
- Tribal EMS
- Air Medical EMS
- Local EMS service directors/administrators
- EMS Medical Directors
- Emergency Physicians
- Trauma Surgeons
- Pediatric Emergency Physicians
- State EMS Directors
- State Highway Safety Directors
- EMS Educators
- Public Safety Call-taker/Dispatcher (911)
- EMS Data Managers
- EMS Quality Improvement
- EMS Researchers
- Emergency Nurses
- Hospital Administration
- Public Health
- Emergency Management
- EMS Practitioners
- Consumers (not directly affiliated with an EMS or healthcare organization)
- State or local legislative bodies (e.g., city/county councils; state legislatures)

Members serve in a “representative” capacity on NEMSAC and not as Special Government Employees. The Secretary of Transportation shall appoint each member for up to a 2-year term and members may be reappointed but may not serve more than two consecutive terms unless the Secretary determines that additional terms are permitted to ensure representation of all sectors of EMS. NEMSAC members will not receive pay or other compensation from NHTSA for their NEMSAC service, but are entitled to reimbursement of their travel expenses, including per diem. The NEMSAC meets in plenary session approximately three to four times per year.

Qualifications: Members will be selected for their ability to reflect a balanced representation of interests from across the EMS community, but no member will represent a specific organization.

Vacancies: NEMSAC is seeking to fill the following EMS sector representative vacancies:

- Fire-based EMS
- Private EMS

Materials to Submit: Qualified individuals interested in serving on the NEMSAC are invited to apply for appointment by submitting the following materials to one of the locations listed in the **ADDRESSES** section by the deadline listed in the **DATES** section:

- Resume or Curriculum Vitae (CV) containing the applicants full name, title, home address, phone number, email address.
- At least two (2) but no more than four (4) letters of recommendation from a company, association, organization, or individual on letterhead containing a brief description of why the applicant should be considered for appointment.
- A letter of interest which identifies the EMS sector the applicant seeks to represent and contains an attestation statement indicating that the applicant is not a registered federal lobbyist and an understanding that as a government representative the applicant may not concurrently serve as registered federal lobbyists.

Each applicant must submit the required materials to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by the deadline. Nominees for appointment will be selected on the basis of materials submitted and in a manner that ensures equal opportunity for all people and avoids discrimination on the basis of race, color, religion, sex, gender identity, sexual orientation, national origin, disability or age; however, selection will be undertaken in a manner that encourages participation by members of underrepresented and underserved communities in accordance with Presidential Executive Order 13985.

Authority: 42 U.S.C. 300d–4(b); 49 CFR 1.95(i)(4).

Issued in Washington, DC.

Nanda Narayanan Srinivasan,
Associate Administrator, Research and Program Development.

[FR Doc. 2023–04321 Filed 3–1–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Veterans and Community Oversight and Engagement Board

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is seeking nominations of

qualified candidates to be considered for appointment as a member of the Veterans and Community Oversight and Engagement Board (herein-after referred in this section to as “the Board”) for the VA West Los Angeles Campus in Los Angeles, CA (“Campus”) for the 2023 membership cycle.

DATES: Nominations for membership on the Board must be received no later than 5:00 p.m. EST on April 30, 2023.

ADDRESSES: All nominations should be mailed to the Veterans Experience Office, Department of Veterans Affairs, 810 Vermont Avenue NW (30), Washington, DC 20420; or sent electronically to the Advisory Committee Management Office mailbox at vaadvisorycmt@va.gov with a subject line: Nomination to VCOEB.

FOR FURTHER INFORMATION CONTACT: Eugene W. Skinner, Jr., Designated Federal Officer, Veterans Experience Office, Department of Veterans Affairs, 810 Vermont Avenue NW (30), Washington, DC 20420, telephone 202–631–7645 or via email at Eugene.Skinner@va.gov.

SUPPLEMENTARY INFORMATION: In carrying out the duties set forth in the West LA Leasing Act, the Board shall:

- (1) Provide the community with opportunities to collaborate and communicate by conducting public forums; and
- (2) Focus on local issues regarding the Department that are identified by the community with respect to health care, implementation of the Master Plan, and any subsequent plans, benefits, and memorial services at the Campus. Information on the Master Plan can be found at <https://www.losangeles.va.gov/masterplan/>.

Authority: The Board is a statutory committee established as required by section 2(i) of the West Los Angeles Leasing Act of 2016, Public Law 114–226 (the West LA Leasing Act). The Board operates in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 10. The Board is established to coordinate locally with the Department of Veterans Affairs to identify the goals of the community and Veteran partnership; provide advice and recommendations to the Secretary to improve services and outcomes for Veterans, members of the Armed Forces, and the families of such Veterans and members; and provide advice and recommendations on the implementation of the Draft Master Plan approved by the Secretary on January 28, 2016, and on the creation and implementation of any other successor master plans.

Membership Criteria: VA is seeking nominations for Board membership. The Board is composed of fifteen members and several ex-officio members. The Board meets up to four times annually; and it is important that Board members attend meetings to achieve a quorum so that Board can effectively carry out its duties. The members of the Board are appointed by the Secretary of Veterans Affairs from the general public, from various sectors and organizations, and shall meet the following qualifications, as set forth in the West LA Leasing Act:

(1) Not less than 50% of members shall be Veterans; and

(2) Non-Veteran members shall be:

- a. Family members of Veterans,
- b. Veteran advocates,
- c. Service providers,
- d. Real estate professionals familiar with housing development projects, or
- e. Stakeholders.

The Board members may also serve as Subcommittee members.

In accordance with the Board Charter, the Secretary shall determine the number, terms of service, and pay and allowances of Board members, except that a term of service of any such member may not exceed two years. The Secretary may reappoint any Board member for additional terms of service.

To the extent possible, the Secretary seeks members who have diverse professional and personal qualifications including but not limited to subject matter experts in the areas described above. VA strives to develop a Committee membership that includes diversity in military services, ranks, and deployments, military service, military deployments, working with Veterans, committee subject matter expertise, as well as diversity in race/ethnicity, gender, religion, disability, geographical background, and profession. We ask that nominations include any relevant experience and information so that VA can ensure diverse Board membership.

Requirements for Nomination Submission: Nominations should be typed written (one nomination per nominator). Self-nominations are acceptable. Nomination package should include:

(1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (i.e. specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating a willingness to serve as a member of the Board;

(2) The nominee's contact information, including name, mailing address, telephone numbers, and email address;

(3) The nominee's curriculum vitae, not to exceed three pages and a one-page cover letter; and

(4) A summary of the nominee's experience and qualifications relative to the membership criteria and professional qualifications criteria listed above;

(5) Letters of recommendation are accepted, but not required; and

(6) A statement confirming that he/she is not a federally-registered lobbyist.

The Department makes every effort to ensure that the membership of VA Federal advisory committees is diverse in terms of points of view represented and the committee's capabilities. Appointments to this Board shall be made without discrimination because of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Board and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee. An OGE Form 450, Confidential Financial Disclosure, is required annually for all Board Members.

Dated: February 27, 2023.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2023-04330 Filed 3-1-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Staff Sergeant Fox Suicide Prevention Grant Program Funding Opportunity

AGENCY: Department of Veterans Affairs.

ACTION: Notice of funding opportunity.

SUMMARY: The Department of Veterans Affairs (VA) is announcing the availability of funds for suicide prevention grants under the Staff Sergeant Fox Suicide Prevention Grant Program (SSG Fox SPGP). This Notice of Funding Opportunity (NOFO) contains information concerning the SSG Fox SPGP; the renewal and new applicant suicide prevention grant application processes; and the amount of funding available. Awards made for suicide prevention grants will fund operations beginning on October 1, 2023. This is a 1-year award with the option to renew for an additional year, pending availability of funds and grantee performance.

DATES: Applications for suicide prevention services grants under SSG

Fox SPGP must be received by 11:59 p.m. Eastern Time on May 19, 2023. In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays, computer service outages or other submission-related problems.

ADDRESSES: For a Copy of the Application Package: Copies of the application can be downloaded from the SSG Fox SPGP website at <https://www.mentalhealth.va.gov/ssgfox-grants/>. Questions should be referred to the SSG Fox SPGP via email at VASSGFoxGrants@va.gov. For detailed program information and requirements, see part 78 of title 38, Code of Federal Regulations (38 CFR part 78).

Submission of Application Package: Applicants must submit applications electronically following instructions found at <https://www.mentalhealth.va.gov/ssgfox-grants/>. Applications may not be mailed, hand carried, or sent by facsimile (FAX). Applications must be received by SSG Fox SPGP by 11:59 p.m. Eastern Time on the application deadline date. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected.

Technical Assistance: Information regarding how to obtain technical assistance with the preparation of a new or renewal suicide prevention grant application is available on the SPGP Program website at <https://www.mentalhealth.va.gov/ssgfox-grants/>.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Foley, SSG Fox SPGP Director, Office of Mental Health and Suicide Prevention either via email at VASSGFoxGrants@va.gov or via Telephone: (202) 502-0002 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Funding Opportunity Title: Staff Sergeant Fox Suicide Prevention Grant Program.

Announcement Type: Initial.

Funding Opportunity Number: VA-FOX-SP-FY2023.

Assistance Listing Number: 64.055.

I. Funding Opportunity Description

A. Assistance Listing Number: 64.055. Staff Sergeant Fox Suicide Prevention Grant Program.

B. Purpose: The purpose of the SSG Fox SPGP is to reduce Veteran suicide

by expanding suicide prevention programs for Veterans through the award of suicide prevention services grants to eligible entities to provide or coordinate the provision of suicide prevention services to eligible individuals and their families. SSG Fox SPGP builds upon VA's public health approach, which combines clinical and community-based interventions to prevent Veteran suicide for those inside and outside of VA health care. This grant program assists in further implementing a public health approach through these community efforts. The goal of these grants is to reduce Veteran suicide risk; improve baseline mental health status, well-being, and social support; and improve financial stability for eligible individuals and their families.

C. Funding Priorities: The principal goal of this NOFO is to seek entities that have demonstrated the ability to provide or coordinate suicide prevention services.

Under Priority 1, VA will provide funding to those entities with existing SPGP awards. Grant funds will be awarded pursuant to 38 CFR 78.40. Following the ranking and selection of renewal applicants, if remaining funds are available, they will be awarded pursuant to the following Priority 2.

Under Priority 2 applications will be accepted from new eligible entities. VA may prioritize the distribution of suicide prevention services grants under this Priority to (i) rural communities, (ii) Tribal lands, (iii) territories of the United States, (iv) medically underserved areas, (v) areas with a high number or percentage of minority Veterans or women Veterans and (vi) areas with a high number or percentage of calls to the Veterans Crisis Line.

D. Definitions: The regulations for the SSG Fox SPGP, published in the **Federal Register** on March 10, 2022, and codified in 38 CFR part 78, contain all detailed definitions and requirements pertaining to this program. A subsequent technical correction to the regulation was published in the **Federal Register** on March 22, 2022.

E. Authority: Funding applied for under this NOFO is authorized by section 201 of the Commander John Scott Hannon Veterans Mental Health Improvement Act (Public Law 116–171, “the Act”). VA established and implemented this statutory authority for the SSG Fox SPGP in 38 CFR part 78. Funds made available under this NOFO may be subject to the requirements of section 201 of the Act, 38 CFR part 78 and other applicable laws and regulations.

F. Approach: Suicide prevention services are those services that address the needs of eligible individuals and their families and are necessary for improving the mental health status and well-being and reducing the suicide risk of eligible individuals and their families. Applicants must include in their application that they will provide or coordinate the provision of the baseline mental health screening to all participants aged 18 and over. In addition, the application must include the proposed suicide prevention services to be provided or coordinated to be provided and the identified need for those services. Suicide prevention services include:

Outreach to identify and engage eligible individuals (and their families) at highest risk of suicide: Grantees providing or coordinating the provision of outreach must use their best efforts to ensure that eligible individuals, including those who are at highest risk of suicide or who are not receiving health care or other services furnished by VA, and their families are identified, engaged and provided suicide prevention services. Based on the suicide risk and eligibility screening conducted by grantees, eligible individuals who should be considered at highest risk of suicide are those with a recent suicide attempt, an active plan or preparatory behavior for suicide or a recent hospitalization for suicidality. VA will provide access to the Columbia Suicide Severity Rating Scale (CSSR–S) to determine level of suicide risk. Outreach must include active liaison with local VA facilities; State, local, or tribal government (if any); and private agencies and organizations providing suicide prevention services to eligible individuals and their families in the area to be served by the grantee. This outreach can include, for example, local mental health and emergency or urgent care departments in local hospitals or clinics. Grantees are required to have a presence in the area to meet with individuals and organizations to create referral processes to the grantee and other community resources. VA requires that grantees coordinate with VA with respect to the provision of health care and other services to eligible individuals. VA expects that grantees will work with local VA facilities on a regular basis to coordinate care when needed for eligible individuals.

Baseline mental health screening: Grantees must provide or coordinate the provision of baseline mental health screenings to all participants aged 18 and over they serve at the time those services begin. This baseline mental health screening ensures that the

participant's mental health needs can be properly determined and that suicide prevention services can be further tailored to meet the individual's needs. The baseline mental health screening must be provided using validated screening tools that assess suicide risk and mental and behavioral health conditions. VA will provide access to the Patient Health Questionnaire (PHQ9), Generalized Self-Efficacy Scale (GSE), Interpersonal Support Evaluation List (ISEL–12), Socio Economic Status (SES) and the Warwick Edinburgh Mental Well Being Scale (WEMWBS) to grantees providing or coordinating the provision of baseline mental health screenings.

If an eligible individual is at risk of suicide or other mental or behavioral health condition pursuant to the baseline mental health screening, the grantee must refer such individual to VA for care. If the eligible individual refuses the grantee's referral to VA, any ongoing clinical services provided to the eligible individual by the grantee is at the expense of the grantee. It is important to note that this is only required for eligible individuals and not the family of eligible individuals.

If a participant other than an eligible individual is at risk of suicide or other mental or behavioral health condition pursuant to the baseline mental health screening, the grantee must refer such participant to appropriate health care services in the area. To the extent that the grantee is able to furnish such appropriate health care services on an ongoing basis and has available funding separate from funds provided under this grant program to do so, they would be able to furnish such services using those non-VA funds without being required to refer such participants to other services. As noted previously herein, any ongoing clinical services provided to the participant by the grantee is at the expense of the grantee.

When such referrals are made by grantees to VA, to the extent practicable, those referrals are required to be a “warm hand-off” to ensure that the eligible individual receives necessary care. This “warm hand-off” may include providing any necessary transportation to the nearest VA facility, assisting the eligible individual with scheduling an appointment with VA and any other similar activities that may be necessary to ensure the eligible individual receives necessary care in a timely manner.

Education: Suicide prevention education programs may be provided and coordinated to be provided to educate communities, Veterans and families on how to identify those at risk

of suicide, how and when to make referrals for care and the types of suicide prevention resources available within the area. Education can include gatekeeper training, lethal means safety training or specific education programs that assist with identification, assessment or prevention of suicide. Gatekeeper training generally refers to programs that seek to develop individuals' knowledge, attitudes and skills to prevent suicide. Gatekeeper training is an educational course designed to teach clinical and non-clinical professionals or gatekeepers the warning signs of a suicide crisis and how to respond and refer individuals for care. Education is important because learning the signs of suicide risk, how to reduce access to lethal means and to connect those at risk of suicide to care can improve understanding of suicide and has the potential to reduce suicide.

Clinical services for emergency treatment: Clinical services may be provided or coordinated to be provided for emergency treatment of a participant. Emergency treatment means medical services, professional services, ambulance services, ancillary care and medication (including a short course of medication related to and necessary for the treatment of the emergency condition that is provided directly to or prescribed for the patient for use after the emergency condition is stabilized and the patient is discharged) was rendered in a medical emergency of such nature that a prudent layperson would have reasonably expected that delay in seeking immediate medical attention would have been hazardous to life or health. This standard is met by an emergency medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of the immediate medical assistance to result in placing the health of the individual in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part. It is important to note that emergency medical conditions include emergency mental health conditions.

If an eligible individual is furnished clinical services for emergency treatment and the grantee determines that the eligible individual requires ongoing services, the grantee must refer the eligible individual to VA for additional care. If the eligible individual refuses the grantee's referral to VA, any ongoing clinical services provided to the eligible individual by the grantee is at the expense of the grantee.

If a participant other than an eligible individual is furnished clinical services for emergency treatment and the grantee determines that the participant requires ongoing services, the grantee must refer the participant to appropriate health care services in the area for additional care. Except in instances in which a participant other than an eligible individual is furnished clinical services for emergency treatment, funds provided under this grant program may not be used to provide ongoing clinical services to such participants, and any ongoing clinical services provided to the participant by the grantee is at the expense of the grantee.

Case management services: Case management services are focused on suicide prevention to effectively assist participants at risk of suicide. Grantees providing or coordinating the provision of case management services must provide or coordinate the provision of such services that include, at a minimum, (a) performing a careful assessment of participants, and developing and monitoring case plans in coordination with a formal assessment of suicide prevention services needed, including necessary follow-up activities, to ensure that the participant's needs are adequately addressed, (b) establishing linkages with appropriate agencies and service providers in the area to help participants obtain needed suicide prevention services, (c) providing referrals to participants and related activities (such as scheduling appointments for participants) to help participants obtain needed suicide prevention services, such as medical, social and educational assistance or other suicide prevention services to address participants' identified needs and goals, (d) deciding how resources and services are allocated to participants on the basis of need, (e) educating participants on issues, including, but not limited to, suicide prevention services' availability and participant rights and (f) other activities, as approved by VA, to serve the comprehensive needs of participants for the purpose of reducing suicide risk.

Peer support services: The coordination of peer support services by the grantee must be to help participants understand what resources and supports are available in their area for suicide prevention. Peer support services must be provided by Veterans trained in peer support with similar lived experiences related to suicide or mental health. Peer support specialists serve as role models and a resource to assist participants with their mental health recovery. Peer support specialists function as

interdisciplinary team members, assisting physicians and other professional and non-professional personnel in a rehabilitation treatment program. Each grantee providing or coordinating the provision of peer support services must ensure that Veterans providing such services to participants meet the requirements of 38 U.S.C. 7402(b)(13) and meet qualification standards for appointment or have completed peer support training, are pursuing credentials to meet the minimum qualification standards for appointment and are under the supervision of an individual who meets the necessary requirements of 38 U.S.C. 7402(b)(13).

Qualification standards include that the individual is (1) a Veteran who has recovered or is recovering from a mental health condition and (2) certified by (i) a not-for-profit entity engaged in peer support specialist training as having met such criteria as the Secretary shall establish for a peer support specialist position or (ii) a State as having satisfied relevant State requirements for a peer support specialist position. VA has further set forth qualifications for its peer support specialists in VA Handbook 5005, Staffing (last updated September 30, 2021). Grant funds may be used to provide education and training for employees of the grantee or the community partner who provide peer support services based on the terms set forth in the grant agreement.

Assistance in obtaining VA benefits: The provision of this assistance will provide grantees with additional means by which VA can notify participants of available VA benefits. Grantees assisting participants in obtaining VA benefits are required to aid participants in obtaining any benefits from VA for which the participants are eligible. Such benefits include but are not limited to (1) vocational and rehabilitation counseling, (2) supportive services for homeless Veterans, (3) employment and training services, (4) educational assistance and (5) health care services. Grantees are not permitted to represent participants before VA with respect to a claim for VA benefits unless they are recognized for that purpose pursuant to 38 U.S.C. 5902. Employees and members of grantees are not permitted to provide such representation unless the individual providing representation is accredited pursuant to 38 U.S.C. chapter 59.

Assistance in obtaining and coordinating other public benefits and assistance with emergent needs: Grantees assisting participants in obtaining and coordinating other public benefits or assisting with emergency

needs are required to assist participants in obtaining and coordinating the provision of benefits that are being provided by Federal, State, local or Tribal agencies, or any other grantee in the area served by the grantee by referring the participant to and coordinating with such entity. If a public benefit is not being provided by Federal, State, local, or Tribal agencies, or any other grantee in the area, the grantee is not required to obtain, coordinate or provide such public benefit. Public benefits and assistance that a participant may be referred to include health care services, which include (1) health insurance and (2) referrals to a governmental entity or grantee that provides (i) hospital care, nursing home care, outpatient care, mental health care, preventive care, habilitative and rehabilitative care, case management, respite care, home care, (ii) the training of any eligible individual's family in the care of any eligible individual and (iii) the provision of pharmaceuticals, supplies, equipment, devices, appliances and assistive technology. Grantees also may refer participants, as appropriate, to an entity that provides daily living services relating to the functions or tasks for self-care usually performed in the normal course of a day. Grantees may refer or provide directly personal financial planning services; transportation services; temporary income support services (including, among other services, food assistance and housing assistance); fiduciary and representative payee services; legal services to assist eligible individuals with issues that may contribute to the risk of suicide; and the provision of childcare. For additional details on these elements, applicants may consult 38 CFR 78.80.

Nontraditional and innovative approaches and treatment practices: Grantees may provide or coordinate the provision of nontraditional and innovative approaches and treatment, including but not limited to complementary or alternative interventions with some evidence for effectiveness of improving mental health or mitigating a risk factor for suicidal thoughts and behavior. Applicants may propose nontraditional and innovative approaches and treatment practices in their suicide prevention services grant applications. VA is exercising its authority by reserving the right to approve or disapprove nontraditional and innovative approaches and treatment practices to be provided or coordinated to be provided using funds authorized under SSG Fox SPGP.

Other services: Grantees may provide general suicide prevention assistance, which may include payment directly to a third party (and not to a participant or their family), in an amount not to exceed \$750 per participant during any 1-year period, beginning on the date that the grantee first submits a payment to a third party. Expenses that may be paid include expenses associated with gaining or keeping employment, such as uniforms, tools, certificates and licenses, as well as expenses associated with lethal means safety and secure storage, such as gun locks and locked medication storage.

Applicants may propose additional suicide prevention services to be provided or coordinated to be provided. Examples of other services may include but are not limited to adaptive sports; equine assisted therapy; in-place or outdoor recreational therapy; substance use reduction programming; individual, group, or family counseling; and relationship coaching. VA reserves the right to approve or disapprove other suicide prevention services to be provided or coordinated to be provided using funds authorized under SSG Fox SPGP.

G. Guidance For The Use of VA Suicide Prevention Grant Funds: Consistent with section 201(o) of the Act, only grantees that are a State or local government or an Indian Tribe can use grant funds to enter into an agreement with a community partner under which the grantee may provide funds to the community partner for the provision of services to eligible individuals and their families. However, grantees may choose to enter into contracts for goods or services because in some situations, resources may be more readily available at a lower cost, or they may only be available from another party in the community.

Grantees may make payments directly to a third party on behalf of a participant for childcare, transportation, and general suicide prevention assistance. Funds can be used to conduct outreach, educate and connect with eligible individuals who are not engaged with VA services. Any outreach and education that is funded by SSG Fox SPGP should link directly back to a referral to the grantee's program for an opportunity to enroll the eligible individual in the program.

Funds must be used to screen for eligibility and suicide risk and enroll individuals in the program accordingly. Note that some individuals who come through the referral process may not engage in services. Grantees are expected to determine what referrals are appropriate for these individuals for

follow up services. Funds must be used to coordinate and provide suicide prevention services, by the grantee, based on screening and assessment, including clinical services for emergency treatment.

Funds also must be used to evaluate outcomes and effectiveness related to suicide prevention services. Prior to providing suicide prevention services, grantees must verify, document and classify each participant's eligibility for suicide prevention services. Grantees must determine and document each participant's degree of risk of suicide using tools identified in the suicide prevention services grant agreement. Prior to services ending, grantees must provide or coordinate the provision of a mental health screening to all participants aged 18 or over they serve, when possible. This screening must be conducted with the same tools used to conduct the initial baseline mental health screening. Having this screening occur at the beginning and prior to services ending is important in evaluating the effectiveness of the services provided.

Grantees must document the suicide prevention services provided or coordinated, how such services are provided or coordinated, the duration of the services provided or coordinated and any goals for the provision or coordination of such services. If the eligible individual wishes to enroll in VA health care, the grantee must inform the eligible individual of a VA point of contact for assistance with enrollment.

For each participant aged 18 and over, grantees must develop and document an individualized plan with respect to the provision of suicide prevention services provided. This plan must be developed in consultation with the participant.

As outlined in 38 CFR 78.105, activities for which grantees will not be authorized to use suicide prevention services grant funds include direct cash assistance to participants and their families; those legal services prohibited pursuant to § 78.80(g); medical or dental care and medicines except for clinical services for emergency treatment authorized pursuant to § 78.6; and any activities considered illegal under Federal law, and any costs identified as unallowable per 2 CFR part 200, subpart E.

II. Award Information

A. Overview: This NOFO announces the availability of funds for suicide prevention grants under the SSG Fox SPGP.

B. Funding Priorities: The funding priorities for this NOFO are as follows: Under Priority 1, current grantees may

apply for a new grant award to continue to provide services within the scope of their current grant award; for purposes of 38 CFR part 78, these awards are considered renewals. Priority 1 applicants must apply using the renewal application. To be eligible for renewal of a suicide prevention grant, the Priority 1 applicants' program must be substantially the same as the program of the grantees' current grant award. Renewal applications can request funding that is equal to or less than their current annualized award.

Under Priority 2, VA will accept applications from eligible entities that are not current grantees for funding consideration. Priority 2 applicants must apply using the application materials designated for new applicants.

C. Allocation of Funds:

Approximately \$52,500,000 is available for grant awards under this NOFO. The maximum allowable grant size is \$750,000 per year per eligibility entity.

(1) In response to this NOFO, only existing grantees can apply as Priority 1 applicants. New applicants apply under Priority 2. Priority 1 renewal grant requests cannot exceed the current award.

(2) If a Priority 1 applicant is not renewed, the existing grant will end on September 30, 2023.

(3) Priority 1 applicants may request an amount less than their current award; this will not be considered a substantial change to the program.

D. Grant Award Period: Grants awarded will be for a minimum of a 1-year period starting October 1, 2023. Awards may be extended for up to one additional year pending availability of funding and grantee performance.

III. Eligibility Information

A. Eligible Applicants: Eligible entity means an entity that meets the definition of an eligible entity in section 201(q) of the Act. Under section 201(q)(3) of the Act, an eligible entity must be one of the following:

(1) An incorporated private institution or foundation that (i) has no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual and (ii) has a governing board that would be responsible for the operation of the suicide prevention services provided under this section.

(2) A corporation wholly owned and controlled by an organization meeting the requirements of clauses (i) and (ii) in III.A.(1).

(3) An Indian Tribe.

(4) A community-based organization that can effectively network with local civic organizations, regional health

systems and other settings where eligible individuals and their families are likely to have contact.

(5) A State or local government, which may include, but not be limited to, nonprofit and private organizations such as those that are part of VA-Substance Abuse and Mental Health Services Administration's Governors' and Mayors' Challenge to prevent suicide among Service members, Veterans, and their families; universities; and city, county, State, and Tribal governments.

Demonstration of eligibility as detailed in the application includes submission of documents as outlined in section IV of this NOFO.

Applicants applying for funding consideration under Priority 1 are existing grantees with grant awards scheduled to end by September 30, 2023. For Priority 1 and 2, eligible entities may apply for up to \$750,000 per entity.

Applicants must be registered in the System for Award Management (SAM; sam.gov) and provide a unique entity identifier and continue to maintain an active SAM registration with current information as per 2 CFR part 200.

B. Cost Sharing and Matching: Applicants are not required to submit proposals that contain matching funds.

IV. Application Submission Information

A. Obtaining an Application Package: Initial and renewal applications are located at <https://www.mentalhealth.va.gov/ssgfox-grants/>. Any questions regarding this process may be referred to SSG Fox SPGP via email at VASSGFoxGrants@va.gov. For detailed program information and requirements, see 38 CFR part 78.

B. Content and Form of Application: Applicants must submit applications electronically following instructions found at <https://www.mentalhealth.va.gov/ssgfox-grants/>.

C. Submission Date and Time: Applications for suicide prevention grant under SSG Fox SPGP must be received by SSG Fox SPGP by 11:59 p.m. Eastern Time on May 19, 2023. Awards made for suicide prevention grants will fund operations beginning October 1, 2023. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected. In addition, in the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the

deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays, computer service outages or other delivery-related problems.

D. Other Submission Requirements:

(1) Existing grantees applying for Priority 1 grants may apply only as renewal applicants using the application designed for renewal grants.

(2) New applicants applying for Priority 2 grants may apply only as new applicants using the application designed for new grants.

(3) Submission of an incorrect, incomplete, inconsistent, unclear or incorrectly formatted application package will result in the application being rejected during threshold review. The application packages must contain all required forms and certifications. Selections will be made based on criteria described in 38 CFR part 78 and this NOFO. Applicants and grantees will be notified of any additional information needed to confirm or clarify information provided in the application and the deadline by which to submit such information. Applicants must submit applications electronically. Applications may not be mailed, hand carried or sent by facsimile.

(4) In accordance with 2 CFR part 200, applicants may elect to charge a de minimis rate of 10 percent of modified total direct costs (MTDC) which may be used indefinitely. No documentation is required to justify the 10 percent de minimis indirect cost rate. As described in 2 CFR 200.403, costs must be consistently charged as either indirect or direct costs but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

E. Funding Restrictions: Funding will be awarded under this NOFO to existing grantees and new applicants (pending the availability of funds), beginning October 1, 2023. In addition to limitations set forth in law and regulation, the following restrictions apply.

(1) Funding cannot be used for construction.

(2) Funding cannot be used for vehicle purchases.

(3) Funding cannot be used for food for staff unless part of per diem travel.

(4) Funding cannot be used for pre-award costs.

V. Application Form and Content

A. Priority 1 (Renewals): VA's regulations at 38 CFR 78.35 describe the criteria that VA will use to score those grantees who are applying for renewal of a grant. Such criteria will assist with VA's review and evaluation of grantees to ensure that those grantees have successful existing programs using the previously awarded grant funds and that they have complied with the requirements of 38 CFR part 78 and section 201 of the Act. The criteria in § 78.35 ensure that renewals of grants are awarded based on the grantee's program's success, cost-effectiveness and compliance with VA goals and requirements for this grant program.

The renewal application is organized into the following sections: Program Outcomes (maximum 55 points), Cost Effectiveness (maximum 20 points), Compliance with Program Goals and Requirements (25 maximum points) and Exhibits (no point values).

VA will use the following criteria to score grantees applying for renewal of a suicide prevention services grant:

- (1) Success of the grantee's program.
- (2) Cost-effectiveness of the grantee's program.
- (3) Extent to which the grantee's program complies with SSG Fox SPGP goals and requirements.

The Exhibit section includes an applicant budget template, to be submitted in a Microsoft Excel File. The budget submission must include (1) annual budget, attached as Exhibit I, containing a proposed quarterly budget for the renewal period and (2) a budget narrative, which provides a description of each of the line items contained in the renewal application.

B. Priority 2 (New Applicants): VA's regulations at 38 CFR part 78.25 describe the criteria that VA will use to score new applications. Applicants must include all required documents in their application submission. Submission of an incorrect, incomplete, inconsistent, unclear or incorrectly formatted application package will result in the application being rejected.

VA will use the following criteria to score applicants who are applying for a suicide prevention services grant:

- (1) Background, qualifications, experience and past performance of the applicant and any community partners identified by the applicant in the suicide prevention services grant application.
- (2) Program concept and suicide prevention services plan.
- (3) Quality assurance and evaluation plan.
- (4) Financial capability and plan.

(5) Area linkages and relations.

The Exhibit section includes an applicant budget template, to be submitted in a Microsoft Excel File. The budget submission must include (1) annual budget, attached as Exhibit I, containing a proposed quarterly budget for the period and (2) a budget narrative, which provides a description of each of the line items contained in the application.

VI. Review and Selection Process

A. Review Process: Based on the application criteria described previously herein, grant applications will be divided into two groups: renewal applications and new applications. Suicide prevention services grant applications will be scored by a VA grant review committee. The grant review committee will be trained in understanding the program's goals, the requirements of the NOFO, VA's regulations for this Program (38 CFR part 78) and the prescribed scoring rubric (pursuant to 2 CFR part 200). Consistent with 38 CFR 78.40, if all available grant funds are awarded to renewal grants for existing grantees, no new applications will be awarded.

B. Application Selection: VA will only score applicants who meet the following threshold requirements:

- (1) Application must be filed within the time period established in the NOFO, and any additional information or documentation requested by VA is provided within the time frame established by VA.
- (2) Application must be completed in all parts.
- (3) Activities for which the suicide prevention services grant is requested must be eligible for funding.
- (4) Applicant's proposed participants must be eligible to receive suicide prevention services.
- (5) Applicant must agree to comply with the requirements of 38 CFR part 78.
- (6) Applicant must not have an outstanding obligation to the Federal Government that is in arrears and does not have an overdue or unsatisfactory response to an audit.
- (7) Applicant must not be in default by failing to meet the requirements for any previous Federal assistance.

If these threshold requirements are not met, VA will deem applicants to be ineligible for further consideration.

Renewal applications must receive at least 60 points and at least 1 point under each of the criteria noted in section V of this NOFO. After selection of renewal applicants, if there is funding available, VA will score and rank all new applicants who score at least 60

cumulative points and receive at least one point under each of the criteria noted above in section V of this NOFO.

VA will use the ranked scores of new applicants as the primary basis for selection. The applicants will be ranked in order from highest to lowest. However, VA will give preference to applicants that have demonstrated the ability to provide or coordinate suicide prevention services. VA may prioritize the distribution of suicide prevention services grants to (i) rural communities, (ii) Tribal lands, (iii) territories of the United States, (iv) medically underserved areas, (v) areas with a high number or percentage of minority Veterans or women Veterans and (vi) areas with a high number or percentage of calls to the Veterans Crisis Line.

To the extent practicable, VA will ensure that suicide prevention services grants are distributed to (i) provide services in areas of the United States that have experienced high rates of suicide by eligible individuals, (ii) applicants who can assist eligible individuals at risk of suicide who are not currently receiving health care furnished by VA and (iii) ensure that suicide prevention services are provided in as many areas as possible.

VII. Award Administration Information

A. Award Notices: Although subject to change, VA expects to announce grant awards in the fourth quarter of fiscal year 2023. VA reserves the right in any year to make adjustments (*e.g.*, to funding levels) as needed within the intent of the NOFO based on a variety of factors, including the availability of funding. The initial announcement of awards will be made via a news release posted on VA's SSG Fox SPGP website at <https://www.mentalhealth.va.gov/ssgfox-grants>. The SSG Fox SPGP will concurrently notify both successful and unsuccessful applicants. Only a grant agreement with a VA signature is evidence of an award and is an authorizing document allowing costs to be incurred against a grant award. Other notices, letters or announcements are not authorizing documents. The grant agreement includes the terms and conditions of the award and must be signed by the entity and VA to be legally binding.

B. Administrative and National Policy Requirements: VA places great emphasis on responsibility and accountability. VA has procedures in place to monitor grants provided under the SSG Fox SPGP. All applicants selected in response to this NOFO must agree to meet applicable inspection standards outlined in the grant agreement.

As SSG FOX SGP grants cannot be used to fund treatment for mental health or substance use disorders, with the exception of clinical services for emergency treatment, applicants must provide evidence that they can provide access to such services to all program participants through formal and informal agreements with community providers.

C. Reporting: Applicants should be aware of the following:

(1) Upon execution of a suicide prevention services grant agreement with VA, grantees will have a liaison appointed by the SSG Fox SGP Office who will provide oversight and monitor the use of funds to provide or coordinate suicide prevention services provided to participants.

(2) VA will require grantees use validated tools and assessments to determine the effectiveness of the suicide prevention services furnished by VA. These include any measures and metrics developed and provided by VA for the purposes of measuring the effectiveness of the programming to be provided in improving mental health status and well-being and reducing suicide risk and suicide deaths of eligible individuals. Grantees will be required to use the VA Data Collection Tool for this purpose

(3) Grantees must provide each participant with a satisfaction survey, which the participant can submit directly to VA, within 30 days of such participant's pending exit from the

grantee's program. This is required to assist VA in evaluating grantees' performance and participants' satisfaction with the suicide prevention services they receive.

(4) Monitoring also will include the submittal of periodic and annual financial and performance reports by the grantee in accordance with 2 CFR part 200. The grantee will be expected to demonstrate adherence to the grantee's proposed program concept, as described in the grantee's application.

(5) VA has the right, at all reasonable times, to make onsite visits to all grantee locations and have virtual meetings where a grantee is using suicide prevention services grant funds to review grantee accomplishments and management control systems and to provide such technical assistance as may be required.

D. Payments to Grantees: Grantees will receive payments electronically through the U.S. Department of Health and Human Services Payment Management System. Grantees will have the ability to request payments as frequently as they choose. Grantees must have internal controls in place to ensure funding is available for the full duration of the grant period of performance, to the extent possible.

VIII. Program Evaluation

The purpose of program evaluation is to evaluate the impact participation in the SSG Fox SGP has on eligible individuals' financial stability, mental

health status, well-being, suicide risk and social support, as required by the Act.

As part of the national program evaluation, grantees must input data regularly in VA's web-based system. VA will ensure grantees have access to the data they need to gather and summarize program impacts and lessons learned on the implementation of the program evaluation criteria; performance indicators used for grantee selection and communication; and the criteria associated with the best outcomes for Veterans.

Training and technical assistance for program evaluation will be provided by VA, which will coordinate with subject matter experts to provide various trainings including the use of measures and metrics required for this program.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 27, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final
2023 and 2024 Harvest Specifications for Groundfish; Final Rule

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 230224–0053; RTID 0648–XC347]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2023 and 2024 Harvest Specifications for Groundfish

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

ACTION: Final rule; harvest specifications and closures.

SUMMARY: NMFS announces final 2023 and 2024 harvest specifications, apportionments, and Pacific halibut prohibited species catch limits for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits for groundfish during the remainder of the 2023 and the start of the 2024 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The 2023 harvest specifications supersede those previously set in the final 2022 and 2023 harvest specifications, and the 2024 harvest specifications will be superseded in early 2024 when the final 2024 and 2025 harvest specifications are published. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Harvest specifications and closures are effective at 1200 hours, Alaska local time (A.l.t.), March 2, 2023, through 2400 hours, A.l.t., December 31, 2024.

ADDRESSES: Electronic copies of the Final Alaska Groundfish Harvest Specifications Environmental Impact Statement (EIS), Record of Decision (ROD), and the annual Supplementary Information Reports (SIRs) to the EIS prepared for this action are available from <https://www.regulations.gov>. The 2022 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the GOA, dated November 2022, and SAFE reports for previous years are available from the North Pacific Fishery Management Council (Council) at 1007 West Third Avenue, Suite 400, Anchorage, AK 99501, phone 907–271–2809, or from

the Council's website at <https://www.npfmc.org>.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the GOA groundfish fisheries in the exclusive economic zone of the GOA under the FMP. The Council prepared the FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600, 679, and 680.

The FMP and its implementing regulations require that NMFS, after consultation with the Council, specify the total allowable catch (TAC) for each target species, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) (50 CFR 679.20(a)(1)(i)(B) and 679.20(a)(2)). Section 679.20(c)(1) further requires that NMFS publish and solicit public comment on proposed annual TACs and apportionments thereof, Pacific halibut prohibited species catch (PSC) limits, and seasonal allowances of pollock and Pacific cod. Upon consideration of public comment received under § 679.20(c)(1), NMFS must publish a notification of final harvest specifications for up to 2 fishing years as annual TACs and apportionments, Pacific halibut PSC limits, and seasonal allowances of pollock and Pacific cod, per § 679.20(c)(3)(ii). The final harvest specifications set forth in Tables 1 through 27 of this rule reflect the outcome of this process, as required at § 679.20(c).

The proposed 2023 and 2024 harvest specifications for groundfish of the GOA and Pacific halibut PSC limits were published in the **Federal Register** on December 2, 2022 (87 FR 74102). Comments were invited and accepted through January 3, 2023. NMFS did not receive any comments on the proposed harvest specifications. In December 2022, NMFS consulted with the Council regarding the 2023 and 2024 harvest specifications. After considering public comment at public meetings, as well as biological and socioeconomic data that were available at the Council's December 2022 meeting, NMFS is implementing the final 2023 and 2024 harvest specifications, as recommended by the Council. For 2023, the sum of the TAC amounts is 468,796 mt. For 2024, the sum of the TAC amounts is 476,537 mt.

Other Actions Affecting the 2023 and 2024 Harvest Specifications

Amendment 112 to the FMP: Sablefish Individual Fishing Quota (IFQ) Program Revisions

On November 23, 2022, NMFS published a proposed rule (87 FR 71559) to implement Amendment 112 to the FMP, which, if approved, would allow jig gear as an authorized fishing gear type in the GOA sablefish Individual Fishing Quota (IFQ) fisheries. The Council's intent in recommending Amendment 112 is to increase entry-level opportunities and increase flexibility for IFQ holders. This is because jig gear is a smaller investment than other gear types and does not require significant vessel retrofits as with other gear. Additionally, jig gear is already an authorized gear type for the harvest of halibut IFQ and this action would further align the authorized gear types in the halibut and sablefish IFQ fisheries. Additionally, the proposed rule includes a variety of other provisions, which, if approved, would revise regulations associated with requirements or exemptions for the use of collapsible pot gear. It would also revise regulatory specifications for gear marking, pot limits, and other pot use restrictions in the GOA. Further details are available in the proposed rule to implement Amendment 112. If the FMP amendment and its implementing regulations are approved by the Secretary of Commerce, the action is anticipated to be effective for the 2023 IFQ season.

Amendment 122 to the Bering Sea and Aleutian Islands FMP: Pacific Cod Cooperative Program

NMFS is developing a proposed rule to implement Amendment 122 to the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI), which, if approved, would establish the Pacific Cod Trawl Cooperative Program (PCTC Program) to allocate BSAI Pacific cod harvest quota to qualifying groundfish License Limitation Program (LLP) license holders and qualifying processors. The PCTC Program would be a limited access privilege program (LAPP) for the harvest of Pacific cod in the BSAI trawl catcher vessel (CV) sector. One of the elements of the proposed PCTC Program is to revise the GOA groundfish sideboard limits and halibut PSC limits for LLP licenses that receive allocations of PCTC quota share. The Program would change the American Fisheries Act (AFA) non-exempt GOA groundfish sideboard and halibut PSC limits for all

non-exempt AFA LLP licenses and CVs based on the GOA fishing activity of these vessels in the aggregate during the PCTC Program qualifying years. If approved by the Secretary of Commerce, Amendment 122 and its implementing regulations would affect the calculation and establishment of the groundfish sideboard limits and halibut PSC limits discussed in the subsequent *American Fisheries Act (AFA) Catcher/Processor and Catcher Vessel Groundfish Harvest Limits and Non-Exempt AFA Catcher Vessel Halibut PSC Limits* sections of this rule.

Acceptable Biological Catch (ABC) and TAC Specifications

In December 2022, the Council's Scientific and Statistical Committee (SSC), its Advisory Panel (AP), and the Council reviewed the most recent biological and harvest information about the condition of the GOA groundfish stocks. The Council's GOA Groundfish Plan Team (Plan Team) compiled and presented this information in the 2022 SAFE report for the GOA groundfish fisheries, dated November 2022 (see **ADDRESSES**). The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team recommends, and the SSC sets, an overfishing level (OFL) and ABC for each species and species group. The 2022 SAFE report was made available for public review during the public comment period for the proposed harvest specifications.

In previous years, the greatest changes from the proposed to the final harvest specifications have been based on recent NMFS stock surveys, which provide updated estimates of stock biomass and spatial distribution, and changes to the models used for producing stock assessments. At the November 2022 Plan Team meeting, NMFS scientists presented updated and new survey results, changes to stock assessment models, and accompanying stock assessment estimates for groundfish species and species groups that are included in the 2022 SAFE report per the stock assessment schedule found in the 2022 SAFE report introduction. The SSC reviewed this information at the December 2022 Council meeting. Changes from the proposed to the final 2023 and 2024 harvest specifications are discussed below.

The final 2023 and 2024 OFLs and ABCs are based on the best available

biological information, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass, and the final 2023 and 2024 TACs are based on the best available biological and socioeconomic information. The FMP specifies the formulas, or tiers, to be used to compute OFLs and ABCs. The formulas applicable to a particular stock or stock complex are determined by the level of reliable information available to fisheries scientists. This information is categorized into a successive series of six tiers to define OFL and ABC amounts, with Tier 1 representing the highest level of information quality available and Tier 6 representing the lowest level of information quality available. The Plan Team used the FMP tier structure to calculate OFL and ABC amounts for each groundfish species. The SSC adopted the final 2023 and 2024 OFLs and ABCs recommended by the Plan Team.

The Council adopted the SSC's OFLs and ABCs and the AP's TAC recommendations. The final TAC recommendations are based on the ABCs and are adjusted for other biological and socioeconomic considerations, including maintaining the sum of all TACs within the required OY range of 116,000 to 800,000 mt.

The Council recommended 2023 and 2024 TACs that are equal to ABCs for pollock in the Southeast Outside (SEO) District, sablefish, shallow-water flatfish in the Central GOA and the West Yakutat and SEO Districts, deep-water flatfish, rex sole, arrowtooth flounder in the Central GOA and the West Yakutat District, flathead sole in the Central GOA and the West Yakutat and SEO Districts, Pacific ocean perch (a rockfish species), northern rockfish, shorttraker rockfish, dusky rockfish, rougheye and blackspotted rockfish, demersal shelf rockfish, thornyhead rockfish, "other rockfish" in the Western/Central GOA and West Yakutat District, big skate, longnose skate, other skates, sharks, and octopuses in the GOA. The Council recommended TACs for 2023 and 2024 that are less than the ABCs for pollock for the combined Western and Central GOA and West Yakutat District area, Pacific cod, shallow-water flatfish in the Western GOA, arrowtooth flounder in the Western GOA and the SEO District, flathead sole in the Western GOA, Atka mackerel, and "other rockfish" in the SEO District.

The combined Western, Central, and West Yakutat pollock TAC and the GOA Pacific cod TACs are set to accommodate the State of Alaska's (State's) guideline harvest levels (GHLs)

so that the ABCs for pollock and Pacific cod are not exceeded. The Western GOA shallow-water flatfish, Western GOA arrowtooth flounder, and Western GOA flathead sole TACs are set to allow for increased harvest opportunities for these target species while conserving the halibut PSC limit for use in other, more fully utilized fisheries. Similarly, the SEO District arrowtooth flounder TAC is set lower than ABC to conserve halibut PSC limit for use in other fisheries or because there is limited commercial interest and participation in this fishery. The Atka mackerel TAC is set to accommodate incidental catch amounts in other fisheries. The "other rockfish" TAC in the SEO District is set to reduce the amount of discards of the species in that complex.

The final 2023 and 2024 harvest specifications approved by the Secretary of Commerce are unchanged from those recommended by the Council, and are consistent with the preferred harvest strategy alternative outlined in the FMP and EIS (see **ADDRESSES**).

NMFS finds that the Council's recommended OFLs, ABCs, and TACs are consistent with the biological condition of the groundfish stocks as described in the final 2022 SAFE report. NMFS also finds that the Council's recommendations for TACs are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the sum of all TACs within the OY range. NMFS reviewed the Council's recommended TACs and apportionments, and NMFS approves these harvest specifications under 50 CFR 679.20(c)(3)(ii). The apportionment of TAC amounts among gear types and sectors, processing sectors, and seasons is discussed below.

Tables 1 and 2 list the final 2023 and 2024 OFLs, ABCs, TACs, and area apportionments of groundfish in the GOA. The 2023 harvest specifications set in this final action supersede the 2023 harvest specifications previously set in the final 2022 and 2023 harvest specifications (87 FR 11599, March 2, 2022). The 2024 harvest specifications will be superseded in early 2024 when the final 2024 and 2025 harvest specifications are published. Pursuant to this final action, the 2023 harvest specifications therefore will apply for the remainder of the current year (2023), while the 2024 harvest specifications are projected only for the following year (2024) and will be superseded in early 2024 by the final 2024 and 2025 harvest specifications. Because this final action (published in early 2023) will be superseded in early 2024 by the

publication of the final 2024 and 2025 harvest specifications, it is projected that this final action will implement the harvest specifications for the GOA for approximately 1 year.

Specification and Apportionment of TAC Amounts

NMFS's apportionment of groundfish species is based on the distribution of biomass among the regulatory areas over which NMFS manages the species. Additional regulations govern the apportionment of pollock, Pacific cod, and sablefish and are described below.

The ABC for the pollock stock in the combined Western and Central Regulatory Areas and the West Yakutat (WYK) District of the Eastern Regulatory Area (the W/C/WYK) includes the amount for the GHL established by the State for the Prince William Sound (PWS) pollock fishery. The Plan Team, SSC, AP, and Council have recommended that the sum of all State waters and Federal waters pollock removals from the GOA not exceed ABC recommendations. For 2023 and 2024, the SSC recommended and the Council approved the W/C/WYK pollock ABC, including the amount to account for the State's PWS GHL. At the November 2022 Plan Team meeting, State fisheries managers recommended setting the PWS pollock GHL at 2.5 percent of the annual W/C/WYK pollock ABC. For 2023, this yields a PWS pollock GHL of 3,723 mt, an increase of 396 mt from the 2022 PWS pollock GHL of 3,327 mt. For 2024, the PWS pollock GHL is 4,027 mt, an increase of 700 mt from the 2022 PWS pollock GHL of 3,327 mt. After the GHL reductions, the 2023 and 2024 pollock ABCs for the combined W/C/WYK areas are then apportioned between four statistical areas (Areas 610, 620, 630, and 640) as both ABCs and TACs, as described below and detailed in Tables 1 and 2. The total ABCs and TACs for the four statistical areas, plus the State PWS GHL, do not exceed the combined W/C/WYK ABC.

Apportionments of pollock to the W/C/WYK areas are considered to be "apportionments of annual catch limits (ACLs)" rather than "ABCs." This more accurately reflects that such apportionments address management, rather than biological or conservation, concerns. In addition, apportionments of the ACL in this manner allow NMFS to balance any transfer of TAC among Areas 610, 620, and 630 pursuant to § 679.20(a)(5)(iv)(B) to ensure that the combined W/C/WYK ACL, ABC, and TAC are not exceeded.

NMFS establishes pollock TACs in the Western (Area 610) and Central (Areas 620 and 630) Regulatory Areas and the West Yakutat (Area 640) and the SEO (Area 650) Districts of the GOA (see Tables 1 and 2). NMFS also establishes seasonal apportionments of the annual pollock TACs in the Western and Central Regulatory Areas of the GOA among Statistical Areas 610, 620, and 630. Additional detail on area apportionments and seasonal allowances is provided in the *Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components* section of this rule; Tables 3 and 4 list these amounts.

The 2023 and 2024 Pacific cod TACs are set to accommodate the State's GHLs for Pacific cod in State waters in the Western and Central Regulatory Areas, as well as in PWS (in the Eastern Regulatory Area). The Plan Team, SSC, AP, and Council recommended that the sum of all State waters and Federal waters Pacific cod removals from the GOA not exceed ABC recommendations. The Council recommended setting the 2023 and 2024 Pacific cod TACs in the Western, Central, and Eastern Regulatory Areas to account for State GHLs. Therefore, the 2023 Pacific cod TACs are less than the ABCs by the following amounts: (1) Western GOA, 2,239 mt; (2) Central GOA, 3,708 mt; and (3) Eastern GOA, 585 mt. The 2024 Pacific cod TACs are less than the ABCs by the following amounts: (1) Western GOA, 2,062 mt; (2) Central GOA, 3,414 mt; and (3) Eastern GOA, 539 mt. These amounts reflect the State's 2023 and 2024 GHLs in these areas, which are 30 percent of the Western GOA ABC and 25 percent of the Eastern and Central GOA ABCs.

The Western and Central GOA Pacific cod TACs are allocated among various gear and operational sectors. NMFS also establishes seasonal apportionments of the annual Pacific cod TACs in the Western and Central Regulatory Areas. The Pacific cod sector and seasonal apportionments are discussed in detail in the *Annual and Seasonal Apportionments of Pacific Cod TAC* section and in Tables 5 and 6 of this rule.

The Council's recommendation for sablefish area apportionments takes into account the prohibition on the use of trawl gear in the SEO District of the Eastern Regulatory Area (§ 679.7(b)(1)) and makes available 5 percent of the

combined Eastern Regulatory Area TACs to vessels using trawl gear for use as incidental catch in other trawl groundfish fisheries in the WYK District (§ 679.20(a)(4)(i)). Tables 7 and 8 list the final 2023 and 2024 allocations of sablefish TAC to fixed gear and trawl gear in the GOA.

Changes From the Proposed 2023 and 2024 Harvest Specifications in the GOA

In October 2022, the Council's recommendations for the proposed 2023 and 2024 harvest specifications (87 FR 74102, December 2, 2022) were based largely on information contained in the final 2021 SAFE report for the GOA groundfish fisheries, dated November 2021. The final 2021 SAFE report for the GOA is available from the Council (see **ADDRESSES**). The Council proposed that the final OFLs, ABCs, and TACs established for the 2023 groundfish fisheries (87 FR 11599, March 2, 2022) be used for the proposed 2023 and 2024 harvest specifications (87 FR 74102, December 2, 2022), pending completion and review of the 2022 SAFE report at the Council's December 2022 meeting.

As described previously, the SSC recommended the final 2023 and 2024 OFLs and ABCs as recommended by the Plan Team, with the exception of the Pacific cod and demersal shelf rockfish OFLs and ABCs. The Council adopted as its recommendations the SSC's OFL and ABC recommendations and the AP's TAC recommendations for 2023 and 2024.

The final 2023 ABCs are higher than the proposed 2023 ABCs published in the proposed 2023 and 2024 harvest specifications (87 FR 74102, December 2, 2022) for pollock, sablefish, shallow-water flatfish, rex sole, arrowtooth flounder, Pacific ocean perch, northern rockfish, dusky rockfish, and sharks. The final 2023 ABCs are lower than the proposed 2023 ABCs for Pacific cod, deep-water flatfish, flathead sole, demersal shelf rockfish, thornyhead rockfish, and roughey and blackspotted rockfish.

The final 2024 ABCs are higher than the proposed 2024 ABCs for pollock, sablefish, shallow-water flatfish, rex sole, flathead sole, dusky rockfish, and sharks. The final 2024 ABCs are lower than the proposed 2024 ABCs for Pacific cod, deep-water flatfish, arrowtooth flounder, Pacific ocean perch, northern rockfish, roughey and blackspotted rockfish, demersal shelf rockfish, and thornyhead rockfish. For the remaining

target species (shortraker rockfish, “other rockfish,” Atka mackerel, big skates, longnose skates, other skates, and octopus), the Council recommended the final 2023 and 2024 ABCs that are the same as the proposed 2023 and 2024 ABCs.

Additional information explaining the changes between the proposed and final ABCs is included in the final 2022 SAFE report, which was not completed and available when the Council made its proposed ABC and TAC recommendations in October 2022. At that time, the most recent stock assessment information was contained in the final 2021 SAFE report. The final 2022 SAFE report contains the best and most recent scientific information on the condition of the groundfish stocks, as previously discussed in this preamble, and is available for review (see **ADDRESSES**). The Council considered the 2022 SAFE report in December 2022 when it made recommendations for the final 2023 and 2024 harvest specifications. In the GOA, the total final 2023 TAC amount is 468,796 mt, an increase of 5.7 percent from the total proposed 2023 TAC amount of 443,615 mt. The total final

2024 TAC amount is 476,537 mt, an increase of 7.4 percent from the total proposed 2024 TAC amount of 443,615 mt. Table 1a summarizes the difference between the proposed and final TACs.

Annual stock assessments incorporate a variety of new or revised inputs, such as survey data or catch information, as well as changes to the statistical models used to estimate a species’ biomass and population trend. Changes to biomass and ABC estimates are primarily based on fishery catch updates to species’ assessment models. Some species, such as pollock and sablefish, have additional surveys conducted on an annual basis, which resulted in additional data being available for the 2022 assessments for these stocks.

The changes for individual species or species groups from the proposed 2023 TACs to the final 2023 TACs are within a range of plus 53 percent or minus 22 percent, and the changes from the proposed 2024 TACs to the final 2024 TACs are within a range of plus 45 percent or minus 22 percent. Based on changes in the estimates of overall biomass in the stock assessment for 2023 and 2024, as compared to the estimates previously made for 2022 and

2023, the species or species group with the greatest TAC percentage increases are pollock, flathead sole, dusky rockfish, and sharks. Based on changes in the estimates of biomass, the species or species group with the greatest TAC percentage decreases are Pacific cod, demersal shelf rockfish, and thornyhead rockfish. For all other species and species groups, changes from the proposed 2023 TACs to the final 2023 TACs and changes from the proposed 2024 TACs to the final 2024 TACs are less than a 10 percent change (either increase or decrease). These TAC changes correspond to associated changes in the OFLs and ABCs, as recommended by the SSC, AP, and Council.

Detailed information providing the basis for the changes described above is contained in the final 2022 SAFE report. The final TACs are based on the best scientific information available, including biological and socioeconomic information. These TACs are specified in compliance with the harvest strategy described in the proposed and final rules for the 2023 and 2024 harvest specifications.

TABLE 1a—COMPARISON OF PROPOSED AND FINAL 2023 AND 2024 GOA TOTAL ALLOWABLE CATCH LIMITS

[Values are rounded to the nearest metric ton and percentage]

Species	2023 and 2024 Proposed TAC	2023 Final TAC	2023 Final minus 2023 Proposed TAC	Percentage difference	2024 Final TAC	2024 Final minus 2024 Proposed TAC	Percentage difference
Pollock	139,977	156,578	16,601	12	168,416	28,439	20
Pacific cod	21,096	18,103	-2,994	-14	16,668	-4,428	-21
Sablefish	22,003	23,201	1,198	5	21,095	-908	-4
Shallow-water flatfish	44,272	44,302	30	0	45,425	1,153	3
Deep-water flatfish	5,818	5,816	-2	0	5,719	-99	-2
Rex sole	20,594	20,664	70	0	21,097	503	2
Arrowtooth flounder	95,512	94,286	-1,226	-1	93,389	-2,123	-2
Flathead sole	27,426	35,337	7,911	29	35,839	8,413	31
Pacific ocean perch	37,104	37,193	89	0	36,196	-908	-2
Northern rockfish	4,920	4,964	44	1	4,741	-179	-4
Shortraker rockfish	705	705	0	0	705	0	0
Dusky rockfish	5,181	7,917	2,736	53	7,520	2,339	45
Rougheye/blackspotted rockfish	781	775	-6	-1	772	-9	-1
Demersal shelf rockfish	365	283	-82	-22	283	-82	-22
Thornyhead rockfish	1,953	1,628	-325	-17	1,628	-325	-17
Other rockfish	1,610	1,610	0	0	1,610	0	0
Atka mackerel	3,000	3,000	0	0	3,000	0	0
Big skate	2,867	2,867	0	0	2,867	0	0
Longnose skate	2,712	2,712	0	0	2,712	0	0
Other skates	984	984	0	0	984	0	0
Sharks	3,755	4,891	1,136	30	4,891	1,136	30
Octopuses	980	980	0	0	980	0	0
Total	443,615	468,796	25,181	5.7	476,537	32,922	7.4

The final 2023 and 2024 TAC amounts for the GOA are within the OY range established for the GOA and do

not exceed the ABC for any species or species group. Tables 1 and 2 list the final OFL, ABC, and TAC amounts for

GOA groundfish for 2023 and 2024, respectively.

TABLE 1—FINAL 2023 OFLS, ABCs, AND TACS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, THE WEST YAKUTAT AND SOUTHEAST OUTSIDE DISTRICTS OF THE EASTERN REGULATORY AREA, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA

[Values are rounded to the nearest metric ton]

Species	Area ¹	OFL	ABC	TAC
Pollock ²	Shumagin (610)	n/a	26,958	26,958
	Chirikof (620)	n/a	77,005	77,005
	Kodiak (630)	n/a	33,729	33,729
	WYK (640)	n/a	7,523	7,523
	W/C/WYK (subtotal) ²	173,470	148,938	145,215
	SEO (650)	15,150	11,363	11,363
	Total	188,620	160,301	156,578
Pacific cod ³	W	n/a	7,464	5,225
	C	n/a	14,830	11,123
	E	n/a	2,340	1,755
	Total	29,737	24,634	18,103
Sablefish ⁴	W	n/a	4,473	4,473
	C	n/a	9,921	9,921
	WYK	n/a	3,205	3,205
	SEO	n/a	5,602	5,602
	Subtotal TAC	n/a		23,201
	Total	47,390	40,502	n/a
Shallow-water flatfish ⁵	W	n/a	22,485	13,250
	C	n/a	26,769	26,769
	WYK	n/a	2,677	2,677
	SEO	n/a	1,606	1,606
	Total	65,736	53,537	44,302
Deep-water flatfish ⁶	W	n/a	256	256
	C	n/a	2,105	2,105
	WYK	n/a	1,407	1,407
	SEO	n/a	2,048	2,048
	Total	6,918	5,816	5,816
Rex sole	W	n/a	3,236	3,236
	C	n/a	13,110	13,110
	WYK	n/a	1,439	1,439
	SEO	n/a	2,879	2,879
	Total	25,135	20,664	20,664
Arrowtooth flounder	W	n/a	30,469	14,500
	C	n/a	65,000	65,000
	WYK	n/a	7,886	7,886
	SEO	n/a	16,130	6,900
	Total	142,749	119,485	94,286
Flathead sole	W	n/a	12,793	8,650
	C	n/a	21,487	21,487
	WYK	n/a	2,320	2,320
	SEO	n/a	2,880	2,880
	Total	48,161	39,480	35,337
Pacific ocean perch ⁷	W	n/a	2,529	2,529
	C	n/a	29,940	29,940
	WYK	n/a	1,370	1,370
	W/C/WYK subtotal	40,308	33,839	33,839
	SEO	3,994	3,354	3,354
	Total	44,302	37,193	37,193
Northern rockfish ⁸	W	n/a	2,614	2,614
	C	n/a	2,350	2,350
	E	n/a		
	Total	5,927	4,964	4,964

TABLE 1—FINAL 2023 OFLS, ABCs, AND TACs OF GROUND FISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, THE WEST YAKUTAT AND SOUTHEAST OUTSIDE DISTRICTS OF THE EASTERN REGULATORY AREA, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species	Area ¹	OFL	ABC	TAC
Shortraker rockfish ⁹	W	n/a	51	51
	C	n/a	280	280
	E	n/a	374	374
	Total	940	705	705
Dusky rockfish ¹⁰	W	n/a	149	149
	C	n/a	7,647	7,647
	WYK	n/a	90	90
	SEO	n/a	31	31
	Total	9,638	7,917	7,917
Rougheye and Blackspotted rockfish ¹¹	W	n/a	180	180
	C	n/a	232	232
	E	n/a	363	363
	Total	930	775	775
Demersal shelf rockfish ¹²	SEO	376	283	283
Thornyhead rockfish ¹³	W	n/a	314	314
	C	n/a	693	693
	E	n/a	621	621
	Total	2,170	1,628	1,628
Other rockfish ^{14 15}	W and C	n/a	940	940
	WYK	n/a	370	370
	SEO	n/a	2,744	300
	Total	5,320	4,054	1,610
Atka mackerel	GW	6,200	4,700	3,000
Big skate ¹⁶	W	n/a	591	591
	C	n/a	1,482	1,482
	E	n/a	794	794
	Total	3,822	2,867	2,867
Longnose skate ¹⁷	W	n/a	151	151
	C	n/a	2,044	2,044
	E	n/a	517	517
	Total	3,616	2,712	2,712
Other skates ¹⁸	GW	1,311	984	984
Sharks	GW	6,521	4,891	4,891
Octopus	GW	1,307	980	980
	Total	646,826	539,072	468,796

¹ Regulatory areas and districts are defined at §679.2. (W=Western Gulf of Alaska; C=Central Gulf of Alaska; E=Eastern Gulf of Alaska; WYK=West Yakutat District; SEO=Southeast Outside District; GW=Gulf-wide).

² The total for the W/C/WYK Regulatory Areas pollock ABC is 148,938 mt. After deducting 2.5 percent (3,723 mt) of that ABC for the State's pollock GHL fishery, the remaining pollock ABC of 145,215 mt (for the W/C/WYK Regulatory Areas) is apportioned among four statistical areas (Areas 610, 620, 630, and 640). These apportionments are considered subarea ACLs, rather than ABCs, for specification and reapportionment purposes. The ACLs in Areas 610, 620, and 630 are further divided by season, as detailed in Table 3 (final 2023 seasonal biomass distribution of pollock in the Western and Central Regulatory Areas, area apportionments, and seasonal allowances). In the West Yakutat (Area 640) and Southeast Outside (Area 650) Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

³ The annual Pacific cod TAC is apportioned, after seasonal apportionment to the jig sector, as follows: (1) 63.84 percent to the A season and 36.16 percent to the B season and (2) 64.16 percent to the A season and 35.84 percent to the B season in the Western and Central Regulatory Areas of the GOA, respectively. Pacific cod TAC in the Eastern Regulatory Area of the GOA is allocated 90 percent to vessels harvesting Pacific cod for processing by the inshore component and 10 percent to vessels harvesting Pacific cod for processing by the offshore component. Table 5 lists the final 2023 Pacific cod seasonal apportionments and sector allocations.

⁴ The sablefish OFL and ABC are set Alaska-wide (47,390 mt and 40,502 mt, respectively), and the Alaska-wide totals are included in the total OFL and ABC in Table 1. Additionally, sablefish is allocated to trawl and fixed gear in 2023 and trawl gear in 2024. Table 7 lists the final 2023 allocations of sablefish TACs.

⁵ "Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

⁶ "Deep-water flatfish" means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

⁷ "Pacific ocean perch" means *Sebastes alutus*.

⁸ "Northern rockfish" means *Sebastes polyspinis*. For management purposes, the 1 mt apportionment of ABC to the WYK District of the Eastern Gulf of Alaska has been included in the "other rockfish" species group.

⁹ "Shortraker rockfish" means *Sebastes borealis*.

¹⁰ "Dusky rockfish" means *Sebastes variabilis*.

¹¹ "Rougheye and blackspotted rockfish" mean *Sebastes aleutianus* (rougheye) and *S. melanostictus* (blackspotted).

¹² "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

¹³ "Thornyhead rockfish" means *Sebastolobus* species.

¹⁴“Other rockfish” means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermillion), *S. reedi* (yellowmouth), *S. entomelas* (widow), and *S. flavidus* (yellowtail). In the Eastern GOA only, “other rockfish” also includes northern rockfish, *S. polyspinis*.

¹⁵“Other rockfish” in the Western and Central Regulatory Areas and in the West Yakutat District means other rockfish and demersal shelf rockfish. The “other rockfish” species group in the SEO District only includes “other rockfish.”

¹⁶“Big skate” means *Raja binoculata*.

¹⁷“Longnose skate” means *Raja rhina*.

¹⁸“Other skates” mean *Bathyraja* and *Raja* spp.

TABLE 2—FINAL 2024 OFLS, ABCs, AND TACS OF GROUND FISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, THE WEST YAKUTAT AND SOUTHEAST OUTSIDE DISTRICTS OF THE EASTERN REGULATORY AREA, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA

[Values are rounded to the nearest metric ton]

Species	Area ¹	OFL	ABC	TAC
Pollock ²	Shumagin (610)	n/a	29,156	29,156
	Chirikof (620)	n/a	83,283	83,283
	Kodiak (630)	n/a	36,478	36,478
	WYK (640)	n/a	8,136	8,136
	W/C/WYK (subtotal) ²	186,101	161,080	157,053
	SEO (650)	15,150	11,363	11,363
Pacific cod ³	Total	201,251	172,443	168,416
	W	n/a	6,873	4,811
	C	n/a	13,655	10,241
	E	n/a	2,155	1,616
	Total	27,507	22,683	16,668
Sablefish ⁴	W	n/a	4,626	4,626
	C	n/a	8,819	8,819
	WYK	n/a	2,669	2,669
	SEO	n/a	4,981	4,981
	Subtotal TAC	n/a	n/a	21,095
Shallow-water flatfish ⁵	Total	48,561	41,539	n/a
	W	n/a	23,299	13,250
	C	n/a	27,737	27,737
	WYK	n/a	2,774	2,774
	SEO	n/a	1,664	1,664
Deep-water flatfish ⁶	Total	68,015	55,474	45,425
	W	n/a	255	255
	C	n/a	2,068	2,068
	WYK	n/a	1,383	1,383
	SEO	n/a	2,013	2,013
Rex sole	Total	6,802	5,719	5,719
	W	n/a	3,314	3,314
	C	n/a	13,425	13,425
	WYK	n/a	1,453	1,453
	SEO	n/a	2,905	2,905
Arrowtooth flounder	Total	25,652	21,097	21,097
	W	n/a	30,093	14,500
	C	n/a	64,200	64,200
	WYK	n/a	7,789	7,789
	SEO	n/a	15,932	6,900
Flathead sole	Total	141,008	118,014	93,389
	W	n/a	13,033	8,650
	C	n/a	21,892	21,892
	WYK	n/a	2,363	2,363
	SEO	n/a	2,934	2,934
Pacific ocean perch ⁷	Total	49,073	40,222	35,839
	W	n/a	2,461	2,461
	C	n/a	29,138	29,138
	WYK	n/a	1,333	1,333
	W/C/WYK	39,229	32,932	32,932
	SEO	3,888	3,264	3,264
Total		43,117	36,196	36,196

TABLE 2—FINAL 2024 OFLS, ABCs, AND TACs OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, THE WEST YAKUTAT AND SOUTHEAST OUTSIDE DISTRICTS OF THE EASTERN REGULATORY AREA, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species	Area ¹	OFL	ABC	TAC
Northern rockfish ⁸	W	n/a	2,497	2,497
	C	n/a	2,244	2,244
	E	n/a		
	Total	5,661	4,741	4,741
Shortraker rockfish ⁹	W	n/a	51	51
	C	n/a	280	280
	E	n/a	374	374
	Total	940	705	705
Dusky rockfish ¹⁰	W	n/a	141	141
	C	n/a	7,264	7,264
	WYK	n/a	85	85
	SEO	n/a	30	30
	Total	9,154	7,520	7,520
Rougheye and Blackspotted rockfish ¹¹	W	n/a	180	180
	C	n/a	231	231
	E	n/a	361	361
	Total	927	772	772
Demersal shelf rockfish ¹²	SEO	376	283	283
Thornyhead rockfish ¹³	W	n/a	314	314
	C	n/a	693	693
	E	n/a	621	621
	Total	2,170	1,628	1,628
Other rockfish ^{14 15}	W and C	n/a	940	940
	WYK	n/a	370	370
	SEO	n/a	2,744	300
	Total	5,320	4,054	1,610
Atka mackerel	GW	6,200	4,700	3,000
Big skate ¹⁶	W	n/a	591	591
	C	n/a	1,482	1,482
	E	n/a	794	794
	Total	3,822	2,867	2,867
Longnose skate ¹⁷	W	n/a	151	151
	C	n/a	2,044	2,044
	E	n/a	517	517
	Total	3,616	2,712	2,712
Other skates ¹⁸	GW	1,311	984	984
Sharks	GW	6,521	4,891	4,891
Octopus	GW	1,307	980	980
	Total	658,311	550,224	476,537

¹Regulatory areas and districts are defined at §679.2. (W=Western Gulf of Alaska; C=Central Gulf of Alaska; E=Eastern Gulf of Alaska; WYK=West Yakutat District; SEO=Southeast Outside District; GW=Gulf-wide).

²The total for the W/C/WYK Regulatory Areas pollock ABC is 161,080 mt. After deducting 2.5 percent (4,027 mt) of that ABC for the State's pollock GHL fishery, the remaining pollock ABC of 157,053 mt (for the W/C/WYK Regulatory Areas) is apportioned among four statistical areas (Areas 610, 620, 630, and 640). These apportionments are considered subarea ACLs, rather than ABCs, for specification and reapportionment purposes. The ACLs in Areas 610, 620, and 630 are further divided by season, as detailed in Table 4 (final 2024 seasonal biomass distribution of pollock in the Western and Central Regulatory Areas, area apportionments, and seasonal allowances). In the West Yakutat (Area 640) and Southeast Outside (Area 650) Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

³The annual Pacific cod TAC is apportioned, after seasonal apportionment to the jig sector, as follows: 1) 63.84 percent to the A season and 36.16 percent to the B season and 2) 64.16 percent to the A season and 35.84 percent to the B season in the Western and Central Regulatory Areas of the GOA, respectively. Pacific cod TAC in the Eastern Regulatory Area of the GOA is allocated 90 percent to vessels harvesting Pacific cod for processing by the inshore component and 10 percent to vessels harvesting Pacific cod for processing by the offshore component. Table 6 lists the final 2024 Pacific cod seasonal apportionments and sector allocations.

⁴The sablefish OFL and ABC are set Alaska-wide (48,561 mt and 41,539 mt, respectively), and the Alaska-wide totals are included in the total OFL and ABC in Table 2. Additionally, sablefish is allocated only to trawl gear for 2024. Table 8 lists the final 2024 allocation of sablefish TACs to trawl gear.

⁵"Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

⁶"Deep-water flatfish" means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

⁷"Pacific ocean perch" means *Sebastes alutus*.

⁸"Northern rockfish" means *Sebastes polypsinis*. For management purposes, the 1 mt apportionment of ABC to the WYK District of the Eastern Gulf of Alaska has been included in the "other rockfish" species group.

⁹"Shortraker rockfish" means *Sebastes borealis*.

¹⁰ “Dusky rockfish” means *Sebastes variabilis*.

¹¹ “Rougheye and blackspotted rockfish” mean *Sebastes aleutianus* (rougheye) and *S. melanostictus* (blackspotted).

¹² “Demersal shelf rockfish” means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

¹³ “Thornyhead rockfish” means *Sebastolobus* species.

¹⁴ “Other rockfish” means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermillion), *S. reedi* (yellowmouth), *S. entomelas* (widow), and *S. flavidus* (yellowtail). In the Eastern GOA only, “other rockfish” also includes northern rockfish, *S. polyspinis*.

¹⁵ “Other rockfish” in the Western and Central Regulatory Areas and in the West Yakutat District means other rockfish and demersal shelf rockfish. The “other rockfish” species group in the SEO District only includes “other rockfish.”

¹⁶ “Big skate” means *Raja binoculata*.

¹⁷ “Longnose skate” means *Raja rhina*.

¹⁸ “Other skates” mean *Bathyraja* and *Raja* spp.

Apportionment of Reserves

Section 679.20(b)(2) requires NMFS to set aside 20 percent of each TAC for pollock, Pacific cod, flatfish, sharks, and octopuses in reserve for possible apportionment at a later date during the fishing year. For 2023 and 2024, NMFS proposed reapportionment of all the reserves in the proposed 2023 and 2024 harvest specifications published in the **Federal Register** on December 2, 2022 (87 FR 74102). NMFS did not receive any public comments on the proposed reapportionments. For the final 2023 and 2024 harvest specifications, NMFS reapportions, as proposed, all the reserves for pollock, Pacific cod, flatfish, sharks, and octopuses back to the original TAC limit from which the reserve was derived (§ 679.20(b)(3)). This is being done because NMFS expects, based on recent harvest patterns, that such reserves are not necessary or that the entire TAC for each of these species will be caught. The TACs listed in Tables 1 and 2 reflect reapportionments of reserve amounts to the original TAC limit for these species and species groups, *i.e.*, each final TAC for the above-mentioned species or species groups contains the full TAC recommended by the Council.

Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further allocated for processing by inshore and offshore components. The pollock TACs in the Western and Central Regulatory Areas of the GOA are apportioned among Statistical Areas 610, 620, and 630. These apportionments are divided into two equal seasonal allowances of 50 percent to the A season (January 20

through May 31) and 50 percent to the B season (September 1 through November 1) (§§ 679.20(a)(5)(iv)(B) and 679.23(d)(2)).

Effective in 2021, regulatory changes revised the number of GOA pollock seasons to two seasons from four seasons (85 FR 38093, June 25, 2020). The GOA pollock stock assessment continues to use a four-season methodology to determine pollock distribution in the Western and Central Regulatory Areas of the GOA to maintain continuity in the historical pollock apportionment time-series. Pollock TACs in the Western and Central Regulatory Areas of the GOA are apportioned among Statistical Areas 610, 620, and 630 in proportion to the distribution of pollock biomass determined by the most recent NMFS surveys, pursuant to § 679.20(a)(5)(iv)(A). The pollock chapter of the 2022 SAFE report (see **ADDRESSES**) contains a comprehensive description of the apportionment and reasons for the minor changes from past apportionments. For purposes of specifying pollock TAC between two seasons for the Western and Central Regulatory Areas of the GOA, NMFS has summed the A and B season apportionments and the C and D season apportionments, using the four-season methodology, as calculated in the 2022 GOA pollock assessment. This yields the seasonal amounts specified for the A season and the B season, respectively.

Within any fishing year, the amount by which a pollock seasonal allowance is underharvested or overharvested may be added to, or subtracted from, the subsequent seasonal allowance for the Western and Central Regulatory Areas in a manner to be determined by the Regional Administrator (§ 679.20(a)(5)(iv)(B)). The rollover amount is limited to 20 percent of the

subsequent seasonal TAC apportionment for the statistical area. Any unharvested pollock above the 20-percent limit could be further distributed to the other statistical areas, in proportion to the estimated biomass in the subsequent season in those statistical areas and in an amount no more than 20 percent of the seasonal TAC apportionment in those statistical areas (§ 679.20(a)(5)(iv)(B)). The pollock TACs in the WYK and the SEO Districts of 7,523 mt and 11,363 mt, respectively, in 2023, and 8,136 mt and 11,363 mt, respectively, in 2024, are not allocated by season.

Tables 3 and 4 list the final 2023 and 2024 seasonal biomass distribution of pollock in the Western and Central Regulatory Areas, area apportionments, and seasonal allowances. The amounts of pollock for processing by the inshore and offshore components are not shown. Section 679.20(a)(6)(i) requires the allocation of 100 percent of the pollock TAC in all GOA regulatory areas and all seasonal allowances to vessels catching pollock for processing by the inshore component after subtraction of pollock amounts projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. Thus, the amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount that will be taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed by § 679.20(e) and (f). At this time, these incidental catch amounts of pollock are unknown and will be determined during the fishing year during the course of fishing activities by the offshore component.

TABLE 3—FINAL 2023 DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA; AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton ¹]

Season ²	Shumigan (Area 610)	Chirikof (Area 620)	Kodiak (Area 630)	Total ³
A (January 20–May 31)	1,685	58,039	9,121	68,846
B (September 1–November 1)	25,272	18,965	24,608	68,846
Annual Total	26,958	77,005	33,729	137,691

¹ Area apportionments and seasonal allowances may not total precisely due to rounding.² As established by § 679.23(d)(2), directed fishing for pollock in the Western and Central Regulatory Areas is authorized only during the following two seasons: January 20 through May 31 and September 1 through November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.³ The West Yakutat and Southeast Outside District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

TABLE 4—FINAL 2024 DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA; AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton ¹]

Season ²	Shumigan (Area 610)	Chirikof (Area 620)	Kodiak (Area 630)	Total ³
A (January 20–May 31)	1,823	62,771	9,864	74,459
B (September 1–November 1)	27,333	20,511	26,614	74,459
Annual Total	29,156	83,283	36,478	148,917

¹ Area apportionments and seasonal allowances may not total precisely due to rounding.² As established by § 679.23(d)(2), directed fishing for pollock in the Western and Central Regulatory Areas is authorized only during the following two seasons: January 20 through May 31 and September 1 through November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.³ The West Yakutat and Southeast Outside District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

Annual and Seasonal Apportionments of Pacific Cod TAC

Pursuant to § 679.20(a)(12)(i), NMFS seasonally allocates the 2023 and 2024 Pacific cod TACs in the Western and Central Regulatory Areas of the GOA among gear and operational sectors. In the Western and Central Regulatory Areas, a portion of the annual TAC is apportioned to the A season for hook-and-line, pot, and jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10, and a portion of the annual TAC is apportioned to the B season for jig gear from June 10 through December 31, for hook-and-line and pot gear from September 1 through December 31, and for trawl gear from September 1 through November 1 (§§ 679.20(a)(12) and 679.23(d)(3)). NMFS also allocates the Pacific cod TACs annually between the inshore (90 percent) and offshore (10 percent) components in the Eastern Regulatory Area of the GOA (§ 679.20(a)(6)(ii)).

In the Central GOA, the Pacific cod TAC is apportioned seasonally first to vessels using jig gear, and then among catcher vessels (CVs) less than 50 feet (15.2 meters (m)) in length overall using hook-and-line gear, CVs equal to or greater than 50 feet (15.2 m) in length

overall using hook-and-line gear, catcher/processors (CPs) using hook-and-line gear, CVs using trawl gear, CPs using trawl gear, and vessels using pot gear (§ 679.20(a)(12)(i)(B)). In the Western GOA, the Pacific cod TAC is apportioned seasonally first to vessels using jig gear, and then among CVs using hook-and-line gear, CPs using hook-and-line gear, CVs using trawl gear, CPs using trawl gear, and vessels using pot gear (§ 679.20(a)(12)(i)(A)). Excluding seasonal apportionments to the jig sector, NMFS seasonally apportions the remainder of the annual Pacific cod TACs in the Western GOA as 63.84 percent to the A season and 36.16 percent to the B season, and in the Central GOA as 64.16 percent to the A season and 35.84 percent to the B season.

Under § 679.20(a)(12)(ii), any overage or underage of the Pacific cod season allowance from the A season may be subtracted from, or added to, the subsequent B season allowance. In addition, any portion of the hook-and-line, trawl, pot, or jig sector allocations that is determined by NMFS as likely to go unharvested by a sector may be reallocated to other sectors for harvest during the remainder of the fishing year.

Pursuant to § 679.20(a)(12)(i)(A) and (B), a portion of the annual Pacific cod

TACs in the Western and Central GOA will be allocated to vessels with a Federal fisheries permit that use jig gear before the TACs are apportioned among other non-jig sectors. In accordance with the FMP, the annual jig sector allocations may increase to up to 6 percent of the annual Western and Central GOA Pacific cod TACs, depending on the annual performance of the jig sector (see Table 1 of the rulemaking to implement Amendment 83 to the FMP for a detailed discussion of the jig sector allocation process (76 FR 74670, December 1, 2011)). Jig sector allocation increases are established for a minimum of 2 years.

NMFS has evaluated the historical harvest performance of the jig sector in the Western and Central GOA, and is establishing the 2023 and 2024 Pacific cod apportionments to this sector based on its historical harvest performance through 2022. NMFS did not evaluate the 2020 performance of the jig sectors in the Western and Central GOA. Since NMFS prohibited directed fishing for all Pacific cod sectors in 2020, the catch for the jig sectors could not reach 90 percent of the annual allocation that is required for a performance increase in the following year's allocation (87 FR 74102, December 2, 2022; 84 FR 70438, December 23, 2019). For 2023 and 2024,

NMFS allocates the jig sector 2.5 percent of the annual Pacific cod TAC in the Western GOA. The 2023 and 2024 allocations consist of a base allocation of 1.5 percent of the Western GOA Pacific cod TAC, and prior additional performance increases of 1.0 percent. For 2023 and 2024, NMFS allocates the jig sector 1.0 percent of the annual Pacific cod TAC in the Central GOA.

The 2023 and 2024 allocations consist of a base allocation of 1.0 percent of the Central GOA Pacific cod TAC, and no additional performance increase in the Central GOA.

For 2023 and 2024, NMFS is apportioning the jig sector allocations for the Western and Central GOA between the A season (60 percent) and the B season (40 percent), pursuant to

§ 679.20(a)(12)(i). This is the same jig sector seasonal apportionment implemented in prior groundfish harvest specifications for the GOA and is consistent with Amendment 83 to the FMP (76 FR 44700, July 26, 2011).

Tables 5 and 6 list the seasonal apportionments and allocations of the 2023 and 2024 Pacific cod TACs.

TABLE 5—FINAL 2023 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH (TAC) AMOUNTS IN THE GOA; ALLOCATIONS IN THE WESTERN GOA AND CENTRAL GOA SECTORS, AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS

[Values are rounded to the nearest metric ton]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Western GOA:					
Jig (2.5% of TAC)	131	2.50	78	N/A	52
Hook-and-line CV	71	0.70	36	0.70	36
Hook-and-line CP	1,009	10.90	555	8.90	453
Trawl CV	1,956	31.54	1,607	6.86	349
Trawl CP	122	0.90	46	1.50	76
All Pot CV and Pot CP	1,936	19.80	1,009	18.20	927
Total	5,225	63.84	3,331	36.16	1,894
Central GOA:					
Jig (1.0% of TAC)	111	1.00	67	N/A	44
Hook-and-line <50 CV	1,608	9.32	1,026	5.29	582
Hook-and-line ≥50 CV	738	5.61	618	1.10	121
Hook-and-line CP	562	4.11	452	1.00	110
Trawl CV ¹	4,579	25.29	2,785	16.29	1,794
Trawl CP	462	2.00	221	2.19	242
All Pot CV and Pot CP	3,062	17.83	1,963	9.97	1,098
Total	11,123	64.16	7,131	35.84	3,991
Eastern GOA .....	.....	Inshore (90% of Annual TAC)		Offshore (10% of Annual TAC)	
	1,755	1,580		176	

¹ Trawl catcher vessels participating in Rockfish Program cooperatives receive 3.81 percent, or 424 mt, of the annual Central GOA TAC, which is deducted from the Trawl CV B season allowance (see Table 12. Final 2023 Apportionments of Rockfish Secondary Species in the Central GOA and Table 28c to 50 CFR part 679).

TABLE 6—FINAL 2024 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH (TAC) AMOUNTS IN THE GOA; ALLOCATIONS IN THE WESTERN GOA AND CENTRAL GOA SECTORS, AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS

[Values are rounded to the nearest metric ton]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Western GOA:					
Jig (2.5% of TAC)	120	2.50	72	N/A	48
Hook-and-line CV	66	0.70	33	0.70	33
Hook-and-line CP	929	10.90	511	8.90	417
Trawl CV	1,801	31.54	1,479	6.86	322
Trawl CP	113	0.90	42	1.50	70
All Pot CV and Pot CP	1,783	19.80	929	18.20	854
Total	4,811	63.84	3,067	36.16	1,744
Central GOA:					

TABLE 6—FINAL 2024 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH (TAC) AMOUNTS IN THE GOA; ALLOCATIONS IN THE WESTERN GOA AND CENTRAL GOA SECTORS, AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS—Continued

[Values are rounded to the nearest metric ton]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Jig (1.0% of TAC)	102	1.00	61	N/A	41
Hook-and-line <50 CV	1,481	9.32	944	5.29	536
Hook-and-line ≥50 CV	680	5.61	569	1.10	111
Hook-and-line CP	518	4.11	416	1.00	101
Trawl CV ¹	4,216	25.29	2,564	16.29	1,652
Trawl CP	426	2.00	203	2.19	222
All Pot CV and Pot CP	2,819	17.83	1,808	9.97	1,011
Total	10,241	64.16	6,566	35.84	3,675
Eastern GOA	1,616	Inshore (90% of Annual TAC)		Offshore (10% of Annual TAC)	
		1,455		162	

¹ Trawl catcher vessels participating in Rockfish Program cooperatives receive 3.81 percent, or 390 mt, of the annual Central GOA TAC, which is deducted from the Trawl CV B season allowance (see Table 13. Final 2024 Apportionments of Rockfish Secondary Species in the Central GOA and Table 28c to 50 CFR part 679).

Allocations of the Sablefish TAC Amounts to Vessels Using Fixed and Trawl Gear

Section 679.20(a)(4)(i) and (ii) require allocations of sablefish TACs for each of the regulatory areas and districts to fixed and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to fixed gear, and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to fixed gear, and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used to support incidental catch of sablefish using trawl gear while directed fishing for other target species (§ 679.20(a)(4)(i)).

In recognition of the prohibition against trawl gear in the SEO District of the Eastern Regulatory Area, the Council recommended, and NMFS approves, specifying for incidental catch the allocation of 5 percent of the combined Eastern Regulatory Area sablefish TAC to trawl gear in the WYK District of the Eastern Regulatory Area. The remainder of the WYK District sablefish TAC is

allocated to vessels using fixed gear. NMFS allocates 100 percent of the sablefish TAC in the SEO District to vessels using fixed gear. This action results in 2023 allocations of 440 mt to trawl gear and 2,765 mt to fixed gear in the WYK District, a 2023 allocation of 5,602 mt to fixed gear in the SEO District, and a 2024 allocation of 383 mt to trawl gear in the WYK District. Table 7 lists the allocations of the 2023 sablefish TACs to fixed and trawl gear. Table 8 lists the allocations of the 2024 sablefish TACs to trawl gear.

The Council recommended that a trawl sablefish TAC be established for 2 years so that retention of incidental catch of sablefish by trawl gear could commence in January in the second year of the groundfish harvest specifications. Both the 2023 and 2024 trawl allocations are specified in these final harvest specifications in Tables 7 and 8, respectively.

The Council also recommended that the fixed gear sablefish TAC be established annually to ensure that this IFQ fishery is conducted concurrently with the halibut IFQ fishery and is

based on the most recent survey information. Since there is an annual assessment for sablefish and since the final harvest specifications are expected to be published before the IFQ season begins in March 2023, the Council recommended that the fixed gear sablefish TAC be set annually, rather than for 2 years, so that the best scientific information available could be considered in establishing the sablefish TACs. Accordingly, Table 7 lists the 2023 fixed gear allocations, and the 2024 fixed gear allocations will be specified in the 2024 and 2025 harvest specifications.

With the exception of the trawl allocations that are provided to the Rockfish Program (see Table 28c to 50 CFR part 679), directed fishing for sablefish with trawl gear in the GOA is closed during the fishing year. Also, fishing for groundfish with trawl gear is prohibited prior to January 20 (§ 679.23(c)). Therefore, it is not likely that the sablefish allocation to trawl gear will be reached before the effective date of these final 2023 and 2024 harvest specifications.

TABLE 7—FINAL 2023 SABLEFISH TAC AMOUNTS IN THE GULF OF ALASKA AND ALLOCATIONS TO FIXED AND TRAWL GEAR

[Values are rounded to the nearest metric ton]

Area/district	TAC	Fixed gear allocation	Trawl gear allocation
Western	4,473	3,578	895
Central ¹	9,921	7,936	1,985
West Yakutat ²	3,205	2,765	440

TABLE 7—FINAL 2023 SABLEFISH TAC AMOUNTS IN THE GULF OF ALASKA AND ALLOCATIONS TO FIXED AND TRAWL GEAR—Continued

[Values are rounded to the nearest metric ton]

Area/district	TAC	Fixed gear allocation	Trawl gear allocation
Southeast Outside	5,602	5,602	0
Total	23,201	19,881	3,320

¹ The trawl allocation of sablefish in the Central Regulatory Area is further apportioned to the Rockfish Program cooperatives (1,021 mt). See Table 12: Final 2023 Apportionments of Rockfish Secondary Species in the Central GOA. This results in 964 mt being available for the non-Rockfish Program trawl fisheries.

² The trawl allocation is based on allocating 5 percent of the combined Eastern Regulatory Area (West Yakutat and Southeast Outside Districts) sablefish TAC as incidental catch to trawl gear in the West Yakutat District.

TABLE 8—FINAL 2024 SABLEFISH TAC AMOUNTS IN THE GULF OF ALASKA AND ALLOCATIONS TO TRAWL GEAR ¹

[Values are rounded to the nearest metric ton]

Area/district	TAC	Fixed gear allocation	Trawl gear allocation
Western	4,626	n/a	925
Central ²	8,819	n/a	1,764
West Yakutat ³	2,669	n/a	383
Southeast Outside	4,981	n/a	0
Total	21,095	0	3,072

¹ The Council recommended that the final 2024 harvest specifications for the fixed gear sablefish Individual Fishing Quota fisheries not be specified in the final 2023 and 2024 harvest specifications. The final 2024 harvest specifications for fixed gear will be specified in the 2024 and 2025 harvest specifications.

² The trawl allocation of sablefish in the Central Regulatory Area is further apportioned to the Rockfish Program cooperatives (907 mt). See Table 13: Final 2024 Apportionments of Rockfish Secondary Species in the Central GOA. This results in 857 mt being available for the non-Rockfish Program trawl fisheries.

³ The trawl allocation is based on allocating 5 percent of the combined Eastern Regulatory Area (West Yakutat and Southeast Outside Districts) sablefish TAC as incidental catch to trawl gear in the West Yakutat District.

Allocations, Apportionments, and Sideboard Limits for the Rockfish Program

These final 2023 and 2024 harvest specifications for the GOA include the fishery cooperative allocations and sideboard limitations established by the Rockfish Program. Rockfish Program participants are primarily trawl CVs and trawl CPs, with limited participation by vessels using longline gear. The Rockfish Program assigns quota share and cooperative quota to participants for primary species (Pacific ocean perch, northern rockfish, and dusky rockfish) and secondary species (Pacific cod, rougheye and blackspotted rockfish, sablefish, shortraker rockfish, and thornyhead rockfish), allows a participant holding a license limitation program (LLP) license with rockfish quota share to form a rockfish cooperative with other persons, and allows holders of CP LLP licenses to opt out of the fishery. The Rockfish Program also has an entry-level fishery for rockfish primary species for vessels using longline gear. Longline gear includes hook-and-line, jig, troll, and handline gear.

Under the Rockfish Program, rockfish primary species in the Central GOA are allocated to participants after deducting for incidental catch needs in other directed groundfish fisheries (§ 679.81(a)(2)). Participants in the Rockfish Program also receive a portion of the Central GOA TAC of specific secondary species. In addition to groundfish species, the Rockfish Program allocates a portion of the halibut PSC limit (191 mt) from the third season deep-water species fishery allowance for the GOA trawl fisheries to Rockfish Program participants (§ 679.81(d) and Table 28d to 50 CFR part 679). The Rockfish Program also establishes sideboard limits to restrict the ability of harvesters operating under the Rockfish Program to increase their participation in other, non-Rockfish Program fisheries. These restrictions and halibut PSC limits are discussed in the *Rockfish Program Groundfish Sideboard and Halibut PSC Limitations* section of this rule.

Section 679.81(a)(2)(ii) and Table 28e to 50 CFR part 679 require allocations of 5 mt of Pacific ocean perch, 5 mt of northern rockfish, and 50 mt of dusky

rockfish to the entry-level longline fishery in 2023 and 2024. The allocations for the entry-level longline fishery may increase incrementally each year if the catch in the previous year exceeds 90 percent of the allocation of a species. The incremental increase in the allocation would continue each year until it reaches the maximum percent of the TAC assigned to the Rockfish Program for that species. In 2022, the catch of Pacific ocean perch, northern rockfish, and dusky rockfish did not attain the 90 percent threshold, and the final allocations for 2023 therefore remain the same as the 2022 allocations. The remainder of the TACs for the rockfish primary species are allocated to the CV and CP cooperatives (§ 679.81(a)(2)(iii)). Table 9 lists the allocations of the 2023 and 2024 TACs for each rockfish primary species to the entry-level longline fishery, the potential incremental increases for future years, and the maximum percent of the TACs assigned to the Rockfish Program that may be allocated to the rockfish entry-level longline fishery.

TABLE 9—FINAL 2023 AND INITIAL 2024 ALLOCATIONS OF ROCKFISH PRIMARY SPECIES TO THE ENTRY LEVEL LONGLINE FISHERY IN THE CENTRAL GULF OF ALASKA

Rockfish primary species	2023 and 2024 allocations	Incremental increase in 2024 if >90% of 2023 allocation is harvested	Up to maximum percent of TAC
Pacific ocean perch	5 metric tons	5 metric tons	1
Northern rockfish	5 metric tons	5 metric tons	2
Dusky rockfish	50 metric tons	20 metric tons	5

Section 679.81 requires allocations of rockfish primary species among various sectors of the Rockfish Program. Tables 10 and 11 list the final 2023 and 2024 allocations of rockfish primary species in the Central GOA to the entry-level longline fishery, and rockfish CV and CP cooperatives in the Rockfish Program. NMFS also is setting aside incidental catch amounts (ICAs) for other directed fisheries in the Central GOA of 3,000 mt of Pacific ocean perch, 300 mt of northern rockfish, and 250 mt

of dusky rockfish. These amounts are based on recent average incidental catches of these species in the Central GOA by other groundfish fisheries.

Allocations among vessels belonging to CV or CP cooperatives are not included in these final harvest specifications. Rockfish Program applications for CV cooperatives and CP cooperatives are not due to NMFS until March 1 of each calendar year; therefore, NMFS cannot calculate 2023 and 2024 allocations in conjunction

with these final harvest specifications (§ 679.81(f)). After receiving the Rockfish Program applications, NMFS will calculate the 2023 allocations for CV and CP cooperatives, as set forth in § 679.81(b), (c), and (e); NMFS will post the 2023 allocations on the Alaska Region website at <https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/alaska-fisheries-management-reports#central-goa-rockfish> when they become available after March 1, 2023.

TABLE 10—FINAL 2023 ALLOCATIONS OF ROCKFISH PRIMARY SPECIES IN THE CENTRAL GULF OF ALASKA TO THE ENTRY LEVEL LONGLINE FISHERY AND ROCKFISH COOPERATIVES IN THE ROCKFISH PROGRAM

[Values are rounded to the nearest metric ton]

Rockfish primary species	Central GOA annual TAC	Incidental catch allowance	TAC minus ICA	Allocation to the entry level longline ¹ fishery	Allocation to the Rockfish cooperatives ²
Pacific ocean perch	29,940	3,000	26,940	5	26,935
Northern rockfish	2,350	300	2,050	5	2,045
Dusky rockfish	7,647	250	7,397	50	7,347
Total	39,937	3,550	36,387	60	36,327

¹ Longline gear includes hook-and-line, jig, troll, and handline gear (50 CFR 679.2).

² Rockfish cooperatives include vessels in CV and CP cooperatives (50 CFR 679.81).

TABLE 11—FINAL 2024 ALLOCATIONS OF ROCKFISH PRIMARY SPECIES IN THE CENTRAL GULF OF ALASKA TO THE ENTRY LEVEL LONGLINE FISHERY AND ROCKFISH COOPERATIVES IN THE ROCKFISH PROGRAM

[Values are rounded to the nearest metric ton]

Rockfish primary species	Central GOA annual TAC	Incidental catch allowance	TAC minus ICA	Allocation to the entry level longline ¹ fishery	Allocation to the Rockfish cooperatives ²
Pacific ocean perch	29,138	3,000	26,138	5	26,133
Northern rockfish	2,244	300	1,944	5	1,939
Dusky rockfish	7,264	250	7,014	50	6,964
Total	38,646	3,550	35,096	60	35,036

¹ Longline gear includes hook-and-line, jig, troll, and handline gear (50 CFR 679.2).

² Rockfish cooperatives include vessels in CV and CP cooperatives (50 CFR 679.81).

Section 679.81(c) and Table 28c to 50 CFR part 679 require allocations of rockfish secondary species to CV and CP cooperatives in the Central GOA. CV cooperatives receive allocations of Pacific cod, sablefish from the trawl gear

allocation, and thornyhead rockfish. CP cooperatives receive allocations of sablefish from the trawl gear allocation, rougheye and blackspotted rockfish, shortraker rockfish, and thornyhead rockfish. Tables 12 and 13 list the

apportionments of the 2023 and 2024 TACs of rockfish secondary species in the Central GOA to CV and CP cooperatives.

TABLE 12—FINAL 2023 APPORTIONMENTS OF ROCKFISH SECONDARY SPECIES IN THE CENTRAL GOA TO CATCHER VESSEL AND CATCHER/PROCESSOR COOPERATIVES

[Values are rounded to the nearest metric ton]

Rockfish secondary species	Central GOA annual TAC	Catcher vessel cooperatives		Catcher/processor cooperatives	
		Percentage of TAC	Apportionment (mt)	Percentage of TAC	Apportionment (mt)
Pacific cod	11,123	3.81	424	0.00	0
Sablefish	9,921	6.78	673	3.51	348
Shortraker rockfish	280	0.00	0	40.00	112
Rougheye/blackspotted rockfish	232	0.00	0	58.87	137
Thornyhead rockfish	693	7.84	54	26.50	184

TABLE 13—FINAL 2024 APPORTIONMENTS OF ROCKFISH SECONDARY SPECIES IN THE CENTRAL GOA TO CATCHER VESSEL AND CATCHER/PROCESSOR COOPERATIVES

[Values are rounded to the nearest metric ton]

Rockfish secondary species	Central GOA annual TAC	Catcher vessel cooperatives		Catcher/processor cooperatives	
		Percentage of TAC	Apportionment (mt)	Percentage of TAC	Apportionment (mt)
Pacific cod	10,241	3.81	390	0.00	0
Sablefish	8,819	6.78	598	3.51	310
Shortraker rockfish	280	0.00	0	40.00	112
Rougheye/blackspotted rockfish	231	0.00	0	58.87	136
Thornyhead rockfish	693	7.84	54	26.50	184

Halibut PSC Limits

Section 679.21(d) establishes annual halibut PSC limit apportionments to trawl gear and hook-and-line gear, and authorizes the establishment of apportionments for pot gear. In December 2022, the Council recommended and NMFS approves halibut PSC limits of 1,705 mt for trawl gear, 257 mt for hook-and-line gear, and 9 mt for the demersal shelf (DSR) rockfish fishery in the SEO District for both 2023 and 2024, consistent with § 679.21.

The DSR fishery in the SEO District is defined at § 679.21(d)(2)(ii)(A). This fishery is apportioned 9 mt of the halibut PSC limit in recognition of its small-scale harvests of groundfish (§ 679.21(d)(2)(i)(A)). The separate halibut PSC limit for the DSR fishery is intended to prevent that fishery from being impacted from the halibut PSC incurred by other GOA fisheries. NMFS estimates low halibut bycatch in the DSR fishery because: (1) the duration of the DSR fishery and the gear soak times are short; (2) the DSR fishery occurs in the winter when there is less overlap in the distribution of DSR and halibut; and, (3) the directed commercial DSR fishery has a low DSR TAC. The Alaska Department of Fish and Game sets the commercial GHL for the DSR fishery after deducting estimates of DSR incidental catch in all fisheries (including halibut and subsistence) and allocation to the sport DSR fishery. In

2022, the commercial fishery for DSR was closed due to concerns about declining DSR biomass.

The FMP authorizes the Council and NMFS to exempt specific gear from the halibut PSC limits. NMFS, after consultation with the Council, exempts pot gear, the sablefish IFQ fixed gear fishery categories, and jig gear from the non-trawl halibut PSC limit for 2023 and 2024. The Council recommended, and NMFS approves, these exemptions because: (1) the pot gear fisheries have low annual halibut bycatch mortality; (2) IFQ program regulations prohibit discard of halibut if any halibut IFQ permit holder on board a catcher vessel holds unused halibut IFQ for that vessel category and the IFQ regulatory area in which the vessel is operating (§ 679.7(f)(11)); (3) some sablefish IFQ fishermen hold halibut IFQ permits and are therefore required to retain the halibut they catch while fishing sablefish IFQ; and (4) NMFS estimates negligible halibut mortality for the jig gear fisheries given the small amount of groundfish harvested by jig gear, the selective nature of jig gear, and the high survival rates of halibut caught and released with jig gear.

The best available information on estimated halibut bycatch consists of data collected by fisheries observers during 2022. The calculated halibut bycatch mortality through December 31, 2022, is 355 mt for trawl gear and 43 mt for hook-and-line gear for a total halibut

mortality of 398 mt. This halibut mortality was calculated using groundfish and halibut catch data from the NMFS Alaska Region's catch accounting system. This accounting system contains historical and recent catch information compiled from each Alaska groundfish fishery.

Section 679.21(d)(4)(i) and (ii) authorize NMFS to seasonally apportion the halibut PSC limits after consultation with the Council. The FMP and regulations require that the Council and NMFS consider the following information in seasonally apportioning halibut PSC limits: (1) seasonal distribution of halibut; (2) seasonal distribution of target groundfish species relative to halibut distribution; (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species; (4) expected bycatch rates on a seasonal basis; (5) expected changes in directed groundfish fishing seasons; (6) expected actual start of fishing effort; and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry. The Council considered information from the 2022 SAFE report, NMFS catch data, State of Alaska catch data, International Pacific Halibut Commission (IPHC) stock assessment and mortality data, and public testimony when apportioning the halibut PSC limits. NMFS concurs with the Council's recommendations listed in

Table 14, which shows the final 2023 and 2024 Pacific halibut PSC limits, allowances, and apportionments.

Section 679.21(d)(4)(iii) and (iv) specify that any unused amounts, or overages, of a seasonal apportionment of a halibut PSC limit will be added to, or

deducted from, the next respective seasonal apportionment within the fishing year.

TABLE 14—FINAL 2023 AND 2024 PACIFIC HALIBUT PROHIBITED SPECIES CATCH (PSC) LIMITS, ALLOWANCES, AND APPORTIONMENTS

[Values are in metric tons]

Trawl gear			Hook-and-line gear ¹				
Season	Percent	Amount	Other than DSR			DSR	
			Season	Percent	Amount	Season	Amount
January 20–April 1	30.5	519	January 1–June 10	86	221	January 1–December 31	9
April 1–July 1	20.0	341	June 10–September 1	2	5		
July 1–August 1	27.0	462	September 1–December 31	12	31		
August 1–October 1	7.5	128					
October 1–December 31	15.0	256					
Total		1,705			257		9

Note: Seasonal or sector apportionments may not total precisely due to rounding.

¹ The Pacific halibut prohibited species catch (PSC) limit for hook-and-line gear is allocated to the DSR fishery in the SEO District and to the hook-and-line fisheries other than the DSR fishery. The fixed gear sablefish IFQ fishery is exempt from halibut PSC limits, as are pot and jig gear for all groundfish fisheries.

Section 679.21(d)(3)(ii) authorizes further apportionment of the trawl halibut PSC limit to trawl fishery categories listed in § 679.21(d)(3)(iii). The annual apportionments are based on each category's proportional share of the anticipated halibut bycatch mortality during the fishing year and optimization of the total amount of groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are: (1) a deep-water species fishery, composed of sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder; and (2) a shallow-water species fishery, composed of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species" (sharks and octopuses) (§ 679.21(d)(3)(iii)). Halibut mortality incurred while directed fishing for skates with trawl gear accrues towards the shallow-water species fishery halibut PSC limit (69 FR 26320, May 12, 2004).

NMFS will combine available trawl halibut PSC limit apportionments during a portion of the second season deep-water and shallow-water species fisheries for use in either fishery from May 15 through June 30 (§ 679.21(d)(4)(iii)(D)). This is intended to maintain groundfish harvest while minimizing halibut bycatch by these sectors to the extent practicable. This provides the deep-water and shallow-water species trawl fisheries additional flexibility and the incentive to participate in fisheries at times of the year that may have lower halibut PSC rates relative to other times of the year.

Table 15 lists the final 2023 and 2024 apportionments of trawl halibut PSC limits between the trawl gear deep-water and shallow-water species fishery categories.

Table 28d to 50 CFR part 679 specifies the amount of the trawl halibut PSC limit that is assigned to the CV and CP sectors that are participating in the Rockfish Program. This includes 117 mt

of halibut PSC limit to the CV sector and 74 mt of halibut PSC limit to the CP sector. These amounts are allocated from the trawl deep-water species fishery's halibut PSC third seasonal apportionment. After the combined CV and CP halibut PSC limit allocation of 191 mt to the Rockfish Program, 150 mt remains for the trawl deep-water species fishery's halibut PSC third seasonal apportionment.

Section 679.21(d)(4)(iii)(B) limits the amount of the halibut PSC limit allocated to Rockfish Program participants that could be re-apportioned to the last seasonal apportionment for the general GOA trawl fisheries during the current fishing year to no more than 55 percent of the unused annual halibut PSC limit apportioned to Rockfish Program participants. The remainder of the unused Rockfish Program halibut PSC limit is unavailable for use by any person for the remainder of the fishing year (§ 679.21(d)(4)(iii)(C)).

TABLE 15—FINAL 2023 AND 2024 APPORTIONMENT OF PACIFIC HALIBUT PROHIBITED SPECIES CATCH LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES FISHERY AND THE SHALLOW-WATER SPECIES FISHERY CATEGORIES

[Values are in metric tons]

Season	Shallow-water	Deep-water ¹	Total
January 20–April 1	384	135	519
April 1–July 1	85	256	341
July 1–August 1	121	341	462
August 1–October 1	53	75	128
Subtotal January 20–October 1	643	807	1,450
October 1–December 31 ²			256

TABLE 15—FINAL 2023 AND 2024 APPORTIONMENT OF PACIFIC HALIBUT PROHIBITED SPECIES CATCH LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES FISHERY AND THE SHALLOW-WATER SPECIES FISHERY CATEGORIES—Continued

[Values are in metric tons]

Season	Shallow-water	Deep-water ¹	Total
Total			1,705

¹ Vessels participating in cooperatives in the Central GOA Rockfish Program will receive 191 mt of the third season (July 1 through August 1) deep-water species fishery halibut PSC apportionment.

² There is no apportionment between trawl shallow-water and deep-water species fishery categories during the fifth season (October 1 through December 31).

Section 679.21(d)(2)(i)(B) requires that the “other hook-and-line fishery” halibut PSC limit apportionment to vessels using hook-and-line gear must be apportioned between CVs and CPs in accordance with § 679.21(d)(2)(iii) in conjunction with these harvest specifications. A comprehensive description and example of the calculations necessary to apportion the “other hook-and-line fishery” halibut PSC limit between the hook-and-line CV and CP sectors were included in the proposed rule to implement Amendment 83 to the FMP (76 FR 44700, July 26, 2011) and are not repeated here.

Pursuant to § 679.21(d)(2)(iii), the hook-and-line halibut PSC limit for the “other hook-and-line fishery” is apportioned between the CV and CP sectors in proportion to the total Western and Central GOA Pacific cod allocations, which vary annually based on the proportion of the Pacific cod biomass between the Western, Central, and Eastern GOA. Pacific cod is

apportioned among these three management areas based on the percentage of overall biomass per area, as calculated in the 2022 Pacific cod stock assessment. Updated information in the final 2022 SAFE report describes this distributional calculation, which allocates ABC among GOA regulatory areas on the basis of the three most recent stock surveys. For 2023 and 2024, the distribution of the total GOA Pacific cod ABC is 29 percent to the Western GOA, 61 percent to the Central GOA, and 10 percent to the Eastern GOA. Therefore, the calculations made in accordance with § 679.21(d)(2)(iii) incorporate the most recent information on GOA Pacific cod distribution and allocations with respect to establishing the annual halibut PSC limits for the CV and CP hook-and-line sectors of the “other hook-and-line fishery.” Additionally, the annual halibut PSC limits for both the CV and CP sectors of the “other hook-and-line fishery” are divided into three seasonal apportionments, using seasonal

percentages of 86 percent, 2 percent, and 12 percent.

For 2023 and 2024, NMFS apportions halibut PSC limits of 150 mt and 107 mt to the hook-and-line CV and hook-and-line CP sectors, respectively. Table 16 lists the final 2023 and 2024 apportionments of halibut PSC limits between the hook-and-line CV and the hook-and-line CP sectors of the “other hook-and-line fishery.”

No later than November 1 of each year, NMFS will calculate the projected unused amount of halibut PSC limit by either of the CV or CP hook-and-line sectors that comprise the two sectors of the “other hook-and-line fishery” for the remainder of the year. The projected unused amount of halibut PSC limit is made available to the other sector for the remainder of that fishing year (§ 679.21(d)(2)(iii)(C)), if NMFS determines that an additional amount of halibut PSC is necessary for that sector to continue its directed fishing operations.

TABLE 16—FINAL 2023 AND 2024 APPORTIONMENTS OF THE “OTHER HOOK-AND-LINE FISHERY” ANNUAL HALIBUT PROHIBITED SPECIES CATCH ALLOWANCE BETWEEN THE HOOK-AND-LINE GEAR CATCHER VESSEL AND CATCHER/PROCESSOR SECTORS

[Values are in metric tons]

“Other than DSR” allowance	Hook-and-line sector	Sector annual amount	Season	Seasonal percentage	Sector seasonal amount
257	Catcher Vessel	150	January 1–June 10	86	129
			June 10–September 1	2	3
			September 1–December 31	12	18
	Catcher/Processor	107	January 1–June 10	86	92
			June 10–September 1	2	2
			September 1–December 31	12	13

Estimates of Halibut Biomass and Stock Condition

The IPHC annually assesses the abundance and potential yield of the Pacific halibut stock using all available data from the commercial and sport fisheries, other removals, and scientific surveys. Additional information on the Pacific halibut stock assessment may be found in the IPHC’s 2022 Pacific halibut

stock assessment (December 2022), available on the IPHC website at <https://www.iphc.int>. The IPHC considered the 2022 Pacific halibut stock assessment at its January 2023 annual meeting when it set the 2023 commercial halibut fishery catch limits.

Halibut Discard Mortality Rates

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut incidental catch rates, halibut discard mortality rates (DMRs), and estimates of groundfish catch to project when a fishery’s halibut bycatch mortality allowance or seasonal apportionment is reached. Halibut

incidental catch rates are based on observed estimates of halibut incidental catch in the groundfish fishery. DMRs are estimates of the proportion of incidentally caught halibut that do not survive after being returned to the sea. The cumulative halibut mortality that accrues to a particular halibut PSC limit is the product of a DMR multiplied by the estimated halibut PSC. DMRs are estimated using the best scientific information available in conjunction with the annual GOA stock assessment process. The DMR methodology and findings are included as an appendix to the annual GOA groundfish SAFE report.

In 2016, the DMR estimation methodology underwent revisions per the Council's directive. An interagency halibut working group (IPHC, Council, and NMFS staff) developed improved

estimation methods that have undergone review by the GOA Plan Team, SSC, and the Council. A summary of the revised methodology is contained in the GOA proposed 2017 and 2018 harvest specifications (81 FR 87881, December 6, 2016), and the comprehensive discussion of the working group's statistical methodology is available from the Council (see ADDRESSES). The DMR working group's revised methodology is intended to improve estimation accuracy, transparency, and transferability in the methodology used for calculating DMRs. The working group will continue to consider improvements to the methodology used to calculate halibut mortality, including potential changes to the reference period (the period of data used for calculating the DMRs). The new methodology continues to

ensure that NMFS is using DMRs that accurately reflect halibut mortality, which will inform the sectors of their estimated halibut mortality and allow sectors to respond with methods that could reduce mortality and, eventually, the DMR for that sector.

At the December 2022 meeting, the SSC, AP, and the Council concurred with the revised DMR estimation methodology, and NMFS adopts for 2023 and 2024 the DMRs calculated under the revised methodology, which uses an updated 2-year reference period. The final 2023 and 2024 DMRs in this rule are unchanged from the DMRs in the proposed 2023 and 2024 harvest specifications (87 FR 74102, December 2, 2022). Table 17 lists these final 2023 and 2024 DMRs.

TABLE 17—FINAL 2023 AND 2024 HALIBUT DISCARD MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA
[Values are percent of halibut assumed to be dead]

Gear	Sector	Groundfish fishery	Halibut discard mortality rate (percent)
Pelagic trawl	Catcher vessel	All	100
	Catcher/processor	All	100
Non-pelagic trawl	Catcher vessel	Rockfish Program	55
	Catcher vessel	All others	74
	Mothership and catcher/processor	All	83
Hook-and-line	Catcher/processor	All	13
	Catcher vessel	All	9
Pot	Catcher vessel and catcher/processor	All	27

Chinook Salmon Prohibited Species Catch Limits

Amendment 93 to the FMP (77 FR 42629, July 20, 2012) established separate Chinook salmon PSC limits in the Western and Central GOA in the directed pollock trawl fishery. NMFS is required to close the directed pollock fishery in the Western and Central Regulatory Areas of the GOA if the applicable Chinook salmon PSC limit in that regulatory area will be reached (§ 679.21(h)(8)). The annual Chinook salmon PSC limits in the directed pollock fishery of 6,684 salmon in the Western GOA and 18,316 salmon in the Central GOA are set at § 679.21(h)(2).

Amendment 97 to the FMP (79 FR 71350, December 2, 2014) established an initial annual PSC limit of 7,500 Chinook salmon for the trawl non-pollock groundfish fisheries in the Western and Central GOA. This limit is apportioned among the three sectors that conduct directed fishing for groundfish species other than pollock: 3,600 Chinook salmon to trawl CPs; 1,200 Chinook salmon to trawl CVs participating in the Rockfish Program;

and 2,700 Chinook salmon to trawl CVs not participating in the Rockfish Program (§ 679.21(h)(4)). NMFS will monitor the Chinook salmon PSC in the trawl non-pollock groundfish fisheries and close an applicable sector if it will reach its Chinook salmon PSC limit.

The Chinook salmon PSC limit for two sectors, trawl CPs and trawl CVs not participating in the Rockfish Program, may be increased in subsequent years based on the performance of these two sectors and their ability to minimize their use of their respective Chinook salmon PSC limits during a calendar year. If either or both of these two sectors limited its use of Chinook salmon PSC to a specified threshold amount in 2022 (3,120 for trawl CPs and 2,340 for Non-Rockfish Program trawl CVs), that sector will receive an incremental increase to its 2023 Chinook salmon PSC limit (§ 679.21(h)(4)). In 2022, the trawl CP sector did not exceed 3,120 Chinook salmon PSC; therefore, the 2023 trawl CP sector Chinook salmon PSC limit will be 4,080 Chinook salmon. In 2022, the Non-Rockfish Program trawl CV

sector did not exceed 2,340 Chinook salmon PSC; therefore, the 2023 Non-Rockfish Program trawl CV sector Chinook salmon PSC limit will be 3,060 Chinook salmon.

American Fisheries Act (AFA) Catcher/Processor and Catcher Vessel Groundfish Harvest Limits

Section 679.64 establishes groundfish harvesting and processing sideboard limitations on AFA CPs and CVs in the GOA. These sideboard limits are necessary to protect the interests of fishermen and processors who do not directly benefit from the AFA as compared to those fishermen and processors who receive exclusive harvesting and processing privileges under the AFA. Section 679.7(k)(1)(ii) prohibits listed AFA CPs and CPs designated on a listed AFA CP permit from harvesting any species of groundfish in the GOA. Additionally, § 679.7(k)(1)(iv) prohibits listed AFA CPs and CPs designated on a listed AFA CP permit from processing any pollock harvested in a directed pollock fishery in the GOA and any groundfish

harvested in Statistical Area 630 of the GOA.

AFA CVs that are less than 125 feet (38.1 m) length overall, have annual landings of pollock in the Bering Sea and Aleutian Islands (BSAI) less than 5,100 mt, and have made at least 40 GOA groundfish landings from 1995 through 1997 are exempt from GOA CV groundfish sideboard limits under § 679.64(b)(2)(ii). Sideboard limits for non-exempt AFA CVs in the GOA are based on their traditional harvest levels of TAC in groundfish fisheries covered

by the FMP. Section 679.64(b)(3)(iv) establishes the CV groundfish sideboard limitations in the GOA based on the aggregate retained catch of non-exempt AFA CVs of each sideboard species or species group from 1995 through 1997 divided by the sum of the TACs for that species or species group available to CVs over the same period. NMFS published a final rule (84 FR 2723, February 8, 2019) that implemented regulations to prohibit non-exempt AFA CVs from directed fishing for specific groundfish species or species groups

subject to sideboard limits (§ 679.20(d)(1)(iv)(D) and Table 56 to 50 CFR part 679). Sideboard limits not subject to the final rule (84 FR 2723, February 8, 2019) continue to be calculated and included in the GOA annual harvest specifications.

Tables 18 and 19 list the final 2023 and 2024 groundfish sideboard limits for non-exempt AFA CVs. NMFS will deduct all targeted or incidental catch of sideboard species made by non-exempt AFA CVs from the sideboard limits listed in Tables 18 and 19.

TABLE 18—FINAL 2023 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Apportionments by season	Area	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	Final 2023 TACs ³	Final 2023 non-exempt AFA CV sideboard limit
Pollock	A Season January 20–May 31	Shumagin (610)	0.6047	1,685	1,019
		Chirikof (620)	0.1167	58,039	6,773
		Kodiak (630)	0.2028	9,121	1,850
	B Season September 1–November 1	Shumagin (610)	0.6047	25,272	15,282
		Chirikof (620)	0.1167	18,965	2,213
		Kodiak (630)	0.2028	24,608	4,990
	Annual	WYK (640)	0.3495	7,523	2,629
		SEO (650)	0.3495	11,363	3,971
Pacific cod	A Season ¹ January 1–June 10	W	0.1331	3,331	443
		C	0.0692	7,131	493
	B Season ² September 1–December 31	W	0.1331	1,894	252
		C	0.0692	3,991	276
Flatfish, shallow-water	Annual	W	0.0156	13,250	207
		C	0.0587	26,769	1,571
Flatfish, deep-water	Annual	C	0.0647	2,105	136
		E	0.0128	3,455	44
Rex sole	Annual	C	0.0384	13,110	503
Arrowtooth flounder	Annual	C	0.0280	65,000	1,820
Flathead sole	Annual	C	0.0213	21,487	458
Pacific ocean Perch	Annual	C	0.0748	29,940	2,240
Northern rockfish	Annual	E	0.0466	4,724	220
		C	0.0277	2,350	65

¹ The Pacific cod A season for trawl gear does not open until January 20.

² The Pacific cod B season for trawl gear closes November 1.

³ The Western and Central GOA and WYK District area apportionments of pollock are considered ACLs.

TABLE 19—FINAL 2024 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Apportionments by season	Area	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	Final 2024 TACs ³	Final 2024 non-exempt AFA CV sideboard limit
Pollock	A Season January 20–May 31	Shumagin (610)	0.6047	1,823	1,102
		Chirikof (620)	0.1167	62,771	7,325
		Kodiak (630)	0.2028	9,864	2,000
	B Season September 1–November 1	Shumagin (610)	0.6047	27,333	16,528
		Chirikof (620)	0.1167	20,511	2,394
		Kodiak (630)	0.2028	26,614	5,397
	Annual	WYK (640)	0.3495	8,136	2,844
		SEO (650)	0.3495	11,363	3,971
Pacific cod	A Season ¹ January 1–June 10	W	0.1331	3,067	408

TABLE 19—FINAL 2024 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH SIDEBOARD LIMITS—Continued

[Values are rounded to the nearest metric ton]

Species	Apportionments by season	Area	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	Final 2024 TACs ³	Final 2024 non-exempt AFA CV sideboard limit
Flatfish, shallow-water	B Season ² September 1–December 31	C	0.0692	6,566	454
		W	0.1331	1,744	232
	Annual	C	0.0692	3,675	254
		W	0.0156	13,250	207
Flatfish, deep-water	Annual	C	0.0587	27,737	1,628
		C	0.0647	2,068	134
	Annual	E	0.0128	3,396	43
		C	0.0384	13,425	516
Rex sole	Annual	C	0.0280	64,200	1,798
Arrowtooth flounder	Annual	C	0.0213	21,892	466
Flathead sole	Annual	C	0.0748	29,138	2,180
Pacific ocean perch	Annual	E	0.0466	4,597	214
Northern rockfish	Annual	C	0.0277	2,244	62
		C			

¹ The Pacific cod A season for trawl gear does not open until January 20.² The Pacific cod B season for trawl gear closes November 1.³ The Western and Central GOA and WYK District area apportionments of pollock are considered ACLs.*Non-Exempt AFA Catcher Vessel Halibut PSC Limits*

The halibut PSC sideboard limits for non-exempt AFA CVs in the GOA are

based on the aggregate retained groundfish catch by non-exempt AFA CVs in each PSC target category from 1995 through 1997 divided by the retained catch of all vessels in that

fishery from 1995 through 1997 (§ 679.64(b)(4)(ii)). Table 20 lists the final 2023 and 2024 non-exempt AFA CV halibut PSC sideboard limits for vessels using trawl gear in the GOA.

TABLE 20—FINAL 2023 AND 2024 NON-EXEMPT AFA CV HALIBUT PROHIBITED SPECIES CATCH (PSC) SIDEBOARD LIMITS FOR VESSELS USING TRAWL GEAR IN THE GOA

[Values are rounded to nearest metric ton]

Season	Season dates	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	2023 and 2024 halibut PSC limit	2023 and 2024 non-exempt AFA CV halibut PSC limit
1	January 20–April 1	shallow-water	0.340	384	131
		deep-water	0.070	135	9
2	April 1–July 1	shallow-water	0.340	85	29
		deep-water	0.070	256	18
3	July 1–August 1	shallow-water	0.340	121	41
		deep-water	0.070	341	24
4	August 1–October 1	shallow-water	0.340	53	18
		deep-water	0.070	75	5
5	October 1–December 31	all targets	0.205	256	52
Annual		Total shallow-water .....	.....	.....	.....
		Total deep-water .....	.....	.....	56
		Total, all season and categories		1,705	328

Non-AFA Crab Vessel Groundfish Harvest Limitations

Section 680.22 establishes groundfish catch limits for vessels with a history of participation in the Bering Sea snow crab fishery to prevent these vessels from using the increased flexibility provided by the Crab Rationalization

(CR) Program to expand their level of participation in the GOA groundfish fisheries. Sideboard limits restrict these vessels' catch to their collective historical landings in each GOA groundfish fishery (except the fixed-gear sablefish fishery). Sideboard limits also apply to catch made using an LLP

license derived from the history of a restricted vessel, even if that LLP license is used on another vessel.

The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the CR Program, including Amendments 18 and 19 to the Fishery Management

Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP) (70 FR 10174, March 2, 2005), Amendment 34 to the Crab FMP (76 FR 35772, June 20, 2011), Amendment 83 to the GOA FMP (76 FR 74670, December 1, 2011), and Amendment 45 to the Crab FMP (80 FR 28539, May 19, 2015).

NMFS published a final rule (84 FR 2723, February 8, 2019) that implemented regulations to prohibit

non-AFA crab vessels from directed fishing for all groundfish species or species groups subject to sideboard limits, except for Pacific cod apportioned to CVs using pot gear in the Western and Central Regulatory Areas (§ 680.22(e)(1)(iii)). Accordingly, the GOA annual harvest specifications will include the non-AFA crab vessel groundfish sideboard limits for only Pacific cod apportioned to CVs using

pot gear in the Western and Central Regulatory Areas.

Tables 21 and 22 list the final 2023 and 2024 groundfish sideboard limitations for non-AFA crab vessels. All targeted or incidental catch of sideboard species made by non-AFA crab vessels or associated LLP licenses will be deducted from these sideboard limits.

TABLE 21—FINAL 2023 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUND FISH SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Season	Area/gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Final 2023 TACs	Final 2023 non-AFA crab vessel sideboard limit
Pacific cod	A Season January 1–June 10	Western Pot CV ...	0.0997	3,331	332
		Central Pot CV	0.0474	7,131	338
	B Season September 1–December 31	Western Pot CV ...	0.0997	1,894	189
		Central Pot CV	0.0474	3,991	189

TABLE 22—FINAL 2024 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUND FISH SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Season	Area/gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Final 2024 TACs	Final 2024 non-AFA crab vessel sideboard limit
Pacific cod	A Season January 1–June 10	Western Pot CV ...	0.0997	3,067	306
		Central Pot CV	0.0474	6,566	311
	B Season September 1–December 31	Western Pot CV ...	0.0997	1,744	174
		Central Pot CV	0.0474	3,675	174

Rockfish Program Groundfish Sideboard and Halibut PSC Limitations

The Rockfish Program establishes three classes of sideboard provisions: CV groundfish sideboard restrictions, CP rockfish sideboard restrictions, and CP opt-out vessel sideboard restrictions (§ 679.82(c)(1)). These sideboards are intended to limit the ability of rockfish harvesters to expand into other GOA groundfish fisheries.

CVs participating in the Rockfish Program may not participate in directed fishing for dusky rockfish, Pacific ocean perch, and northern rockfish in the West Yakutat District and Western GOA from July 1 through July 31. Also, CVs may not participate in directed fishing for arrowtooth flounder, deep-water flatfish, and rex sole in the GOA from July 1 through July 31 (§ 679.82(d)).

CPs participating in Rockfish Program cooperatives are restricted by rockfish and halibut PSC sideboard limits. These CPs are prohibited from directed fishing for dusky rockfish, Pacific ocean perch, and northern rockfish in the West Yakutat District and Western GOA from July 1 through July 31 (§ 679.82(e)(2)).

Prior to 2021, CPs participating in Rockfish Program cooperatives were restricted by rockfish sideboard limits in the Western GOA. A final rule that implemented Amendment 111 to the FMP (86 FR 11895, March 1, 2021) removed from regulation the Western GOA rockfish sideboard limits for Rockfish Program CPs. That rule also revised and clarified the establishment of the West Yakutat District rockfish sideboard ratios in regulation. The rockfish sideboard ratio for each rockfish fishery in the West Yakutat District is an established percentage of the TAC for catcher/processors in the directed fishery for dusky rockfish and Pacific ocean perch (§ 679.82(e)(4)). These percentages are confidential.

Holders of CP-designated LLP licenses that opt out of participating in a Rockfish Program cooperative will be able to access that portion of each rockfish sideboard limit that is not assigned to rockfish cooperatives (§ 679.82(e)(7)).

Under the Rockfish Program, the CP sector is subject to halibut PSC sideboard limits for the trawl deep-

water and shallow-water species fisheries (§ 679.82(e)(3) and (5)). Halibut PSC sideboard ratios by fishery are set forth in § 679.82(e)(5). The CP sector halibut PSC sideboard limits are in effect from July 1 through July 31 (§ 679.82(e)(6)). No halibut PSC sideboard limits apply to the CV sector, as CVs participating in cooperatives receive a portion of the annual halibut PSC limit. CPs that opt out of the Rockfish Program are able to access that portion of the deep-water and shallow-water species fishery halibut PSC sideboard limit not assigned to CP rockfish cooperatives. The sideboard provisions for CPs that elect to opt out of participating in a rockfish cooperative are described in § 679.82(c), (e), and (f). Sideboard limits are linked to the catch history of specific vessels, however, some of these vessels may choose to opt out of the Rockfish Program. After March 1, NMFS will determine which CPs have opted-out of the Rockfish Program in 2023, and NMFS will know the ratios and amounts used to calculate opt-out sideboard ratios. NMFS will then calculate any applicable opt-out

sideboards for 2023 and post these limits on the Alaska Region website at <https://www.fisheries.noaa.gov/alaska/>

sustainable-fisheries/alaska-fisheries-management-reports#central-goa-rockfish. Table 23 lists the final 2023

and 2024 Rockfish Program halibut PSC sideboard limits for the CP sector.

TABLE 23—FINAL 2023 AND 2024 ROCKFISH PROGRAM HALIBUT PSC SIDEBOARD LIMITS FOR THE CATCHER/PROCESSOR SECTOR

[Values are rounded to the nearest metric ton]

Sector	Shallow-water species fishery halibut PSC sideboard ratio (percent)	Deep-water species fishery halibut PSC sideboard ratio (percent)	2023 and 2024 halibut mortality limit (mt)	Annual shallow-water species fishery halibut PSC sideboard limit (mt)	Annual deep-water species fishery halibut PSC sideboard limit (mt)
Catcher/processor	0.10	2.50	1,705	2	43

Amendment 80 Program Groundfish and PSC Sideboard Limits

Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (Amendment 80 Program) established a limited access privilege program for the non-AFA trawl CP sector. The Amendment 80 Program established groundfish and halibut PSC catch limits for Amendment 80 Program participants to limit the ability of participants eligible for the Amendment

80 Program to expand their harvest efforts in the GOA.

Section 679.92 establishes groundfish harvesting sideboard limits on all Amendment 80 program vessels, other than the fishing vessel (F/V) *Golden Fleece*, to amounts no greater than the limits listed in Table 37 to 50 CFR part 679. Under § 679.92(d), the F/V *Golden Fleece* is prohibited from directed fishing for pollock, Pacific cod, Pacific ocean perch, dusky rockfish, and northern rockfish in the GOA.

Groundfish sideboard limits for Amendment 80 Program vessels operating in the GOA are based on their average aggregate harvests from 1998 through 2004 (72 FR 52668, September 14, 2007). Tables 24 and 25 list the final 2023 and 2024 groundfish sideboard limits for Amendment 80 Program vessels. NMFS will deduct all targeted or incidental catch of sideboard species made by Amendment 80 Program vessels from the sideboard limits in Tables 24 and 25.

TABLE 24—FINAL 2023 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by season	Area	Ratio of amendment 80 sector vessels 1998–2004 catch to TAC	2023 TAC (mt)	2023 Amendment 80 vessel sideboard limit (mt)
Pollock	A Season January 20–May 31	Shumagin (610)	0.003	1,685	5
		Chirikof (620)	0.002	58,039	116
		Kodiak (630)	0.002	9,121	18
	B Season September 1–November 1	Shumagin (610)	0.003	25,272	76
		Chirikof (620)	0.002	18,965	38
		Kodiak (630)	0.002	24,608	49
Pacific cod	Annual	WYK (640)	0.002	7,523	15
	A Season ¹ January 1–June 10	W	0.020	3,331	67
		C	0.044	7,131	314
		W	0.020	1,894	38
	B Season ² September 1–December 31.	C	0.044	3,991	176
		WYK	0.034	1,755	60
Pacific ocean perch.	Annual	W	0.994	2,529	2,514
	Annual	WYK	0.961	1,370	1,317
Northern rockfish ..	Annual	W	1.000	2,614	2,614
Dusky rockfish	Annual	W	0.764	149	114
		WYK	0.896	90	81

¹ The Pacific cod A season for trawl gear does not open until January 20.

² The Pacific cod B season for trawl gear closes November 1.

TABLE 25—FINAL 2024 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by season	Area	Ratio of amendment 80 sector vessels 1998–2004 catch to TAC	2024 TAC (mt)	2024 Amendment 80 vessel sideboard limit (mt)
Pollock	A Season January 20–May 31	Shumagin (610)	0.003	1,823	5
		Chirikof (620)	0.002	62,771	126
		Kodiak (630)	0.002	9,864	20
	B Season September 1–November 1	Shumagin (610)	0.003	27,333	82
		Chirikof (620)	0.002	20,511	41
		Kodiak (630)	0.002	26,614	53
Pacific cod	Annual	WYK (640)	0.002	8,136	16
	A Season ¹ January 1–June 10	W	0.020	3,067	61
		C	0.044	6,566	289
		W	0.020	1,744	35
	B Season ² September 1–December 31.	C	0.044	3,675	162
		WYK	0.034	1,616	55
Pacific ocean perch.	Annual	W	0.994	2,461	2,446
	Annual	WYK	0.961	1,333	1,281
Northern rockfish ..	Annual	W	1.000	2,497	2,497
Dusky rockfish	Annual	W	0.764	141	108
		WYK	0.896	85	76

¹ The Pacific cod A season for trawl gear does not open until January 20.² The Pacific cod B season for trawl gear closes November 1.

The halibut PSC sideboard limits for Amendment 80 Program vessels in the GOA are based on the historic use of halibut PSC by Amendment 80 Program vessels in each PSC target category from 1998 through 2004. These values are slightly lower than the average historic use to accommodate two factors:

allocation of halibut PSC cooperative quota under the Rockfish Program and the exemption of the F/V *Golden Fleece* from this restriction (§ 679.92(b)(2)). Table 26 lists the final 2023 and 2024 halibut PSC sideboard limits for Amendment 80 Program vessels. These tables incorporate the maximum

percentages of the halibut PSC sideboard limits that may be used by Amendment 80 Program vessels as contained in Table 38 to 50 CFR part 679. Any residual amount of a seasonal Amendment 80 halibut PSC sideboard limit may carry forward to the next season limit (§ 679.92(b)(2)).

TABLE 26—FINAL 2023 AND 2024 HALIBUT PSC SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS IN THE GOA

[Values are rounded to nearest metric ton]

Season	Season dates	Target fishery	Historic amendment 80 use of the annual halibut PSC limit catch (ratio)	2023 and 2024 Annual halibut PSC limit (mt)	2023 and 2024 Amendment 80 vessel halibut PSC limit
1	January 20–April 1	shallow-water	0.0048	1,705	8
		deep-water	0.0115	1,705	20
2	April 1–July 1	shallow-water	0.0189	1,705	32
		deep-water	0.1072	1,705	183
3	July 1–August 1	shallow-water	0.0146	1,705	25
		deep-water	0.0521	1,705	89
4	August 1–October 1	shallow-water	0.0074	1,705	13
		deep-water	0.0014	1,705	2
5	October 1–December 31	shallow-water	0.0227	1,705	39
		deep-water	0.0371	1,705	63
Total .....	.....	.....	.....	.....	474

Directed Fishing Closures

Pursuant to § 679.20(d)(1)(i), if the Regional Administrator determines (1) that any allocation or apportionment of a target species or species group allocated or apportioned to a fishery

will be reached; or (2) with respect to pollock and Pacific cod, that an allocation or apportionment to an inshore or offshore component or sector allocation will be reached, then the Regional Administrator may establish a directed fishing allowance (DFA) for

that species or species group. If the Regional Administrator establishes a DFA and that allowance is or will be reached before the end of the fishing season or year, NMFS will prohibit directed fishing for that species or species group in the specified GOA

subarea, regulatory area, or district (§ 679.20(d)(1)(iii)).

The Regional Administrator has determined that the TACs for the

species listed in Table 27 are necessary to account for the incidental catch of these species in other anticipated

groundfish fisheries for the 2023 and 2024 fishing years.

TABLE 27—2023 AND 2024 DIRECTED FISHING CLOSURES IN THE GOA

[Amounts for incidental catch in other directed fisheries are in metric tons]

Target	Area/component/gear	Incidental catch amount and year (if amounts differ by year)
Pollock	all/offshore	not applicable. ¹
Sablefish ²	all/trawl	3,320 (2023). 3,072 (2024).
Pacific cod	Western, CV, HAL	71 (2023), 66 (2024).
	Western, CP, trawl	122 (2023), 113 (2024).
	Central, CP, trawl	462 (2023), 426 (2024).
Shortraker rockfish ²	all	705
Rougheye/blackspotted rockfish ²	all	775 (2023) 772 (2024).
Thornyhead rockfish ²	all	1,628.
Other rockfish	all	1,610.
Atka mackerel	all	3,000.
Big skate	all	2,867.
Longnose skate	all	2,712.
Other skates	all	984.
Sharks	all	4,891.
Octopuses	all	980.

¹ Pollock is closed to directed fishing in the GOA by the offshore component under § 679.20(a)(6)(i).

² Closures are not applicable to participants in cooperatives conducted under the Central GOA Rockfish Program because cooperatives are prohibited from exceeding their allocations (§ 679.7(n)(6)(viii)).

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the DFA for the species or species groups listed in Table 27 as zero mt. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for those species, areas, gear types, and components in the GOA listed in Table 27 effective at 1200 hours, A.l.t., March 2, 2023, through 2400 hours, A.l.t., December 31, 2024.

Closures implemented under the 2022 and 2023 GOA harvest specifications for groundfish (87 FR 11599, March 2, 2022) remain effective under authority of these final 2023 and 2024 harvest specifications and until the date specified in those closure notifications. Closures are posted at the following website under the Alaska filter for Management Areas: <https://www.fisheries.noaa.gov/rules-and-announcements/bulletins>.

While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found at 50 CFR part 679. NMFS may implement other closures during the 2023 and 2024 fishing years as necessary for effective conservation and management.

Comments and Responses

NMFS did not receive any comments during the public comment period for

the proposed groundfish harvest specifications.

Classification

NMFS is issuing this final rule pursuant to section 305(d) of the Magnuson-Stevens Act. Through previous actions, the FMP and regulations are designed to authorize NMFS to take this action. See 50 CFR part 679. The NMFS Assistant Administrator has determined that the final harvest specifications are consistent with the FMP and with the Magnuson-Stevens Act and other applicable laws.

This final rule is exempt from review under Executive Order 12866 because it only implements annual catch limits in the GOA.

NMFS prepared an EIS for the Alaska groundfish harvest specifications and alternative harvest strategies (see **ADDRESSES**) and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the ROD for the EIS. In January-February 2023, NMFS prepared a SIR for this action to provide a subsequent assessment of the action and to address the need to prepare a Supplemental EIS (SEIS; 40 CFR 1501.11(b); § 1502.9(d)(1)). Copies of the EIS, ROD, and annual SIRs for this action are available from NMFS (see **ADDRESSES**). The Final EIS analyzes the environmental, social, and economic consequences of the groundfish harvest specifications and alternative harvest

strategies on resources in the action area. Based on the analysis in the Final EIS, NMFS concluded that the preferred Alternative (Alternative 2) provides the best balance among relevant environmental, social, and economic considerations and allows for continued management of the groundfish fisheries based on the most recent, best scientific information. The preferred alternative is a harvest strategy in which TACs are set at a level within the range of ABCs recommended by the Council's SSC; the sum of the TACs must achieve the OY specified in the FMP. While the specific numbers that the harvest strategy produces may vary from year to year, the methodology used for the preferred harvest strategy remains constant.

The annual SIR evaluates the need to prepare a SEIS for the 2023 and 2024 groundfish harvest specifications. An SEIS must be prepared if (1) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (2) significant new circumstances or information exist relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(d)(1)). After reviewing the information contained in the SIR and SAFE report, the Regional Administrator has determined that (1) approval of the 2023 and 2024 harvest specifications, which were set according to the preferred harvest strategy in the EIS, does not constitute a substantial

change in the action; and (2) there are no significant new circumstances or information relevant to environmental concerns and bearing on the action or its impacts. The 2023 and 2024 harvest specifications will result in environmental, social, and economic impacts within the scope of those analyzed and disclosed in the EIS. Therefore, a SEIS is not necessary to implement the 2023 and 2024 harvest specifications.

Section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604) requires that, when an agency promulgates a final rule under 5 U.S.C. 553, after being required by that section or any other law, to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis (FRFA). The following constitutes the FRFA prepared for these final 2023 and 2024 harvest specifications.

Section 604 of the RFA describes the required contents of a FRFA: (1) a statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis (IRFA), a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected.

A description of this action, its purpose, and its legal basis are contained at the beginning of the

preamble to this final rule and are not repeated here.

NMFS published the proposed rule on December 2, 2022 (87 FR 74102). NMFS prepared an IRFA to accompany the proposed action, and included the IRFA in the proposed rule. The comment period closed on January 3, 2023. No comments were received on the IRFA or on the economic impacts of the rule more generally. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments on the proposed rule.

The entities directly regulated by this action are: (1) entities operating vessels with groundfish Federal fishing permits (FFPs) catching FMP groundfish in Federal waters; (2) all entities operating vessels, regardless of whether they hold groundfish FFPs, catching FMP groundfish in the State-waters parallel fisheries; and (3) all entities operating vessels fishing for halibut inside 3 miles (5.6 km) of the shore (whether or not they have FFPs).

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of \$11 million for all its affiliated operations worldwide.

Using the most recent data available (2021), the estimated number of directly regulated small entities includes approximately 671 individual catcher vessel and CP entities with gross revenues meeting the small entity criteria. This includes an estimated 668 small CV entities and 3 small CP entities in the GOA groundfish sector. The determination of entity size is based on vessel revenues and affiliated group revenues. This determination also includes an assessment of fisheries cooperative affiliations, although actual vessel ownership affiliations have not been completely established. However, the estimate of these 671 CVs and CPs may be an overstatement of the number of small entities because of the complexity of analyzing the linkages and affiliations across these vessels, particularly since many of them conduct operations in Federal and State fisheries. The CVs had average gross revenues that varied by gear type. Average gross revenues for hook-and-line CVs, pot gear CVs, and trawl gear CVs are estimated to be \$390,000, \$720,000, and \$1.96 million,

respectively. Average gross revenues for CP entities are confidential.

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

This action implements the final 2023 and 2024 harvest specifications, apportionments, and halibut PSC limits for the groundfish fishery of the GOA. This action is necessary to establish harvest limits for groundfish during the 2023 and 2024 fishing years and is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act. The establishment of the final harvest specifications is governed by the Council's harvest strategy for the catch of groundfish in the GOA. The harvest strategy was selected previously from among five alternatives, with the preferred alternative harvest strategy being one in which the TACs fall within the range of ABCs recommended by the SSC. Under this preferred alternative harvest strategy, TACs are set within the range of ABCs recommended by the SSC; the sum of the TACs must achieve the OY specified in the FMP; and while the specific TAC numbers that the harvest strategy produces may vary from year to year, the methodology used for the preferred harvest strategy remains constant. This final action implements the preferred alternative harvest strategy previously chosen by the Council to set TACs that fall within the range of ABCs recommended through the Council harvest specifications process and as recommended by the Council. This is the method for determining TACs that has been used in the past.

The final 2023 and 2024 TACs associated with preferred harvest strategy are those recommended by the Council in December 2022. OFLs and ABCs for the species were based on recommendations prepared by the Council's Plan Team, and reviewed by the Council's SSC. The Council based its TAC recommendations on those of its AP, which were consistent with the SSC's OFL and ABC recommendations. The sum of all TACs remains within the OY for the GOA consistent with § 679.20(a)(1)(i)(B).

The final 2023 and 2024 OFLs and ABCs are based on the best available biological information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods to calculate stock biomass. The final 2023 and 2024 TACs are based on the best available biological and socioeconomic information. The final 2023 and 2024 OFLs, ABCs, and TACs are consistent with the biological

condition of groundfish stocks as described in the 2022 SAFE report, which is the most recent, completed SAFE report. Accounting for the most recent biological information to set the final OFLs, ABCs, and TACs is consistent with the objectives for this action, as well as National Standard 2 of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(2)) that actions shall be based on the best scientific information available.

Under this action, the final ABCs reflect harvest amounts that are less than the specified overfishing levels. The final TACs are within the range of final ABCs recommended by the SSC and do not exceed the biological limits recommended by the SSC (the ABCs and overfishing levels). For most species and species groups in the GOA, the Council recommended, and NMFS sets, final TACs equal to final ABCs, which is intended to maximize harvest opportunities in the GOA, unless other conservation or management reasons support setting TAC amounts less than the ABCs.

For the following species and species groups, the Council recommended, and NMFS sets, TACs that are less than the ABCs: for pollock for the combined Western and Central GOA and West Yakutat District area; Pacific cod; shallow-water flatfish in the Western GOA; arrowtooth flounder in the Western GOA and the SEO District; flathead sole in the Western GOA, Atka mackerel; and “other rockfish” in the SEO District. These specific reductions were reviewed and recommended by the Council’s AP, and the Council in turn adopted the AP’s recommendations for the final 2023 and 2024 TACs.

Increasing TACs for some species may not result in increased harvest opportunities for those species. This is due to a variety of reasons. There may be a lack of commercial or market interest in some species. Additionally, there are fixed, and therefore constraining, PSC limits associated with the harvest of the GOA groundfish species that can lead to an underharvest of flatfish TACs. For this reason, the shallow-water flatfish, arrowtooth flounder, and flathead sole TACs are set to allow for increased harvest opportunities for these target species while conserving the halibut PSC limit for use in other fisheries. Similarly, the SEO District arrowtooth flounder TAC is set lower than ABC to conserve halibut PSC limit for use in other fisheries or because there is limited commercial interest in this fishery. The Atka mackerel TAC is set to accommodate incidental catch amounts in other fisheries. The “other rockfish” TAC in

the SEO District is set to reduce the amount of discards of the species in that complex. Finally, the TACs for two species (pollock and Pacific cod) cannot be set equal to ABC, as the TAC must be reduced to account for the State’s GHs in these fisheries. The W/C/WYK Regulatory Area pollock TAC and the GOA Pacific cod TACs are therefore set to account for the State’s GHs for the State waters pollock and Pacific cod fisheries so that the ABCs are not exceeded.

Based upon the best available scientific data, and in consideration of the Council’s objectives of this action, there are no significant alternatives to the final rule that have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the final rule on small entities. This action is economically beneficial to entities operating in the GOA, including small entities. The action specifies TACs for commercially valuable species in the GOA and allows for the continued prosecution of the fishery, thereby creating the opportunity for fishery revenue. After public process, during which the Council solicited input from stakeholders, the Council concluded that these final harvest specifications would best accomplish the stated objectives articulated in the preamble for this final rule and in applicable statutes and would minimize to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

Adverse impacts on marine mammals, or endangered or threatened species, resulting from fishing activities conducted under this rule are discussed in the Final EIS and its accompanying annual SIRs (see **ADDRESSES**).

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in the date of effectiveness for this rule because delaying this rule is contrary to the public interest. The Plan Team review of the 2022 SAFE report occurred in November 2022, and, based on the 2022 SAFE report, the Council considered and recommended the final harvest specifications in December 2022. Accordingly, NMFS’s review of the final 2023 and 2024 harvest specifications could not begin until after the December 2022 Council meeting, and after the public had time to comment on the proposed action.

For all fisheries not currently closed because the TACs established under the final 2022 and 2023 harvest specifications (87 FR 11599, March 2,

2022) have not yet been reached, it is possible that they would be closed prior to the expiration of a 30-day delayed effectiveness period, because those fisheries have nearly reached those previously set TACs. Some affected fisheries therefore could close soon, as they are already close to reaching their TACs, and such closures would cause unnecessary economic harm to the fisheries in the cases where this final rule increases some of the groundfish TACs. If implemented immediately, this final rule would allow these fisheries to continue fishing, because some of the new TACs implemented by this rule are higher than the TACs under which they are currently fishing.

In addition, immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources based on the best available scientific information. This is particularly pertinent for those species that have lower 2023 ABCs and TACs than those established in the 2022 and 2023 harvest specifications (87 FR 11599, March 2, 2022), including target species such as Pacific cod. If implemented immediately, this rule would ensure that NMFS can properly manage those fisheries for which this rule sets lower 2023 ABCs and TACs, which are based on the most recent biological information on the condition of stocks. The changes between the proposed 2023 ABCs and TACs are discussed earlier in the *Changes from the Proposed 2023 and 2024 Harvest Specifications in the GOA* section of this rule.

Certain fisheries, such as those for pollock, are intensive, fast-paced fisheries. Other fisheries, such as those for sablefish, flatfish, rockfish, Atka mackerel, skates, sharks, and octopuses, are critical either as directed fisheries or as incidental catch in other fisheries. Thus, for those species that have higher 2023 TACs than under the final 2022 and 2023 harvest specifications (87 FR 11599, March 2, 2022) than the TACs established by this final rule, there is some risk of exceeding these TAC limits. U.S. fishing vessels have demonstrated the capacity to catch the TAC allocations in many of these fisheries. If the date of effectiveness of this rule were to be delayed 30 days and a TAC was reached during those 30 days, NMFS would be required to close directed fishing or prohibit retention for the applicable species. Such closures and unnecessary discards would cause confusion to the industry and potential economic harm to fishermen, undermining the intent of this rule. Waiving the 30-day delay in the date of effectiveness allows NMFS to prevent

this potential economic harm that could occur, should the previously set 2023 TACs (as set under the 2022 and 2023 harvest specifications) be reached during such a delay. In addition, determining which fisheries may close in advance is nearly impossible because these fisheries are affected by several factors, including fishing effort, weather, movement of fishery stocks and market price, which cannot be predicted. Furthermore, the closure of one fishery has a cascading effect on other fisheries; the closure would free up fishing vessels, allowing them to move from closed fisheries to open fisheries, thereby increasing the fishing capacity in those open fisheries, and potentially causing them to close sooner.

In fisheries subject to declining sideboard limits, a failure to implement the updated sideboard limits before the initial season's end could deny the intended economic protection to the non-sideboarded sectors. Conversely, in fisheries with increasing sideboard limits, economic benefit could be denied to the sideboard-limited sectors.

If the final harvest specifications are not effective by March 10, 2023, which is the start of the 2023 Pacific halibut season as specified by the IPHC, the fixed gear sablefish fishery will not begin concurrently with the Pacific halibut IFQ season. This would result in confusion for the industry and economic harm from unnecessary discard of sablefish that are caught along with Pacific halibut, as both fixed gear sablefish and Pacific halibut are managed under the same IFQ program. Immediate effectiveness of these final

2023 and 2024 harvest specifications will allow the sablefish IFQ fishery to begin concurrently with the Pacific halibut IFQ season.

Finally, immediate effectiveness also provides the fishing industry the earliest possible opportunity to plan and conduct its fishing operations with respect to new information about TACs. Therefore, in accordance with 5 U.S.C. 553(d)(3), NMFS finds good cause to waive the 30-day delay in the date of effectiveness for this rule.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The tables contained in this final rule are provided online and serve as the plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary purpose is to announce the final 2023 and 2024 harvest specifications and prohibited species bycatch allowances for the groundfish fisheries of the GOA. This action is necessary to establish harvest limits and associated management measures for groundfish during the 2023 and 2024 fishing years, and to accomplish the goals and objectives of the FMP. This action affects all fishermen who participate in the GOA fisheries. The specific OFL, ABC, TAC,

and PSC amounts are provided in tables in this final rule to assist the reader. This final rule also contains plain language summaries of the underlying relevant regulations supporting the harvest specifications and the harvest of groundfish in the GOA that the reader may find helpful.

Information to assist small entities in complying with this final rule is provided online. The OFL, ABC, TAC, and PSC tables are individually available online at <https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/alaska-groundfish-harvest-specifications>. Explanatory information on the relevant regulations supporting the harvest specifications is also found in footnotes to the tables. Harvest specification changes are also available from the same online source, which includes applicable **Federal Register** notices, information bulletins, and other supporting materials. NMFS will announce closures of directed fishing in the **Federal Register** and information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Authority: 16 U.S.C. 773 *et seq.*; 16 U.S.C. 1540 (f), 1801 *et seq.*; 16 U.S.C. 3631 *et seq.*; Pub. L. 105-277; Pub. L. 106-31; Pub. L. 106-554; Pub. L. 108-199; Pub. L. 108-447; Pub. L. 109-241; Pub. L. 109-479.

Dated: February 27, 2023.

Samuel D. Rauch, III,

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

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Part III

The President

Proclamation 10522—Adjusting Imports of Aluminum Into the United States
Proclamation 10523—Increasing Duties on Certain Articles From the
Russian Federation

Presidential Documents

Title 3—

Proclamation 10522 of February 24, 2023

The President

Adjusting Imports of Aluminum Into the United States

By the President of the United States of America

A Proclamation

1. On January 19, 2018, the Secretary of Commerce (Secretary) transmitted to the President a report on the Secretary's investigation into the effect of imports of aluminum articles on the national security of the United States under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). The Secretary found and advised the President of his opinion that aluminum articles are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States.

2. In Proclamation 9704 of March 8, 2018 (Adjusting Imports of Aluminum Into the United States), the President concurred in the Secretary's finding that aluminum articles are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States, and decided to adjust the imports of aluminum articles by imposing a 10 percent ad valorem tariff on such articles imported from most countries.

3. In Proclamation 9704, the President also directed the Secretary to monitor imports of aluminum articles and inform the President of any circumstances that in the Secretary's opinion might indicate the need for further action under section 232 of the Trade Expansion Act of 1962, as amended, with respect to such imports.

4. The Secretary has informed me that the capacity utilization in the domestic aluminum industry remains well below the target capacity utilization level recommended in the January 2018 report. The Secretary has also informed me that two of the five remaining aluminum smelters in the United States are in danger of closing as a result of continued high levels of aluminum imports and high energy prices.

5. In the Secretary's January 2018 report, the Secretary recommended that the President consider applying a higher tariff to a list of specific countries should the President determine that all countries should not be subject to the same tariff. One of the countries on that list was the Russian Federation (Russia). As the Secretary explained in that report, Russia is among the major exporters of aluminum to the United States for domestic consumption. While aluminum imports from Russia have declined from the volume in the Secretary's 2018 report, Russia remains the fifth largest source of imported aluminum in the United States, and the imports of aluminum from Russia have increased in both 2021 and 2022. Distortions that result from over-capacity threaten market-oriented aluminum industries and Russia's aluminum industry in particular is extremely export oriented, with Russia being the largest exporter of unwrought aluminum in 2021 and Russian domestic consumption accounting for just 22 percent of Russian production across 2021 and 2022. United States imports of Russian aluminum increased by 53 percent between March and July 2022.

6. Russia continues its unjustified, unprovoked, unyielding, and unconscionable war against Ukraine. The Russian aluminum industry is a key part of Russia's defense industrial base and has played a major role in supplying Russia with weapons and ammunition used in the war. In addition, Russia's

war against Ukraine has caused global energy prices to rise, causing direct harm to the United States aluminum industry.

7. To further reduce imports of aluminum articles and increase domestic capacity utilization, I have determined that it is necessary and appropriate to impose:

(a) beginning on March 10, 2023, a 200 percent ad valorem tariff on aluminum articles that are the product of Russia and derivative aluminum articles that are the product of Russia; and

(b) beginning on April 10, 2023, a 200 percent ad valorem tariff on aluminum articles where any amount of primary aluminum used in the manufacture of the aluminum articles is smelted in Russia, or the aluminum articles are cast in Russia, and derivative aluminum articles where any amount of primary aluminum used in the manufacture of the derivative aluminum articles is smelted in Russia, or the derivative aluminum articles are cast in Russia.

(c) “Primary aluminum” is defined as new aluminum metal that is produced from alumina (or aluminum oxide) by the electrolytic Hall-Heroult process.

8. The Secretary has advised me that the tariff adjustment described in paragraph 7 of this proclamation will be a significant step toward ensuring the viability of the domestic aluminum industry.

9. In adopting the tariff adjustment described in paragraph 7 of this proclamation, I recognize that concerns about aluminum imports from Russia and their impact on our national security are shared by other countries, and that we need to work together with our partners to ensure that the global market distortions caused by Russian aluminum articles do not distort our markets and threaten our national security. Any country that imposes a tariff of 200 percent or more on its imports of aluminum articles that are products of Russia may be exempt from the tariff imposed by this proclamation.

10. Section 232 of the Trade Expansion Act of 1962, as amended, authorizes the President to adjust the imports of an article and its derivatives that are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

11. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTSUS) the substance of statutes affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States of America, including section 232 of the Trade Expansion Act of 1962, as amended, section 301 of title 3, United States Code, and section 604 of the Trade Act of 1974, as amended, do hereby proclaim as follows:

(1) In order to establish increases in the duty rate on imports of aluminum articles that are the product of Russia, or where any amount of primary aluminum used in the manufacture of the aluminum articles is smelted in Russia, or the aluminum articles are cast in Russia, subchapter III of chapter 99 of the HTSUS is modified as provided in the Annex to this proclamation. In order to establish increases in the duty rate on imports of derivative aluminum articles that are the product of Russia, or where any amount of primary aluminum used in the manufacture of the derivative aluminum articles is smelted in Russia, or the derivative aluminum articles are cast in Russia, subchapter III of chapter 99 of the HTSUS is modified as provided in the Annex to this proclamation.

(2) Clause 2 of Proclamation 9704, as amended, is further amended in the second sentence by deleting “and” before “(i)” and inserting before

the period at the end: “, and (j) on or after 12:01 a.m. eastern standard time on March 10, 2023, from all countries except Argentina, Australia, Canada, Mexico, and from the member countries of the European Union through 11:59 p.m. eastern standard time on December 31, 2023, from the United Kingdom, for aluminum articles covered by headings 9903.85.25 through 9903.85.44, inclusive, and from Russia. Further, except as otherwise provided in notices published pursuant to clause 3 of this proclamation, aluminum articles imports covered by clause 1 of this proclamation that are products of Russia shall be subject to a 200 percent ad valorem rate of duty with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on March 10, 2023; and aluminum articles imports covered by clause 1 of this proclamation where any amount of primary aluminum used in the manufacture of the aluminum articles is smelted in Russia, or the aluminum articles are cast in Russia, shall be subject to a 200 percent ad valorem rate of duty with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on April 10, 2023.” Clause 2 of Proclamation 9704, as amended, is further amended by deleting the last sentence and inserting in lieu thereof: “These rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported aluminum articles, shall apply to imports of aluminum articles from each country as specified in the preceding two sentences.”

(3) The first two sentences of clause 1 of Proclamation 9980 of January 24, 2020 (Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States), are revised to read as follows:

“In order to establish increases in the duty rate on imports of certain derivative articles, subchapter III of chapter 99 of the HTSUS is modified as provided in the Annex to this proclamation. Except as otherwise provided in this proclamation, all imports of derivative aluminum articles specified in the Annex to this proclamation shall be subject to an additional 10 percent ad valorem rate of duty, and all imports of derivative steel articles specified in the Annex to this proclamation shall be subject to an additional 25 percent ad valorem rate of duty, with respect to goods entered for consumption, or withdrawn from warehouse for consumption, as follows: (i) on or after 12:01 a.m. eastern standard time on February 8, 2020, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in the Annex to this proclamation from all countries except Argentina, the Commonwealth of Australia (Australia), Canada, and the United Mexican States (Mexico) and to imports of derivative steel articles described in the Annex to this proclamation from all countries except Argentina, Australia, Brazil, Canada, Mexico, and South Korea; (ii) on or after 12:01 a.m. eastern standard time on January 1, 2022, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in the Annex to this proclamation from all countries except Argentina, Australia, Canada, the member countries of the European Union, and Mexico and to imports of derivative steel articles described in the Annex to this proclamation from all countries except Argentina, Australia, Brazil, Canada, the member countries of the European Union, Mexico, and South Korea; (iii) on or after 12:01 a.m. eastern daylight time on April 1, 2022, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in the Annex to this proclamation from all countries except Argentina, Australia, Canada, the member countries of the European Union, and Mexico and to imports of derivative steel articles described in the Annex to this proclamation from all countries

except Argentina, Australia, Brazil, Canada, the member countries of the European Union, Japan, Mexico, and South Korea; (iv) on or after 12:01 a.m. eastern daylight time on June 1, 2022, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in the Annex to this proclamation from all countries except Argentina, Australia, Canada, the member countries of the European Union, and Mexico, and to imports of derivative steel articles described in the Annex to this proclamation from all countries except Argentina, Australia, Brazil, Canada, the member countries of the European Union, Japan, Mexico, and South Korea, and except from Ukraine through 11:59 p.m. eastern daylight time on June 1, 2023; (v) on or after 12:01 a.m. eastern daylight time on June 1, 2022, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in the Annex to this proclamation from all countries except Argentina, Australia, Canada, the member countries of the European Union, Mexico, and the UK, and to imports of derivative steel articles described in the Annex to this proclamation from all countries except Argentina, Australia, Brazil, Canada, the member countries of the European Union, Japan, Mexico, South Korea, and the UK, and except from Ukraine through 11:59 p.m. eastern daylight time on June 1, 2023; and (vi) on or after 12:01 a.m. eastern standard time on March 10, 2023, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in the Annex to this proclamation from all countries except Argentina, Australia, Canada, the member countries of the European Union, Mexico, the UK, and Russia, and to imports of derivative steel articles described in the Annex to this proclamation from all countries except Argentina, Australia, Brazil, Canada, the member countries of the European Union, Japan, Mexico, South Korea, and the UK, and except from Ukraine through 11:59 p.m. eastern daylight time on June 1, 2023. Further, except as otherwise provided in this proclamation, all imports of derivative aluminum articles specified in the Annex to this proclamation that are the product of Russia shall be subject to a 200 percent ad valorem rate of duty with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on March 10, 2023; and all imports of derivative aluminum articles specified in the Annex to this proclamation where any amount of primary aluminum used in the manufacture of the derivative aluminum articles is smelted in Russia, or the derivative aluminum articles are cast in Russia, shall be subject to a 200 percent ad valorem rate of duty with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on April 10, 2023. Primary aluminum is defined as new aluminum metal that is produced from alumina (or aluminum oxide) by the electrolytic Hall-Heroult process.”

(4) For purposes of implementing the duty increases in this proclamation, importers shall provide to U.S. Customs and Border Protection (CBP) information necessary to identify the countries where the primary aluminum used in the manufacture of aluminum articles imports, covered by clause 1 of Proclamation 9704, and derivative aluminum articles, specified in Annex I of Proclamation 9980, are smelted and information necessary to identify the countries where such aluminum articles imports and derivative aluminum articles are cast. CBP shall implement the smelt and cast information requirements as soon as practicable.

(5) The modifications to the HTSUS made by the Annex to this proclamation shall be effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m.

eastern standard time on March 10, 2023, and shall continue in effect, unless such actions are expressly reduced, modified, or terminated.

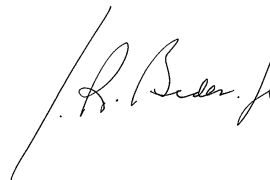
(6) Any imports of aluminum articles that are the product of Russia shall not be eligible for any General Approved Exclusions as set forth in supplement number 3 to part 705 of title 15 of the Code of Federal Regulations if entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on March 10, 2023, and any imports of aluminum articles where any amount of primary aluminum used in the manufacture of the aluminum articles is smelted in Russia, or the aluminum articles are cast in Russia, shall not be eligible for any General Approved Exclusions as set forth in supplement number 3 to part 705 of title 15 of the Code of Federal Regulations if entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on April 10, 2023. Any imports of derivative aluminum articles that are the product of Russia shall not be eligible for any General Approved Exclusions as set forth in supplement number 3 to part 705 of title 15 of the Code of Federal Regulations if entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on March 10, 2023, and any imports of derivative aluminum articles where any amount of primary aluminum used in the manufacture of the derivative aluminum articles is smelted in Russia, or the derivative aluminum articles are cast in Russia shall not be eligible for any General Approved Exclusions as set forth in supplement number 3 to part 705 of title 15 of the Code of Federal Regulations if entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on April 10, 2023.

(7) Any imports of aluminum articles that are the product of Russia shall not be eligible for in-quota treatment for any quota or tariff-rate quota maintained under the authority of section 232 of the Trade Expansion Act of 1962, as amended, if entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on March 10, 2023, and any imports of aluminum articles where any amount of primary aluminum used in the manufacture of the aluminum articles is smelted in Russia, or the aluminum articles are cast in Russia shall not be eligible for in-quota treatment for any quota or tariff-rate quota maintained under the authority of section 232 of the Trade Expansion Act of 1962, as amended, if entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on April 10, 2023.

(8) Any imports of aluminum articles or derivative aluminum articles that are the product of Russia, where any amount of primary aluminum used in the manufacture of the aluminum articles or derivative aluminum articles is smelted in Russia, or the aluminum articles or derivative aluminum articles are cast in Russia, that were admitted into a U.S. foreign trade zone under “privileged foreign status” as defined in 19 CFR 146.41, shall be subject upon entry for consumption made on or after 12:01 a.m. eastern standard time on March 10, 2023, to the provisions of the tariff in effect at the time of the entry for consumption.

(9) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

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

A handwritten signature in black ink, appearing to read "Joe Biden", is written over a diagonal line that serves as a signature line.

ANNEX

**TO MODIFY CERTAIN PROVISIONS OF CHAPTER 99 OF
THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES**

Section A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on March 10, 2023, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (“HTSUS”) is hereby modified as follows:

1. The following new subdivision (vii) is inserted at the end of U.S. note 19(a) to subchapter III of chapter 99 of the HTSUS:

“(vii)(A) Heading 9903.85.67 and 9903.85.69 provides the ordinary duty treatment of aluminum articles that are products of Russia, as enumerated in subdivision (b) of this note. For any such goods that are eligible for special tariff treatment under any of the free trade agreements or preference programs listed in general note 3(c)(i) to the tariff schedule, the duty provided in such heading shall be collected in addition to any special rate of duty otherwise applicable under the appropriate tariff subheading, except where prohibited by law. Goods for which entry is claimed under a provision of chapter 98 and which are subject to the additional duties prescribed herein shall be eligible for and subject to the terms of such provision and applicable U.S. Customs and Border Protection (“CBP”) regulations, except that duties under subheading 9802.00.60 shall be assessed based upon the full value of the imported article. No claim for entry or for any duty exemption or reduction shall be allowed for the aluminum products enumerated in subdivision (b) of this note under a provision of chapter 99 that may set forth a lower rate of duty or provide duty-free treatment, taking into account information supplied by CBP, but any additional duty prescribed in any provision of this subchapter or subchapter IV of chapter 99 shall be imposed in addition to the duty in heading 9903.85.67 or 9903.85.69.

(B) Heading 9903.85.68 and 9903.85.70 provides the ordinary duty treatment of derivative aluminum articles that are the product of Russia, as enumerated in subdivision (a)(iii) of this note. For any such products that are eligible for special tariff treatment under any of the free trade agreements or preference programs listed in general note 3(c)(i) to the tariff schedule, the duty provided in these headings shall be collected in addition to any special rate of duty otherwise applicable under the appropriate tariff subheading, except where prohibited by law. Goods for which entry is claimed under a provision of chapter 98 and which are subject to the additional duties prescribed herein shall be eligible for and subject to the terms of such provision and applicable U.S. Customs and Border Protection (“CBP”) regulations, except that duties under subheading 9802.00.60 shall be assessed based upon the full value of the imported article. No claim for entry or for any exemption or reduction shall be allowed for the aluminum products enumerated in subdivision (b) of this note under a provision of chapter 99 that may set forth a lower rate of duty or provide duty-free treatment, taking into account information supplied by CBP, but any additional duty prescribed in any provision of this subchapter or subchapter IV of chapter 99 shall be imposed in addition to the duty in heading 9903.85.68 or 9903.85.70.”.

2. The first sentence of U.S. note 19(c) to subchapter III is modified by deleting “and 9903.85.21” and inserting “, 9903.85.21, and 9903.85.67 through 9903.85.70” in lieu thereof.

3. The first sentence of U.S. note 19(d) to subchapter III is modified by deleting “or heading 9903.85.21” and inserting “, heading 9903.85.21, or headings 9903.85.67 through 9903.85.70” in lieu thereof; and such sentence is further modified by deleting “and 9903.85.06” and by inserting after “heading 9903.85.21” the language “or headings 9903.85.67 through 9903.85.70”.

4. The following new heading is inserted in numerical sequence in such subchapter III, with the material inserted in the HTSUS columns entitled “Heading/Subheading”, “Article Description”, “Rates of Duty 1 General”, “Rates of Duty 1 Special” and “Rates of Duty 2”, respectively:

Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
“9903.85.67	Aluminum articles that are the product of Russia, the foregoing under the terms of note 19(a)(vii)(A) to this subchapter and provided for in the tariff headings or subheadings enumerated in note 19(b) to this subchapter, except any exclusions that may be determined and announced by the Department of Commerce	The duty provided in the applicable subheading + 200%	The duty provided in the applicable subheading + 200% (AU, BH, CA, CL, CO, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	The duty provided in the applicable subheading + 200%
9903.85.68	Derivative aluminum articles that are products of Russia, when such derivative articles are provided for in the headings or subheadings enumerated in note 19(a)(iii) to this chapter, except any exclusions that may be determined and announced by the Department of Commerce.....	The duty provided in the applicable subheading + 200%	The duty provided in the applicable subheading + 200% (AU, BH, CA, CL, CO, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	The duty provided in the applicable subheading + 200%
9903.85.69	Except for goods provided for in heading 9903.85.67,			

Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
	aluminum articles that are the product of Russia, the foregoing under the terms of note 19(a)(vii)(A) to this subchapter and provided for in the tariff headings or subheadings enumerated in note 19(b) to this subchapter, admitted into a U.S. foreign trade zone under "privileged foreign status" as defined in 19 CFR 146.41, prior to 12:01 a.m. eastern standard time on March 10, 2023, except any exclusions that may be determined and announced by the Department of Commerce	The duty provided in the applicable subheading + 200%	The duty provided in the applicable subheading + 200% (AU, BH, CA, CL, CO, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	The duty provided in the applicable subheading + 200%
9903.85.70	Except for goods provided for in heading 9903.85.68, derivative aluminum articles that are products of Russia, when such derivative articles are provided for in the headings or subheadings enumerated in note 19(a)(iii) to this chapter, admitted into a U.S. foreign trade zone under "privileged foreign status" as defined in 19 CFR 146.41, prior to 12:01 a.m. eastern standard time on March 10, 2023, except any exclusions that may be determined and announced by the Department of Commerce.....	The duty provided in the applicable subheading + 200%	The duty provided in the applicable subheading + 200% (AU, BH, CA, CL, CO, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	The duty provided in the applicable subheading + 200%"

Section B. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on April 10, 2023, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (“HTSUS”) is hereby modified as follows:

1. Note 19(a)(vii)(A) is modified by adding in the first sentence after the comma the following phrase: “or where any amount of primary aluminum used in the manufacture of the aluminum articles is smelted in Russia, or where the aluminum articles are cast in Russia,”.
2. Note 19(a)(vii)(B) is modified by adding in the first sentence after the comma the following phrase: “or where any amount of primary aluminum used in the manufacture of the derivative aluminum articles is smelted in Russia, or where the derivative aluminum articles are cast in Russia,”.
3. Note 19(a)(vii)(A) and (B) are each modified by adding at the end thereof the following new sentences: “All shipments of any article that is otherwise eligible to be entered under a provision that is subject to quantitative limitations, and where any amount of primary aluminum used in the manufacture of the article is smelted in Russia, or the articles are cast in Russia, shall be entered under headings 9903.85.67 through 9903.85.70. Except as otherwise provided in this subdivision, the duty provided in these headings shall be collected on the full value of the article that contains primary aluminum smelted in Russia, or contains articles cast in Russia.”
4. The first sentence of U.S. note 19(d) to subchapter III is modified by deleting “or heading 9903.85.21” and inserting “, heading 9903.85.21, or headings 9903.85.67 through 9903.85.70 ” in lieu thereof; and such sentence is further modified by deleting “and 9903.85.06” and by inserting after “heading 9903.85.21” the language “or headings 9903.85.67 through 9903.85.70, inclusive,”.
5. The article description of headings 9903.85.67 and 9903.85.69 are each modified by inserting after “of Russia” the phrase “, or where any amount of primary aluminum used in the manufacture of the aluminum articles is smelted in Russia, or where the aluminum articles are cast in Russia,”.
6. The article description of headings 9903.85.68 and 9903.85.70 are each modified by inserting after “of Russia” the phrase “, or where any amount of primary aluminum used in the manufacture of the derivative aluminum articles is smelted in Russia, or where the derivative aluminum articles are cast in Russia,”.
7. The article description of headings 9903.85.69 and 9903.85.70 are each modified by deleting the phrase “prior to 12:01 a.m. eastern standard time on March 10, 2023” and inserting in its place the phrase “prior to 12:01 a.m. eastern standard time on April 10, 2023”.

Presidential Documents

Proclamation 10523 of February 24, 2023

Increasing Duties on Certain Articles From the Russian Federation

By the President of the United States of America

A Proclamation

1. On April 8, 2022, I signed the Suspending Normal Trade Relations with Russia and Belarus Act (19 U.S.C. 2434 note) (Suspending NTR Act). Section 3(a) of the Suspending NTR Act suspended nondiscriminatory tariff treatment for products of the Russian Federation and of the Republic of Belarus, and imposed the rates of duty set forth in column 2 of the Harmonized Tariff Schedule of the United States (HTSUS) on all products of the Russian Federation and of the Republic of Belarus, effective as of April 9, 2022. Section 3(b)(1) of the Suspending NTR Act provides that the President may proclaim increases in the column 2 rates of duty applicable to products of the Russian Federation and of the Republic of Belarus.

2. On April 8, 2022, I signed the Ending Importation of Russian Oil Act (22 U.S.C. 8923 note). Section 2 of the Ending Importation of Russian Oil Act prohibits imports of all products of the Russian Federation classified under chapter 27 of the HTSUS, in a manner consistent with any implementation actions issued under Executive Order 14066 of March 8, 2022.

3. In Executive Order 14066 of March 8, 2022, I prohibited, inter alia, the importation into the United States of the following products of Russian Federation origin: crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products.

4. In Executive Order 14068 of March 11, 2022, I prohibited, inter alia, the importation into the United States of the following products of Russian Federation origin: fish, seafood, and preparations thereof; alcoholic beverages; and non-industrial diamonds.

5. In Proclamation 10420 of June 27, 2022, I stated that I had determined that increasing the column 2 rates of duty to 35 percent ad valorem on certain products of the Russian Federation was warranted and consistent with the foreign policy interests of the United States. I also stated that the United States will monitor the implementation of the increased duties, and that I may revisit this determination, as appropriate.

6. In accordance with section 3(b)(1) of the Suspending NTR Act, I have determined that increasing the column 2 rates of duty to 35 percent ad valorem on certain additional products of the Russian Federation and to 70 percent ad valorem on certain other additional products of the Russian Federation, the importation of which has not already been prohibited, is warranted and consistent with the foreign policy interests of the United States. In addition, I have determined that increasing the column 2 rates of duty from 35 percent ad valorem to 70 percent ad valorem on certain products covered by Proclamation 10420 of June 27, 2022, the importation of which has not already been prohibited, is warranted and consistent with the foreign policy interests of the United States. These products are listed in the Annex to this proclamation. The United States will monitor the implementation of the increased duties, and I may revisit this determination, as appropriate.

7. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTSUS the substance of statutes affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

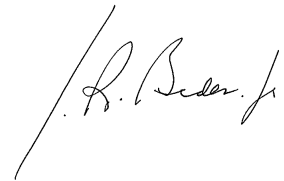
NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States of America, including section 3 of the Suspending Normal Trade Relations with Russia and Belarus Act; section 301 of title 3, United States Code; and section 604 of the Trade Act of 1974, as amended, do hereby proclaim as follows:

(1) To increase the column 2 rates of duty on imports of certain articles of the Russian Federation as set forth in paragraph 6 of this proclamation, subdivision (b) to U.S. Note 30 to subchapter III of chapter 99 of the HTSUS is modified and new HTSUS heading 9903.90.09 and new subdivisions (c) and (d) to U.S. Note 30 to subchapter III of chapter 99 of the HTSUS are established, as provided for in the Annex to this proclamation.

(2) The modifications to the HTSUS made by clause 1 of this proclamation shall be effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on April 1, 2023, and shall continue in effect, unless such actions are expressly reduced, modified, or terminated.

(3) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency.

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

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping horizontal line extending to the left.

ANNEX

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on April 1, 2023, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by deleting “as provided for in this note” from subdivision (a) of U.S. note 30 to subchapter III of chapter 99 and by inserting “as provided for in subdivisions (a) and (b) of this note” in lieu thereof.
2. by deleting the following 8-digit subheadings from subdivision (b) to U.S. note 30 to subchapter III of chapter 99:

“7202.11.50	7304.29.20	7318.22.00
7202.21.10	7304.29.31	7325.10.00
7202.29.00	7304.29.41	7408.11.60
7202.30.00	7304.29.50	7408.19.00
7202.41.00	7306.29.20	7409.21.00
7202.49.10	7306.29.60	7410.22.00
7202.70.00	7307.99.10	7604.29.30
7204.21.00	7308.90.60	7604.29.50
7204.29.00	7310.10.00	7605.11.00
7204.49.00	7310.29.00	7606.12.30
7205.29.00	7311.00.00	7606.12.60
7207.12.00	7314.41.00	7613.00.00
7216.91.00	7318.15.20	7801.10.00
7224.90.00	7318.15.40	7801.99.90”.
7304.29.10	7318.16.00	

3. by inserting the following 8-digit subheadings in subdivision (b) to U.S. note 30 to subchapter III of chapter 99 in numerical sequence:

“2601.12.00	2846.90.40	7110.31.00
2615.10.00	2846.90.80	7110.39.00
2803.00.00	7102.21.30	7110.41.00
2804.90.00	7102.21.40	7110.49.00
2805.12.00	7102.29.00	7502.10.00
2816.10.00	7110.11.00	7502.20.00
2834.29.10	7110.19.00	7504.00.00
2846.90.20	7110.29.00	8708.10.30”.

4. by inserting the following new heading 9903.90.09 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled “Heading/Subheading”, “Article Description”, “Rates of Duty 1-General”, “Rates of Duty-1 Special”, and “Rates of Duty 2”, respectively:

Heading/ Subheading	Article Description	Rates of Duty		
		1		2
		General	Special	
“9903.90.09	Articles the product of the Russian Federation, as provided for in U.S. note 30(c) to this subchapter and as provided for in the subheadings enumerated in U.S. note 30(d) to this subchapter			70%”.

5. by inserting the following new subdivisions (c) through (d) to U.S. note 30 to subchapter III of chapter 99 in alphabetical sequence:

“(c) For the purposes of heading 9903.90.09, articles that are the product of the Russian Federation, as provided for in subdivisions (c) and (d) of this note, shall be subject to a 70 percent *ad valorem* rate of duty in lieu of the rates of duty provided for such articles in column 2 of the HTSUS in chapters 1 to 97. All articles that are the product of the Russian Federation that are classified in the subheadings enumerated in U.S. note 30(d) to subchapter III of chapter 99 are subject to the 70 percent *ad valorem* rate of duty imposed by heading 9903.90.09.

As provided in U.S. note 1 to subchapter III of chapter 99, articles that are the product of the Russian Federation that are classified in the subheadings enumerated in U.S. note 30(d) to subchapter III of chapter 99 are subject to a 70 percent *ad valorem* rate of duty under heading 9903.90.09 in lieu of the rates of duty provided therefor in column 2 of the HTSUS in chapters 1 to 97.

The duties imposed by heading 9903.90.09 do not apply to goods for which entry is claimed under a provision of chapter 98 of the HTSUS, except for goods entered under subheadings 9802.00.40, 9802.00.50, and 9802.00.60, and heading 9802.00.80. For subheadings 9802.00.40, 9802.00.50, and 9802.00.60, the duties imposed by heading 9903.90.09 apply to the value of repairs, alterations, or processing performed abroad, as described in the applicable subheading. For heading 9802.00.80, the duties imposed by heading 9903.90.09 apply to the value of the article less the cost or value of such products of the United States, as described in heading 9802.00.80.

Products of the Russian Federation that are provided for in heading 9903.90.09 and classified in one of the subheadings enumerated in U.S. note 30(d) to subchapter III of chapter 99 shall continue to be subject to antidumping, countervailing, or other duties, fees, exactions and charges that apply to such products, as well as to the 70 percent *ad valorem* rate of duty imposed by heading 9903.90.09.

(d) Heading 9903.90.09 applies to all products of the Russian Federation that are classified in the following 8-digit subheadings:

7201.10.00	7216.91.00	7408.19.00
7202.11.50	7217.10.60	7409.21.00
7202.21.10	7217.10.90	7410.22.00
7202.29.00	7217.20.30	7601.10.30
7202.30.00	7222.30.00	7601.10.60
7202.41.00	7224.90.00	7601.20.30
7202.49.10	7225.11.00	7601.20.60
7202.70.00	7225.19.00	7601.20.90
7202.92.00	7226.11.10	7604.10.30
7203.10.00	7226.11.90	7604.10.50
7204.21.00	7226.19.90	7604.21.00
7204.29.00	7228.40.00	7604.29.30
7204.49.00	7228.50.10	7604.29.50
7205.29.00	7228.50.50	7605.11.00
7207.12.00	7228.60.80	7605.19.00
7208.10.30	7304.19.10	7605.21.00
7208.10.60	7304.24.40	7605.29.00
7208.25.30	7304.29.10	7606.11.30
7208.36.00	7304.29.20	7606.11.60
7208.37.00	7304.29.31	7606.12.30
7208.38.00	7304.29.41	7606.12.60
7208.39.00	7304.29.50	7606.91.30
7208.40.30	7304.31.60	7606.91.60
7208.40.60	7304.39.00	7606.92.30
7208.51.00	7305.11.10	7606.92.60
7208.52.00	7305.12.10	7607.11.90
7208.53.00	7306.29.20	7607.19.60
7208.54.00	7306.29.60	7607.20.10
7208.90.00	7306.30.50	7607.20.50
7209.16.00	7307.99.10	7612.90.50
7209.17.00	7308.90.30	7613.00.00
7209.18.60	7308.90.60	7801.10.00
7210.41.00	7310.10.00	7801.99.90
7210.49.00	7310.29.00	8108.20.00
7210.61.00	7311.00.00	8108.30.00
7210.69.00	7314.41.00	8112.31.00
7210.70.60	7318.15.20	8112.41.10
7212.40.10	7318.15.40	8112.92.07
7212.40.50	7318.16.00	8112.92.10
7213.10.00	7318.22.00	8112.92.30
7214.20.00	7325.10.00	8112.92.40".
7214.99.00	7403.11.00	
7216.69.00	7408.11.60	



FEDERAL REGISTER

Vol. 88

Thursday,

No. 41

March 2, 2023

Part IV

The President

Notice of March 1, 2023—Continuation of the National Emergency With Respect to Ukraine

Notice of March 1, 2023—Continuation of the National Emergency With Respect to Venezuela

Notice of March 1, 2023—Continuation of the National Emergency With Respect to Zimbabwe

Presidential Documents

Title 3—

Notice of March 1, 2023

The President

Continuation of the National Emergency With Respect to Ukraine

On March 6, 2014, by Executive Order 13660, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of persons that undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets.

On March 16, 2014, the President issued Executive Order 13661, which expanded the scope of the national emergency declared in Executive Order 13660, and found that the actions and policies of the Government of the Russian Federation with respect to Ukraine undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets.

On March 20, 2014, the President issued Executive Order 13662, which further expanded the scope of the national emergency declared in Executive Order 13660, as expanded in scope in Executive Order 13661, and found that the actions and policies of the Government of the Russian Federation, including its purported annexation of Crimea and its use of force in Ukraine, continue to undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets.

On December 19, 2014, the President issued Executive Order 13685, to take additional steps to address the Russian occupation of the Crimea region of Ukraine.

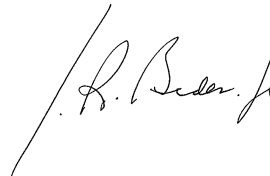
On September 20, 2018, the President issued Executive Order 13849, to take additional steps to implement certain statutory sanctions with respect to the Russian Federation.

On February 21, 2022, the President issued Executive Order 14065, which further expanded the scope of the national emergency declared in Executive Order 13660, as expanded in scope in Executive Orders 13661 and 13662, and relied on for additional steps taken in Executive Orders 13685 and 13849, and found that the Russian Federation's purported recognition of the so-called Donetsk People's Republic or Luhansk People's Republic regions of Ukraine contradicts Russia's commitments under the Minsk agreements and further threatens the peace, stability, sovereignty, and territorial integrity of Ukraine, and thereby constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States.

The actions and policies addressed in these Executive Orders continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13660, which was expanded in scope in Executive Order 13661, Executive Order 13662, and Executive Order 14065, and under which additional steps were taken in Executive Order 13685 and Executive Order 13849, must continue in effect beyond March 6, 2023.

Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13660.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

A handwritten signature in black ink, appearing to read "Joe Biden", is written over a diagonal line that extends from the bottom left towards the top right.

THE WHITE HOUSE,
March 1, 2023.

Presidential Documents

Notice of March 1, 2023

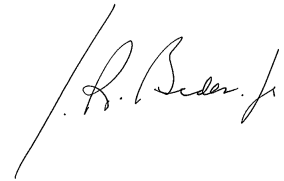
Continuation of the National Emergency With Respect to Venezuela

On March 8, 2015, the President issued Executive Order 13692, declaring a national emergency with respect to the situation in Venezuela, including the Government of Venezuela's erosion of human rights guarantees, persecution of political opponents, curtailment of press freedoms, use of violence and human rights violations and abuses in response to antigovernment protests, and arbitrary arrest and detention of antigovernment protesters, as well as the exacerbating presence of significant government corruption.

The President took additional steps pursuant to this national emergency in Executive Order 13808 of August 24, 2017; Executive Order 13827 of March 19, 2018; Executive Order 13835 of May 21, 2018; Executive Order 13850 of November 1, 2018; Executive Order 13857 of January 25, 2019; and Executive Order 13884 of August 5, 2019.

The circumstances, as described in Executive Order 13692 and subsequent Executive Orders issued with respect to Venezuela, have not improved, and they continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13692.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
March 1, 2023.

Presidential Documents

Notice of March 1, 2023

Continuation of the National Emergency With Respect to Zimbabwe

On March 6, 2003, by Executive Order 13288, the President declared a national emergency and blocked the property of certain persons, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of certain members of the Government of Zimbabwe and other persons to undermine Zimbabwe's democratic processes or institutions. These actions and policies had contributed to the deliberate breakdown in the rule of law in Zimbabwe, to politically motivated violence and intimidation in that country, and to political and economic instability in the southern African region.

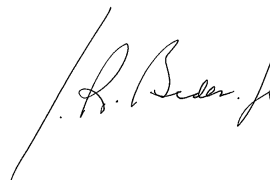
On November 22, 2005, the President issued Executive Order 13391 to take additional steps with respect to the national emergency declared in Executive Order 13288 by ordering the blocking of property of additional persons undermining democratic processes or institutions in Zimbabwe.

On July 25, 2008, the President issued Executive Order 13469, which expanded the scope of the national emergency declared in Executive Order 13288 and authorized the blocking of property of additional persons undermining democratic processes or institutions in Zimbabwe.

The actions and policies of certain members of the Government of Zimbabwe and other persons to undermine Zimbabwe's democratic processes or institutions continue to pose an unusual and extraordinary threat to the foreign policy of the United States. For this reason, the national emergency declared on March 6, 2003, and the measures adopted on that date, on November 22, 2005, and on July 25, 2008, to deal with that emergency, must continue in effect beyond March 6, 2023.

Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13288.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
March 1, 2023.

[FR Doc. 2023-04532
Filed 3-1-23; 2:00 pm]
Billing code 3395-F3-P

Reader Aids

Federal Register

Vol. 88, No. 41

Thursday, March 2, 2023

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-741-6000****Laws** **741-6000**

Presidential Documents

Executive orders and proclamations **741-6000****The United States Government Manual** **741-6000**

Other Services

Electronic and on-line services (voice) **741-6020**Privacy Act Compilation **741-6050**

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FEDERAL REGISTER PAGES AND DATE, MARCH

12803-13014..... 1
13015-13290..... 2

CFR PARTS AFFECTED DURING MARCH

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

1201.....12805

3 CFR

Proclamations:

9704 (amended by

Proc. 10522) 13267

9980 (revised by Proc.

10522) 13267

10521.....12803

10522.....13267

10523.....13277

Administrative Orders:

Memorandums:

Memorandum of

February 27, 2023 13015

Notices:

Notice of March 1,

2023 13285

Notice of March 1,

2023 13287

Notice of March 1,

2023 13289

7 CFR

1710.....12806

9 CFR

Proposed Rules:

410.....12870

10 CFR

72.....13017

12 CFR

748.....12811

14 CFR

39 (2 documents) 12817,

12820

Proposed Rules:

21.....13071

25 (2 documents) 13071

29.....13071

71 (2 documents) 12870,

12872

21 CFR

11.....13018

Proposed Rules:

130.....12870

1300 (2 documents) 12875,

12890

1304 (2 documents) 12875,

12890

1306 (2 documents) 12875,

12890

24 CFR

203.....12822

206.....12822

Proposed Rules:

202.....12906

25 CFR

140.....13018

141.....13018

211.....13018

213.....13018

225.....13018

226.....13018

227.....13018

243.....13018

249.....13018

27 CFR

Proposed Rules:

9.....13072

31 CFR

591 (2 documents) 13022,

13024

33 CFR

165 (2 documents) 12829,

12831, 13026

37 CFR

1.....13028

38 CFR

17.....13033

40 CFR

52 (3 documents) 12831,

12833, 12835

271.....13034

Proposed Rules:

271.....13077

41 CFR

60-1.....12842

48 CFR

212 (2 documents) 12861,

12862

225.....12861

232.....12862

242.....12864

252 (2 documents) 12861,

12862

50 CFR

17.....13038

660.....12865

679.....12868, 13238

Proposed Rules:

622.....13077

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 January 10, 2023

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